Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

On March 20, 2022, the Landlord made an Application for Dispute Resolution seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the "*Act*"), seeking to apply the security deposit towards this debt pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

This hearing was scheduled to commence via teleconference at 1:30 PM on October 18, 2022.

The Landlord attended the hearing, with R.W. attending as an agent for the Landlord; however, the Tenant did not attend the hearing at any point during the 87-minute teleconference. The Landlord advised of his correct, legal name and acknowledged that the Style of Cause on the first page of this Decision should be amended to reflect this correction. At the outset of the hearing, I informed the parties that recording of the hearing was prohibited and they were reminded to refrain from doing so. As well, all parties in attendance provided a solemn affirmation.

Rule 7.1 of the Rules of Procedure stipulates that the hearing must commence at the scheduled time unless otherwise decided by the Arbitrator. The Arbitrator may conduct the hearing in the absence of a party and may make a Decision or dismiss the Application, with or without leave to re-apply.

I dialed into the teleconference at 1:30 PM and monitored the teleconference until 2:57 PM. Only representatives for the Applicant dialed into the teleconference during this time. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that

representatives for the Landlord were the only other persons who had called into this teleconference.

The Landlord advised that the Notice of Hearing and evidence package was served to the Tenant by registered mail on March 24, 2022, and that this was delivered five days later (the registered mail tracking number is noted on the first page of this Decision). Based on this undisputed evidence, I am satisfied that the Landlord's Notice of Hearing and evidence package was duly served to the Tenant. As such, the Landlord's documentary evidence was accepted and will be considered when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to a Monetary Order for compensation?
- Is the Landlord entitled to apply the security deposit towards this debt?
- Is the Landlord entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Landlord advised that the tenancy started on September 1, 2021, as a fixed-term tenancy ending on May 31, 2022. However, the tenancy ended when the Tenant gave him verbal notice, on February 28, 2022, to end the tenancy, and then she gave up vacant possession of the rental unit on March 1, 2022. As an aside, he was informed that the reason he noted in the vacate clause of the tenancy agreement was invalid.

Rent was established at an amount of $1,800.00 per month and was due on the first day of each month. A security deposit of $1,800.00 was also paid. He was informed that

this amount was more than he was permitted to collect for a security deposit, pursuant to Section 19 of the *Act*. However, he claimed that this was also for a potential pet damage deposit, despite this not being indicated as such on the tenancy agreement. A copy of the tenancy agreement was submitted as documentary evidence for consideration, and while this copy was not signed, he claimed that it was electronically signed by the parties.

As well, he stated that a move-in inspection report was conducted on August 31, 2021, that a move-out inspection report was conducted on March 1, 2022, and he solemnly affirmed that the Tenant signed these reports. In addition, while he had difficulty pointing to this, he claimed that the Tenant provided her forwarding address in writing by email on March 8, 2022. This email was submitted as documentary evidence for consideration.

He testified that the Tenant paid March 2022 rent in full, and pre-paid April and May 2022 rent as well.

He also testified that the Tenant's mother contacted him regarding some issues with respect to hardship, so he agreed to send a cheque in the amount of $3,300.00 back to the Tenant, and he did so on March 11, 2022, by registered mail (the registered mail tracking number is noted on the first page of this Decision). He stated that this package was received on March 18, 2022, and was cashed by the Tenant. He then referenced the move-out inspection report, where he claimed that specific terms were allegedly written into this report at the time of the inspection. While these terms were written in a manner that is difficult to understand, he claimed that the agreement was that he would refund $3,300.00 to the Tenant, but if he was unable to re-rent the unit, the Tenant would then pay this money back to him. As well, he stated that the Tenant agreed to pay for cleaning and damage to the rental unit.

He advised that he advertised the rental unit online on March 1, 2022; however, he did not submit any documentary evidence to support this as he "did not think" to do so. As well, he submitted that he would "sometimes hire a real estate agent" to help find prospective tenants. When he was questioned about "sometimes" hiring a realtor, he then claimed that he did in fact hire a realtor, and that he "believed they tried their best" to find a suitable tenant; however, he did not provide any documentary evidence to corroborate this either. He stated that he could have his realtor attend the hearing to provide testimony that would support his claims, so he was invited to contact this person

to dial into the hearing. He stated that he was making arrangements to have this person call in; however, no such person attended the hearing at any point after this exchange.

He then claimed that there were some interested parties that viewed the rental unit, but these parties stated that they were interested in renting the whole property as opposed to the one-bedroom rental unit. He then submitted that there were no interested parties for the rental unit for the remaining two months of the lease, and it has sat vacant since March 1, 2022.

In his Application, the Landlord indicated that he was claiming compensation in the amount of **$1,800.00** because the "tenant destory [sic] agreement move out ealier [sic] and teant [sic] proimise [sic] to pay landlord one month lose" as well as an additional **$1,800.00** because the Tenant "destroy agreement ealrlier [sic] and tenant agree to pay landlord one month lose 1800."

R.W. advised that the Landlord advertised the rental unit with a picture of the whole property, so interested parties inquired if the entire property was available after May 31, 2022.

The Landlord then advised that he was seeking compensation in the amount of **$1,250.00** because the Tenant left the windows and doors open during the winter. He stated that he warned the Tenant several times not to do this as it would damage the boiler; however, the Tenant did not comply with his warning. As well, he submitted that he hired a renovation company who explained this issue to the Tenant in January 2022. He stated that this renovation company repaired the boiler after the tenancy ended, and he referenced the invoice submitted as documentary evidence, but he could not explain why this specific repair or cost was not noted on the invoice.

The Landlord also advised that he was seeking compensation in the amount of **$150.00** because the Tenant did not clean the rental unit at the end of the tenancy. He did not detail what was not cleaned at the end of the tenancy; however, he stated that he hired an acquaintance to clean the rental unit to return it to a re-rentable state. He did not submit the invoice to corroborate this cost; however, he stated that two cleaners spent a total of four hours cleaning the rental unit.

Finally, he advised that he was seeking compensation in the amount of **$275.58** because the Tenant was responsible for 25% of the utilities for February and March 2022, as per the tenancy agreement and addendum. He did not submit any

documentary evidence to corroborate the cost of utilities or to support this calculation, but stated that the total utilities was “around” $1,102.00.

Analysis

Upon consideration of the testimony before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 23 of the *Act* states that the Landlord and Tenant must inspect the condition of the rental unit together on the day the Tenant is entitled to possession of the rental unit or on another mutually agreed upon day.

Section 35 of the *Act* states that the Landlord and Tenant must inspect the condition of the rental unit together before a new tenant begins to occupy the rental unit, after the day the Tenant ceases to occupy the rental unit, or on another mutually agreed upon day. As well, the Landlord must offer at least two opportunities for the Tenant to attend the move-out inspection.

Section 21 of the *Residential Tenancy Regulations* (the “*Regulations*”) outlines that the condition inspection report is evidence of the state of repair and condition of the rental unit on the date of the inspection, unless either the Landlord or the Tenant have a preponderance of evidence to the contrary.

Sections 24(2) and 36(2) of the *Act* state that the right of the Landlord to claim against a security deposit or pet damage deposit is extinguished if the Landlord does not complete the condition inspection reports in accordance with the *Act*.

Section 32 of the *Act* requires that the Landlord provide and maintain a rental unit that complies with the health, housing and safety standards required by law and must make it suitable for occupation. As well, the Tenant must repair any damage to the rental unit that is caused by their negligence.

Section 67 of the *Act* allows a Monetary Order to be awarded for damage or loss when a party does not comply with the *Act*.

With respect to the inspection reports, I note that the Landlord had provided somewhat unreliable, questionable, and illogical testimony throughout the hearing. However, as he solemnly affirmed that the Tenant signed the move-in and move-out inspection reports, I accept this as factual, despite having some misgivings about the truthfulness of the Landlord's testimony. Consequently, I am satisfied that the Landlord complied with the requirements of the *Act* in completing these reports. As such, I find that the Landlord has not extinguished the right to claim against the deposit.

Section 38 of the *Act* outlines how the Landlord must deal with the security deposit and pet damage deposit at the end of the tenancy. With respect to the Landlord's claim against the Tenant's security deposit, Section 38(1) of the *Act* requires the Landlord, within 15 days of the end of the tenancy or the date on which the Landlord receives the Tenant's forwarding address in writing, to either return the deposit in full or file an Application for Dispute Resolution seeking an Order allowing the Landlord to retain the deposit. If the Landlord fails to comply with Section 38(1), then the Landlord may not make a claim against the deposit, and the Landlord must pay double the deposit to the Tenant, pursuant to Section 38(6) of the *Act*.

Based on the consistent and undisputed evidence before me, the forwarding address in writing was received on March 8, 2022, and the Landlord filed to claim against the deposit on March 20, 2022. As such, I am satisfied that the Landlord made this Application within 15 days of receiving the Tenant's forwarding address. As the Landlord has not extinguished the right to claim against the deposit, I find that the doubling provisions do not apply to the security deposit in this instance.

With respect to the Landlord's claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

As noted above, the purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. When establishing if monetary compensation is warranted, it is up to the party claiming compensation to provide evidence to establish that compensation is owed. In essence, to determine whether compensation is due, the following four-part test is applied:

- Did the Tenant fail to comply with the *Act*, regulation, or tenancy agreement?
- Did the loss or damage result from this non-compliance?
- Did the Landlord prove the amount of or value of the damage or loss?
- Did the Landlord act reasonably to minimize that damage or loss?

With respect to the Landlord's claims for lost rent, while these claims are not entirely clear in the Application, and while the Landlord had difficulty explaining his claims or his rationale for doing what he did, it appears as if he is seeking compensation in the amounts of $1,800.00 for April 2022 rent and $1,800.00 for May 2022 rent because the Tenant ended the fixed term tenancy early.

There is no dispute that the parties entered into a fixed term tenancy agreement from September 1, 2021, ending on May 31, 2022. Yet, the tenancy effectively ended when the Tenant gave up vacant possession of the rental unit on March 1, 2022. Sections 44 and 45 of the *Act* set out how tenancies end, and they also specify that the Tenant must give written notice to end a tenancy. As well, this notice cannot be effective earlier than the date specified in the tenancy agreement as the end of the tenancy.

Given that the Tenant ended the fixed term tenancy early, I do not find that this complied with the *Act*. Therefore, I find that the Tenant vacated the rental unit contrary to Section 45 of the *Act*. Consequently, I am satisfied that the Landlord could be entitled to a monetary award in the amount of $3,600.00 to satisfy the loss for rent owing for the months of April and May 2022.

However, I find it important to note that Policy Guideline # 5 outlines the Landlord's duty to minimize their loss in this situation, and that the loss generally begins when the person entitled to claim damages becomes aware that damages are occurring. Moreover, the Landlord must make reasonable efforts to re-rent the rental unit.

While the Landlord claimed to have posted this unit as available for rent on March 1, 2022, and that he hired a realtor also to assist with finding prospective tenants, I note that the Landlord has not submitted any documentary evidence to support his submissions that these efforts were made. As well, he was given an opportunity to have his realtor attend the hearing to provide testimony, but he never had this person attend the hearing.

Furthermore, the Landlord provided much testimony that did not make much logical sense, and was equal parts contradictory and vague. This caused me to question the legitimacy and reliability of the Landlord's testimony on the whole. As such, I am not satisfied that the Landlord mitigated his losses and made reasonable attempts to re-rent the unit.

What further complicates this matter is that he testified that the Tenant had already pre-paid for April and May 2022 rent, totalling $3,600.00, so it is not clear why he is claiming in this Application for those months of rent again as he already had those monies in his possession. Further adding to the confusion here is the unusual manner with which the Landlord managed this tenancy, and the fact that he returned $3,300.00 to the Tenant on March 11, 2022.

As this cheque was cashed by the Tenant on or around March 18, 2022, I find it reasonable to conclude that this cheque amount was made up of the Tenant's $1,800.00 security deposit, which I have already determined to have been more than the Landlord was permitted to collect, and then $1,500.00 in rent. It is still not clear to me why the Landlord would have returned this amount.

Regardless, as the Landlord had already collected April and May 2022 rent, and as I have already determined that the Landlord did not demonstrate that he adequately mitigated his loss, I dismiss his claims for rental loss in its entirety. The fact that he returned an additional $1,500.00 to the Tenant for whatever reason is of the Landlord's own negligence, and this amount will not be recoverable through the Residential Tenancy Branch. The Landlord should seek legal advice if he wishes to pursue this matter against the Tenant.

With respect to the Landlord's claim for compensation in the amount of $1,250.00 to repair a damaged boiler, I note that I have already determined that the Landlord's credibility to be suspect. Furthermore, he claimed that the notes made on the move-out inspection report were written on there on March 1, 2022. In those notes, the Landlord indicated that the "Tenat [sic] agree [sic] to pay damage properces [sic] & walls & $5350 once landlord's renovation team issue [sic] invoice." In addition, I find it important to note that the Landlord's invoice or estimate from the renovation team, that was submitted as documentary evidence, indicated the amount of $5,350.00 plus GST. Furthermore, this invoice or estimate was dated March 28, 2022.

Given that this invoice or estimate for damage was dated after the move-out inspection was conducted, it is not clear to me how the Landlord would have known how much the renovations would have amounted to on March 1, 2022, in order to note that specific figure on the move-out inspection report. This causes me to question the truthfulness of the Landlord's testimony. From this, I can reasonably conclude that the Landlord's notes on the move-out inspection report were not written on the report on March 1, 2022, but were added after he received this March 28, 2022, invoice or estimate.

Furthermore, and more importantly, I note that nowhere on this invoice or estimate is a charge for $1,250.00 for the repair of a damaged boiler. Moreover, there is no documentary evidence to support the Landlord's testimony that the Tenant left the windows and doors open, that he addressed this issue with the Tenant, nor is there any documentary evidence from a qualified professional indicating that even if the Tenant did leave the windows and doors open, that this would have caused the boiler to become damaged. As well, there has also been no documentary evidence submitted that substantiates the Landlord's testimony of a damaged boiler. Ultimately, I am not satisfied that the Landlord has established the legitimacy of this claim, and I dismiss it in its entirety.

Regarding the Landlord's claim for compensation in the amount of $150.00 because the Tenant did not clean the rental unit at the end of the tenancy, given all my doubts above of the Landlord's credibility, and as there was no receipt or invoice submitted to corroborate this claim, this is dismissed in its entirety as well.

Finally, with respect to the Landlord's claim for compensation in the amount of $275.58 for 25% of the utilities owed by the Tenant for February and March 2022, as the Landlord's credibility and reliability has been determined to be dubious at best, and as there was no documentary evidence submitted to corroborate that this amount of utilities was owing, this claim is also dismissed without leave to reapply.

As the Landlord was not successful in these claims, I find that the Landlord is not entitled to recover the $100.00 filing fee paid for this Application.

Conclusion

The Landlord's 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: October 22, 2022

Residential Tenancy Branch