



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

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DECISION

Dispute Codes **MNDCL-S, MNDL-S, FFL**

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for damages and loss pursuant to section 67;
- authorization to retain all or a portion of the tenant's security and pet damage deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. Each party was assisted by a family member.

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

As both parties were present service was confirmed. The tenant confirmed receipt of the landlord's materials and said they had not served any materials of their own. Based on their testimonies I find the tenant duly served in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to any of the relief sought?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The parties agree on the following facts. This tenancy began in 2019 with a monthly rent of \$2,300.00 payable on the first of each month. A security deposit of \$1,150.00 and a pet damage deposit of \$500.00 were paid at the start of the tenancy and are still held by the landlord. The rental unit is the main portion of a stand-alone house with a separate occupant residing in the basement suite.

The parties submit that this tenancy ended on May 12, 2022 when the tenant vacated the rental unit. A condition inspection report was prepared at the start of the tenancy. No condition inspection report was prepared at the end of the tenancy. The landlord characterizes the end of the tenancy as abandonment with the tenant leaving with insufficient notice and without cleaning or paying rent as required. The tenant submits that they vacated the rental unit in accordance with a notice to end tenancy issued by the landlord. The parties agree that the tenants have not provided a forwarding address in writing as at the date of the hearing.

The landlord now seeks a monetary award of \$31,678.79 in their present application. The landlord submits that the amount includes costs of repairs and work performed on the rental unit during and after the tenancy and the lost income from the sale of a separate property necessitated by the tenant's occupancy of the rental unit.

The landlord called their realtor as a witness and they gave testimony that the landlord initially asked the realtor to list and sell the rental property but subsequently was instructed to sell a separate property of the landlord in a short amount of time. The witness testified that the landlord initially listed the sale property for approximately \$30,000.00 higher than the eventual sale price.

The landlord submitted into evidence a handful of various correspondence and receipts dated throughout the tenancy for various items they say were necessitated by the tenant. These include cost of plumbers attending at the rental unit, purchase of a microwave and cleaning the ventilation system.

The tenant disagrees with the landlord's claim in its entirety and notes that many of the issues raised by the landlord were conclusively addressed in the previous hearings under the file numbers on the first page of this decision.

Analysis

Section 38 of the *Act* requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing.

The parties confirmed that the tenant has not provided a forwarding address as at the date of the hearing. Therefore, I find it premature to make a decision on the security and pet damage deposit. This portion of the landlord's application is dismissed with leave to reapply.

Residential Tenancy Rule of Procedure 6.6 provides that the onus to establish their claim on a balance of probabilities lies with the applicant.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

In the present circumstances I find that the landlord has failed to establish any portion of their claim on a balance to demonstrate that there has been any damage or loss arising due to the breach on the part of the tenant.

The landlord submits a handful of receipts for repairs and work during the tenancy. As set out in section 32(1) of the *Act* the obligation to maintain residential property lies with the landlord and I find little evidence that the amounts claimed for expenses such as the purchase of a microwave or plumbing are attributable to a breach on the part of the tenant. While one of the letters provided by a third-party plumber notes that the frequency of issues with the plumbing system is unusual, I find it is insufficient to determine that the issues are therefore the result of the tenant's actions or inactions.

I note that the landlord has submitted a handful of invoices with little explanation and the amounts of the invoices do not correspond to the monetary award sought in their application. The landlord did not provide a cogent explanation of how they arrived at

the monetary figure they are seeking or why it differs from the amounts on the various invoices.

The landlord attributes the sale of a separate property at a lower price than they had initially advertised to the tenant. I find little evidence in support of the landlord's position. The landlord's circuitous logic is: the tenant interfered with the attempts to sell the rental property; therefore the landlord needed to sell a separate property in a short amount of time; the separate property was eventually sold for approximately \$30,000.00 less than the original asking price; therefore the tenant caused the landlord to incur \$30,000.00 in losses.

I find the logic of the landlord to be spurious and in any event there is insufficient evidence to establish that any losses were incurred as a result of the tenant's actions. The landlord's own witness gave evidence that whenever a seller demands that a property must be sold quickly, it is more difficult to sell at a higher price. While the landlord made reference to the property being sold for less than the original asking price, there is little evidence that the original listing price was reasonable for the market at that time.

In any event, I find little evidence that the conduct of the tenant has any material effect on the landlord's decision to sell a property that is not the rental unit. The landlord made several earlier attempt to end the tenancy for various reasons as noted in the previous decisions. The arbitrators at each of the previous hearings found no basis for those notices and upheld the tenancy. I find the tenant's filing an application to dispute a notice to end tenancy is not a breach from which a monetary award could originate.

I find that the landlord has failed to establish any portion of their claim on a balance of probabilities. Consequently, I dismiss the balance of the landlord's without leave to reapply.

Conclusion

The portion of the landlord's application seeking authorization to retain the security and pet damage deposits are dismissed with leave to reapply.

The balance of the application is dismissed without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: June 20, 2022

Residential Tenancy Branch