Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

File #110060783: MNDL-S, MNDCL, FFL
File #110061308: MNSDB-DR, FFT

Introduction

The Landlord seeks the following relief under the *Residential Tenancy Act* (the "*Act*"):

- a monetary order pursuant to s. 67 for damages to the rental unit, which is claimed against the deposits;
- a monetary order pursuant to s. 67 compensating for other losses; and
- return of his filing fee pursuant to s. 72.

The Tenants filed a cross-application in which they seek the following under the *Act*:

- return of double their security deposit and pet damage deposit pursuant to s. 38; and
- return of their filing fee pursuant to s. 72.

The Tenants application was filed as a direct request but was scheduled to hearing in light of the Landlord's application.

J.W. appeared as the Landlord. J.G. and A.E. appeared as the Tenants.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The parties confirmed that they were not recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The parties advise that they served their application materials on the other side. Both parties acknowledge receipt of the other's application materials without objection. Based

on the mutual acknowledgments of the parties without objection, I find that pursuant to s. 71(2) of the *Act* that the parties were sufficiently served with the other's application materials.

Preliminary Issue – The Parties' Claims

Looking at the Landlord's claim, his application seeks $6,015.87 for replacing carpets that are alleged to have been destroyed by a cat and $2,500.00 for an alleged failure by the Tenant's to give proper notice to end the tenancy. The application also includes a vague statement of "More damage but no space left to write all of it down".

The Tenants application is pled as the double return of their deposits but also includes within the description of their claim a request for compensation under s. 51(1) of the *Act* for one month's rent. The Tenant's did not file a compensation claim under s. 51 or 67.

During the hearing, the Landlord made various submissions with respect to amounts that were not listed in his application, including unpaid rent claims from the spring of 2020 and additional damage claims to the rental unit. Similarly, the Tenants made submissions that they were not given compensation under s. 51(1) of the *Act*. Neither party amended their applications pursuant to Rule 4.1 of the Rules of Procedure such that they claimed these other amounts.

Rule 2.2 of the Rules of Procedure stipulates that a claim is limited to what is stated in the application. This rule exists as a basic procedural safeguard to ensure that respondents know what the other side is claiming against them. It also constrains the claims parties make such that disputes do not devolve into a nebulous series of allegations that are not tied to pleadings filed with the Residential Tenancy Branch.

Both parties are at fault of seeking amounts that are not properly set out in their application. I hold both parties strictly to their claims as set out under the applications. The other aspects are not relevant to the applications before me and are an improper attempt to wedge additional monetary claims that are not properly pled.

As these other claims are not properly before me, I make no comment or findings with respect them in these reasons. The parties are free to make applications for these amounts should they wish to do so. Nothing in this decision is to be construed as an extension of any time limitation that may apply under the *Act*.

Issues to be Decided

1) Is the Landlord entitled to compensation for damages to the rental unit?
2) Is the Landlord entitled to compensation for other monetary losses?
3) Are the Tenants entitled to the return of double their deposits?
4) Is either party entitled to the return of their filing fee?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this decision.

The parties confirmed the following details with respect to the tenancy:

- The Tenants took occupancy of the rental unit on December 1, 2018.
- Rent of $2,500.00 was due on the first day of each month.
- The Tenants paid a security deposit of $1,250.00 and a pet damage deposit of $250.00 to the Landlord.

A copy of the tenancy agreement was put into evidence by the Landlord.

There was some dispute regarding the end of the tenancy. The Tenants indicate that they vacated the rental unit on January 4, 2022. The Landlord says that the tenancy ended on February 14, 2022 and did not confirm when the Tenants vacated the rental unit. Both parties confirm that the move-out inspection was conducted on January 8, 2022.

The Landlord testified that he sold the rental unit with the purchasers taking possession on February 15, 2022. The Landlord further testified that the buyers asked for vacant possession of the rental unit and that he served a Two-Month Notice to End Tenancy on the Tenants (the “Two-Month Notice”). The Tenants confirm receiving a Two-Month Notice to End Tenancy from the Landlord. No copy of the notice to end tenancy was put into evidence by the parties.

The Landlord testified that the Tenants failed to give proper notice to end the tenancy and that the Two-Month Notice had an effective date of February 14, 2022. The Landlord argued that rent was not paid for January 1, 2022 and that he is entitled to rent

for that month and for the partial month of February 2022. However, the Landlord's application lists an amount of $2,500.00 for compensation.

The Tenants indicate that they gave the Landlord notice that they would be vacating the rental unit by way of phone call on December 2, 2021. A.E. indicates that the original phone call notice was that the Tenants would vacate on January 1, 2022, though this was pushed back due to difficulties with securing a moving truck during inclement weather.

The Landlord further testified to that the Tenants had an elderly cat that urinated throughout the rental unit. The Landlord indicates that the urine had soaked into the underlay and that there was a pungent odor within the rental unit. The Landlord testified that he had a professional carpet cleaner attend the rental unit and that he was advised by the carpet cleaner that cleaning the carpets would not remove the smell. I was directed to a quote in the Landlord's evidence that the cost of replacing the carpet was $6,015.87.

The Landlord admitted that he did not pay for the carpet replacement. However, the Landlord argued that the buyers may potentially file a claim against him due to the urine-soaked carpets.

The Tenants deny that the carpets were urine soaked and that they had the carpets professionally cleaned when they moved-out of the rental unit. The Tenants testified that the Landlord's realtor and contractors who attended the rental unit said there was no smell.

I was provided with a copy of the move-out inspection report, which indicates it was conducted on January 8, 2022. The version provided by the Landlord and the Tenants do not correspond with one another.

The version provided by the Tenant shows that the rental unit was in good condition and that there were "scuffs, dents, etc. on walls are all considered normal wear and tear." It is signed by the Tenants and the Tenants agreed that the report was accurate.

The version provided by Landlord notes that there is urine smell within one of the bedrooms, a bedroom needed painted, that there was a hole in the carpet, and other damage is described within the Landlord's version.

At the hearing, the Landlord claimed the Tenant J.G. was a master manipulator and had distracted him while the inspection was conducted. The Tenant J.G. denied this and indicated that the inspection lasted 1.5 hours and that they went through the property together.

The parties confirm that the Tenants provided their forwarding address on January 8, 2022 during the move-out inspection.

Analysis

The Landlord claims against the security deposit for damages to the rental unit. The Landlord also claims for other monetary compensation. The Tenants seek the double return of their deposits.

Section 38(1) of the *Act* sets out that a landlord must within 15-days of the tenancy ending or receiving the Tenant's forwarding address, whichever is later, either repay a tenant their security deposit or make a claim against the security deposit with the Residential Tenancy Branch. A landlord may not claim against the security deposit if the application is made outside of the 15-day window established by s. 38. Under s. 38(6) of the *Act*, when a landlord fails to either repay or claim against the security deposit within the 15-day window, the landlord may not claim against the security deposit and must pay the tenant double their deposit.

I have reviewed the condition inspection report and find that it complies with the formal requirements under the *Act* and Regulations. I find that neither party's right to the deposits has been extinguished.

Upon review of the information on file and in consideration of Rule 2.6 of the Rules of Procedure, I find that the Landlord filed his application on January 20, 2022. As the parties confirmed that the forwarding address was provided on January 8, 2022, I find that the Landlord filed his application within the 15-days permitted to him under s. 38(1) of the *Act*. The doubling provision of s. 38(6) does not apply.

Looking at the substantive monetary claims advanced by the Landlord, under s. 67 of the *Act* the Director may order that a party compensate the other if damage or loss result from that party's failure to comply with the *Act*, the regulations, or the tenancy agreement. Policy Guideline #16 sets out that to establish a monetary claim, the arbitrator must determine whether:

1. A party to the tenancy agreement has failed to comply with the *Act*, the regulations, or the tenancy agreement.
2. Loss or damage has resulted from this non-compliance.
3. The party who suffered the damage or loss can prove the amount of or value of the damage or loss.
4. The party who suffered the damage or loss mitigated their damages.

The applicant seeking a monetary award bears the burden of proving their claim.

Looking first to the Landlord's claim for damages to the carpet, I find that the Landlord is not entitled to the cost of replacing the carpets. The Landlord admits that the carpets were not replaced and that the property has been sold. I find that the Landlord has failed to demonstrate an actual loss or sufficiently quantified the loss. The Landlord's argument that the buyers may bring a claim against him is entirely speculative. It would be inappropriate to order for the replacement cost of carpets located in a home that the Landlord no longer owns. An order for compensation under the circumstances would amount to windfall for the Landlord. I dismiss this portion of the Landlord's claim without leave to reapply.

Dealing next with the Landlord's claim for compensation for lost rent, the claim in the application was for $2,500.00, which is equivalent to one month's rent. It is undisputed that the Landlord served the Tenants with the Two-Month Notice issued under s. 49 of the *Act* as the buyer sought vacant possession of the rental unit. Section 50(1) permits tenants who have received under s. 49 of the *Act* to end a tenancy early by giving the landlord at least 10 days' written notice to end tenancy and paying prorated rent for the period in question.

In this instance, the Tenants admit that they did not give written notice that they would be vacating, citing a phone call they had with the Landlord on December 2, 2021. I find that the Tenants failed to give written notice as required under s. 50(1) of the *Act* and that this breach gives rise to a claim for damages for lost rental income over the 10 day notice period.

I have considered the conflicting information with respect to the move-out date. The move-out inspection is clear that the keys were surrendered to the Landlord on January 8, 2022. The Landlord provided evidence that no rent was paid for January 2022 at all. I find that distinction on the move-out date is not relevant as Tenants were permitted to

give 10 days notice and the Landlord obtained the keys for the rental unit on January 8, 2022. Accordingly, I find that the Landlord is entitled to compensation for unpaid rent from January 1 to 10, 2022, which equates to $806.45 (($2,500.00/31) x 10 days).

I find that the Landlord has established a monetary claim on his application of $806.45 and he may retain this amount from the deposits. As the Landlord has not returned any of the deposits, I order that their balance, being $693.55 ($1,500.00 - $806.45), be returned to the Tenants.

Conclusion

The Tenants are not entitled to double the return of the deposits.

The Landlord has established a monetary claim totalling $806.45 under s. 67 of the *Act*. He may retain this amount from the deposits. The Tenants are entitled to the return of the balance of the deposits, being $693.55.

I find that parties had mixed success in their applications. Accordingly, I find that neither are entitled to the return of their filing fee. The claim from both parties under s. 72(1) for the return of their respective filing fees are dismissed without leave to reapply.

As the Landlord retains the deposits, I grant a monetary order in the Tenants favour of $693.55.

It is the Tenants obligation to serve the monetary order on the Landlord. If the Landlord does not comply with the monetary order, it may be filed by the Tenants with the Small Claims Division of the Provincial Court and 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: August 31, 2022

Residential Tenancy Branch