Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: MNRL-S, MNDCL-S, MNDL-S, FFL
Tenant: MNSDB-DR, FFT

Introduction

The Tenant filed an Application for Dispute Resolution (the "Tenant Application") on October 10, 2021 seeking an order for the return of the security deposit, and reimbursement of the Application filing fee.

The Landlord filed an Application for Dispute Resolution (the "Landlord Application") on March 10, 2021 seeking an order for compensation for damage caused by the Tenant, for unpaid rent, and other money owed. Additionally, the Landlord seeks to recover the filing fee for their Application.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the "Act") on June 13, 2022. The Landlord attended the hearing; the Tenant did not attend. I explained the process to the Landlord. The Landlord had the opportunity to present oral testimony and present their prepared evidence in the hearing.

Preliminary Matter – notification of the hearing and evidence

The Landlord stated that they delivered notice of this dispute, as well as their prepared evidence, to the tenant via Canada Post registered mail on November 12, 2021. They provided the registered mail tracking number to show this. From this evidence I am satisfied that the Landlord completed service as required by the *Act* and the *Residential Tenancy Branch Rules of Procedure*.

Though the Tenant did not attend, the Landlord stated they were aware of the Tenant's Application, carried over from the Direct Request proceeding and linked to the Landlord's Application. The Landlord also confirmed that they received evidence from the Tenant in advance.

Issue(s) to be Decided

- Is the Landlord entitled to monetary compensation for unpaid rent, and/or damage to the rental unit, and/or other money owed, pursuant to s. 67 of the *Act*?

- Is the Landlord entitled to recover the filing fee for this Application pursuant to s. 72 of the *Act*?

Background and Evidence

The Landlord provided a copy of the tenancy agreement in their evidence. This shows the tenancy started on May 1, 2020 and was initially set for a fixed term that would end on April 30, 2021. The amount of rent was set at $2,250 per month, payable on the first of each month. The copy in the evidence shows the parties singed the agreement on April 24, 2020. The Tenant paid a security deposit of $1,125 and a pet damage deposit of $1,125.

In the hearing, the Landlord provided that, after April 2021, the tenancy continued on a month-to-month basis. The Landlord presented they were "trying to be flexible" in affording the Tenant the opportunity to move out more easily, after talks they had with the Tenant early in the tenancy about their eventual need to move into the unit themself. The Tenant gave their notice to the Landlord on July 31, 2021 for the end-of-tenancy date of August 31, 2021.

i. Landlord's claim for rent – August 2021

The end-of-tenancy date, as provided by the Tenant when they notified the Landlord, was August 31, 2021. In a written record in their evidence, the Landlord set out that each month the Tenant paid rent in full. For the final month, the rent was late, and they provided the Tenant multiple opportunities to pay; however, the Tenant replied back to the Landlord that they were waiting on the money from a family member. As of the date of the Landlord's Application, they still had not received the final month rent amount. The Landlord thus claims this entire amount, for $2,250.

ii. Landlord's claim for damages to the rental unit

The Landlord confirmed that the Tenant moved out from the unit on August 22, 2021. On that date the Landlord visited to the rental unit for the return of the keys, and they "did a quick walk-through" with the Tenant at that time. The Landlord did not complete a Condition Inspection Report with the Tenant at that time.

The Landlord performed another cursory walk-through inspection on their own, then invited the Tenant to an inspection on August 24th or 25th in order to complete a formal sign-off process. The Tenant declined these dates, stating in a message to the Landlord that "the walk through was completed on Sunday, August 22, 2021."

The Landlord then notified the Tenant of the final opportunity for a condition inspection meeting, using the Residential Tenancy Branch specific form (in their evidence) to do so, offering August 26th at 6:00pm.

The Tenant then did not attend this meeting and the Landlord completed the required Condition Inspection Report on their own on August 26th. The report as it appears in the Landlord's evidence has the Landlord's room-by-room review of the condition of the rental unit, provided notations and other notes about the state of the rental unit throughout. On the final page, the Landlord wrote:

> extensive water damage in ensuite bathroom, flooring to be replaced, and more to be assessed. Extensive dog pee damage on all mainfloor moldings, some flooring & drywall may need replace. S cupboard doors & drawer broken & need replace in kitchen.

The Condition Inspection Report also shows the notation and record for the initial inspection meeting with the Landlord and Tenant present on May 1, 2020 at the start of

the tenancy. The final page bears the Tenant's signature to provide that they agree that the "report fairly represents the condition of the rental unit" at that time.

The Landlord's claim, as set out on the Monetary Order Worksheet dated November 4 is as follows:

#	Items	$ claim
1	replacement of trim/moulding	1,000.00
2	broken kitchen cabinet doors	1,400.00
3	water damaged ensuite flooring – damaged carpets stairwell	1,921.50
4	refinishing damaged main floors	4,000.00
5	cleaning	354.32
6	garage lighting	155.81
	Total	**8,831.63**

For each item, the Landlord provided the following evidence and detail:

1. The Landlord provided an invoice that is a quote for work on the molding on the main floor. This is $600.68 to "replace equivalent of what had been damaged." This required an additional $400 for installation. The Landlord provided a separate document showing 4 images of damaged baseboard, primarily swelling due to it getting soaked. A 21-second video shows damage at the entryway, and a 35-second video shows the same in more close-up detail, and a 10-second video shows the dining area. 5 other videos show damage to baseboards in other areas.

2. For kitchen cabinet doors, the Landlord provided 2 images showing a split in each of one lower and one upper cabinet. There are two videos showing this damage. In their written explanation, the Landlord provided that 4 cabinets were "pulled apart" in the kitchen, being 3 upper and 1 lower. These are "solid oak" cabinets, and a cabinet maker stated they cannot be repaired and must be custom built at $350 per door. This totals $1,400 as the Landlord indicated on their worksheet.

3. The Landlord provided 2 images showing water damage in one of the bathrooms, and one image showing nail polish on the flooring. This is wood flooring in a bathroom. Video shows the Landlord describing water leaking from that bathroom down into the basement, and water damage to the flooring in that bathroom space. In their written description, the Landlord provided that the

"flooring . . . has water damage around the toilet and the tub as can be seen in the photos." They provided a quote "for the cost of equivalent flooring purchase and install", at $1,080, dated November 4.

They also claimed the pet odour could not be cleaned out, and the carpet on the stairs needs to be removed. The same quote from a floor specialist has $750 as their estimate to "re-do carpet on stairs with new underlay."

4. For the Landlord's floors throughout, they provided videos showing details, and photos. Their written description notes "extensive denting in area between entrance and kitchen . . .along with gaping and moisture damage along some of the wall due to damage from dog urine sitting in and under the floor trim." They provided an image to a flooring specialist who quoted $4-5000 for a refinish, this "in order to lessen the dent and water damage". The Landlord claimed $4,000 for damage to the hardwood floors throughout.

5. The Landlord noted "cleaning of the unit was not completed sufficiently." This amounted to "30plus hours of cleaning" which was "2 people for 10 hours". They provided video clips of details and pictures. The cleaners gave the Landlord a message noting the particular smell of "dog urine odor" that "could not be rectified." The full breakdown of the cost is: 2 cleaners at $10/hour for 10 hours = $200; supplies = $74.63; and "special primer for odor reduction" = $79.69.

6. The Landlord included a 29-second video showing LED lights installed with a cord running from one to the other across the garage ceiling. The Landlord provided two receipts totalling $75.67 from the circled amounts. On a written description, the Landlord provided that "the garage pot lights were installed in a unsafe manner". They claimed the lights were taken from their separate shop on the property (not part of the agreement and no access to the Tenant) then installed in the garage. The Landlord claimed $155.81 for this amount, including the $100 cost of an electrician to install the lights.

iii. <u>parking fines imposed by strata</u>

The Landlord provided a copy of the strata agreement that was in place for this rental unit property. The Tenant "incurred 3 parking fines due to parking infractions", reflected in 2-7 of the Consolidated Bylaws that states "ensure that all their vehicles are parked in their yard and not on the street", this to not impede a snow plough or grader.

The Landlord presented a message to the Tenant from November 2020 and February 2021 whereby they informed them of the infraction. The strata forwarded pictures as evidence of the infraction to the Landlord. There is evidence that the Landlord challenged the strata on their imposition of a fine with regard to strict roadway boundaries.

Analysis

The tenant completed their direct request Application for the return of their deposit on April 4, 2021

Regarding deposits from the Tenant, and their dispensation after a tenancy has ended, the *Act* s. 38(1) states:

1) . . .within 15 days after the later of
   a) the date the tenancy ends, and
   b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

   c) repay. . .any security deposit . . . to the tenant
   d) make an application for dispute resolution claiming against the security deposit

Following this, s. 38(2) sets out that subsection (1) does not apply

> if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section . . . 36(1) *[tenant fails to participate in the end of tenancy inspection]*."

From the evidence I find the Landlord offered two opportunities for the Tenant to participate in an end-of-tenancy inspection. This was an email offer of the alternate two dates August 24 or August 25, then the additional form to the Tenant providing for August 26. The Tenant's text response to the Landlord shows their interpretation that the final meeting occurred on August 22 when they returned the keys to the Landlord. The Landlord in the hearing provided this was not a complete inspection meeting, with no Condition Inspection Report completed in that meeting. I find they sought to rectify this and required the Tenant's participation in order to do so.

The Tenant did not attend the final meeting as offered by the Landlord, with "at least 2 opportunities. . . for the inspection" as per s. 35(2). By s. 38(2) I conclude the Tenant's right to the return of the deposits was extinguished; therefore, I dismiss their Application

without leave to reapply. Conversely, the Landlord has the right to claim against the deposits, having complied with s. 35.

Under s. 7 of the *Act*, a landlord or tenant who does not comply with the legislation or their tenancy agreement must compensate the other for damage or loss. Additionally, the party who claims compensation must do whatever is reasonable to minimize the damage or loss. Pursuant to s. 67 of the *Act*, I shall determine the amount of compensation that is due, and order that the responsible party pay compensation to the other party if I determine that the claim is valid.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

i. Landlord's claim for rent – August 2021

The *Act* s. 26 of the *Act* requires a tenant to pay rent when it is due under the tenancy agreement whether or not a landlord complies with the *Act*, the regulations or the tenancy agreement, unless a tenant has a right under the *Act* to deduct all or a portion of the rent.

The Landlord's evidence and testimony – which remains unchallenged because the Tenant did not attend the scheduled hearing – is that the Tenant gave their notice to end the tenancy one month in advance. The Landlord did not receive rent for the final month of August, and I find this is a valid claim to an amount owed to them resulting from the Tenant's violation of s. 26 and the tenancy agreement.

For this portion of the landlord's claim, I award the full amount of August 2021 rent, at $2,250. I find the Landlord is credible on the point that the Tenant simply did not pay the final month of rent.

ii. Landlord's claim for damages to the rental unit

Concerning the condition of the unit at the end of tenancy, s. 37 specifies that a tenant must “leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.”

1. I find it plausible, with verified evidence, that the Tenant’s pet damaged the baseboards in various spots throughout the rental unit. I find the Landlord’s quote for this at $1,000 is a reasonable amount for its replacement which is justified, having likely contributed to the noted odour throughout the rental unit noted by the cleaners. I grant the Landlord compensation of $1,000 for this expense for damage that is beyond reasonable wear and tear in the rental unit.

2. I find the Landlord did not show fully the need for four cabinet door replacements. In the videos, the cabinet doors are functional, and fully closing. I am not satisfied the replacement of four cabinet doors (with only two shown in the evidence) is needed; and full replacement of cabinet doors is not an effort at mitigating the damage. In sum, the damage is not depicted sufficiently in the evidence; therefore, I dismiss this piece of the Landlord’s claim.

3. I find the ensuite bathroom floor, made of hardwood, is in an area that is prone to water and moisture on a daily, regular basis. The wood on the flooring is more prone to water damage than would normally be the case in tile or other types of flooring. I find there is not an inordinate amount of damage present from the evidence the Landlord submitted here. I am not satisfied it is damage beyond reasonable wear and tear given the nature of the room, and the area right next to a bathtub, and the type of flooring used in that room. I am not satisfied that damage exists; therefore, I dismiss this piece of the Landlord’s claim.

   As well, excessive pet odour is impossible to show in video or picture evidence. I am not satisfied of the need for carpet replacement on the stairs (which appears to be the only carpeted area), minus evidence showing damage to that carpeting. I also dismiss this portion of the Landlord’s claim, with no proof of damage present.

4. For the hardwood floors, the evidence presented by the Landlord on the assessment of value is a single texted image showing a broad image of the floor, with a response back from a floor finishing expert. This is a single text message. The quote is “around $4-5000”. I am not satisfied of the legitimacy of this assessment, with no evidence of an onsite visit, and no information that the floor finishing expert was even aware of the nature of the issues raised by the Landlord. In short, I find there is no evidence to show the issues spotted by the

Landlord could be rectified or lessened by refinishing. The evidence consisting of a single text image with a brief response is not sufficient to justify an award for the amount claimed. With no evidence of refinishing indeed being a recommended solution, I find the Landlord has not established the value. I dismiss this piece of the Landlord's claim.

5. From the Landlord's evidence, I grant the costs of their extra cleaning to them. This includes the noted odour for which the best evidence is the account of the cleaners who actually attended to deal with the issues. What is shown in the videos and attested to in the Landlord's account is something beyond reasonable wear and tear.

6. I find the Landlord did not provide proof of the cost for electrician work, with no invoice or receipt submitted for this work. Further, I am not certain of the presence of damage where the Landlord did not note specifically the issue with lights haphazardly installed in the garage by the Tenant. I find the Landlord did not provide sufficient evidence for this piece of their claim; therefore, I grant no compensation for this piece.

iii. <u>parking fines imposed by strata</u>

There is evidence the Landlord notified the Tenant of the parking infraction. The Tenant was not able to abide by the strata bylaw after being asked to by the Landlord. I find the Landlord was not in agreement with the strata on the imposition of fines; however, the strata did not waver on the necessity thereof. I find the Tenant had the means of using the driveway after being requested to do so – the type of vehicle involved could more than handle that task. I find the Tenant rightfully owes this amount to the Landlord, continuing to park on the street after the Landlord asked them not to. This cost the Landlord extra time and effort in establishing the validity of the strata's rule, and the Landlord should not be liable for that cost to them. I so award the Landlord $150 for this piece of their claim.

I find the Landlord has a valid monetary claim for the rent amount owing and some damage to the rental unit and other money owing. By s. 72(2), I have the authority to make a deduction from the deposit amounts held by the Landlord.

The Landlord has established a claim of $3,754.32. After setting off the security deposit ($1,125) and pet damage deposit ($1,125), there is a balance owing of $1,504.32. I am

authorizing the Landlord to keep the security deposit and pet damage deposit and award the balance of $1,504.32 as compensation for rent owing, damage to the rental unit, and other money owing.

Because the Landlord was moderately successful in their claim as set out above, I award the $100 Application filing fee. The Tenant was not successful in their claim; therefore, their Application for the filing fee is dismiss without leave to reapply.

Conclusion

I order that the Tenant pay to the Landlord the amount of $1,604.32. I grant the Landlord a monetary order for this amount. The Landlord may file this monetary order at the Provincial Court (Small Claims) where it will be enforced as an order of that court.

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

Dated: June 15, 2022

Residential Tenancy Branch