Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

File #110070216: MNDL-S, MNDCL-S, FFL
File #110071951: MNSDS-DR, FFT

Introduction

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

- a monetary order pursuant to ss. 67 and 38 to pay for repairs caused by the tenant during the tenancy by claiming against the deposit;
- a monetary order pursuant to ss. 67 and 38 compensating for loss or other money owed by claiming against the deposit; and
- return of the filing fee pursuant to s. 72.

The Tenants file a cross-application seeking the following relief under the *Act*:

- an order pursuant to s. 38 for the return of the security deposit and/or the pet damage deposit; and
- return of the filing fee pursuant to s. 72.

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

L.D. appeared as the Landlord. B.M. appeared as the Tenant. C.J. initially attended the hearing but could not participate due to a poor connection and disconnected. B.M. confirmed he could speak on behalf of both

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. 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.

Issues to be Decided

1) Is the Landlord entitled to claim against the security deposit?
2) Are the Tenants entitled to the return of their security deposit?
3) Is the Landlord entitled to compensation for repairs to the rental unit?
4) Is the Landlord entitled to compensation for other money owed?
5) 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 moved into the rental unit late May or early June 2019.
- The Tenants gave vacant possession of the rental unit to the Landlord on February 28, 2022.
- Rent of $1,619.00 was due on the first of each month.
- A security deposit of $800.00 was paid by the Tenants.

I have been provided with a copy of the tenancy agreement by the parties.

According to the Landlord, the Tenants did not give written notice when vacating the rental unit, giving verbal notice on February 1, 2022. The Landlord testified that the rental unit was rented to a new tenant on April 1, 2022 such that she lost out on one month's rent. The Landlord's application shows that this claim is for $2,300.00. Though the Landlord did not make submissions on how she arrived at this amount, the Landlord's evidence includes the tenancy agreement for the subsequent tenants showing the unit was rented for $2,300.00 per month.

The Tenant advises that he sent a text message to the property manager on January 31, 2022 at 7:41 PM advising that they would be vacating on February 28, 2022. I have not been provided with a copy of the text message from the Tenants.

I enquired with the Landlord whether the rental unit had been listed for rental and, if so, when. The Landlord advised that an advertisement for the rental unit was posted on February 1, 2022 but that there was no interest due to the condition of the rental unit.

According to the Landlord, the Tenants left the rental unit in an unclean state, leaving trash behind within the rental unit and a planter box outside. The Landlord's evidence includes images of the garbage and planter box as well as a receipt for cleaning the rental unit dated March 14, 2022 totalling $330.75.

The Landlord also testified that there was significant mould build-up within the corners of the rental unit, which she argued was attributable to the Tenants' conduct. She says that moisture within the corners that builds up during the winter months and was not cleaned by the Tenants such that mould developed. I have been provided with a series of photographs showing the mould, some of which appears to have built up on the face of painted brick within a fireplace. The Landlord testified that the mould repair required drywall replacement and paint. I am directed to an invoice date March 11, 2022 in the Landlord's evidence totalling $1,531.00 which is the cost of the repairs. The Landlord further testified that some insulation was required and I was directed to a receipt from Rona for spray foam sealant totalling $33.40.

The Tenant testified that mould within the rental unit had been a long-standing issue and that he and his co-tenant had been cleaning it away from the surface of the drywall for years. The Tenants' evidence includes a series of text messages and photographs. The first photograph is dated December 14, 2019 and shows mould build-up in the corner. Subsequent photographs dated from February and July 2021 show further mould build-up. The text messages provided by the Tenant also show that the issue was reported to the Landlord as early as February 3, 2020, though at the hearing the Tenant testified that he first notified the property manager on January 10, 2020.

The Tenant denies the rental unit was left in an unclean state, though admits leaving items behind at the rental unit which he says was damaged by the mould. The Tenant says that mould damaged items were left in one location as demonstrated in the image provided by the Landlord.

The parties confirm that no move-in condition inspection report had been completed, only a verbal walkthrough. The Landlord testified that the Tenants did not participate in the move-out inspection as they had left abruptly. The Landlord's evidence includes a series of text messages with the Tenant asking about the state of the rental unit on February 28, 2022, with attached photographs. The Tenant responds in a text message March 1, 2022 as follows:

> Hello [Property Manager] apologies on the condition. Something came up and I had to take off, was not in service yesterday. That is all junk. The neighbour may want that planter I will ask.
> There was a key in the mailbox.

No move-out condition inspection report appears to have been conducted, though both parties provide videos of the state of the rental unit at the end of the tenancy.

The Tenant says that he provided his forwarding address on April 1, 2022 by way of email, a copy of which is in the Tenants' evidence. A subsequent email date April 18, 2022 is sent by the Tenant to the property manager following up to check on the status of the security deposit.

The email of April 1, 2022 lists its subject line as "[Tenant] Forwarding address" and states the following:

> [Forwarding Address]
>
> [Rental Unit Address]
>
> Thanks

The email of April 18, 2022 states the following:

> Hello there,
>
> This is [the Tenant] from the previously rented [rental unit address] from 21 May 2019 – Feb 28 2022. Just following up, had previously provided a forwarding address for damage deposit but have heard nothing since I moved out.
>
> Please advise.

I have redacted personal identifying information from the emails reproduced above in the interests of the parties' privacy.

The Landlord acknowledges the email of April 1, 2022 though argued that it was not proper as it did not have the Tenants name and was merely an address without any text. The Landlord says that the forwarding address was received on April 18, 2022.

The parties confirm that none of the security deposit has been returned to the Tenants.

Analysis

The Landlord advances monetary claims against the security deposit. The Tenants seek the return of the security deposit.

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(1) of the *Act*. 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.

There is a dispute on when the forwarding address was provided. The Tenant did send an email on April 1, 2022 in which the forwarding address with the rental unit was included. The Landlord acknowledges receipt of this email but argues that it lacked sufficient detail to be considered the provision of a forwarding address by the Tenants as the email does not identify who sent it.

I disagree with the Landlord. Though the Tenant clearly ought to have used some prose to explain the basis for the email, simply as a matter of good etiquette, the subject line for the email states "[The Tenant] Forwarding address". It is difficult for the Landlord to argue that they did not understand the context of the other address. The subject line states the Tenant's name and that it contained the forwarding address. The text of the April 1 email contains the rental unit address and another address. One could infer that the other address was the forwarding address based on the overall content and context of the April 1, 2022 email.

I find that the forwarding address was provided by the Tenant on April 1, 2022. As per s. 38(1) of the *Act*, the Landlord had until April 15, 2022 to file the application. 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 their application on April 24, 2022. Accordingly, I find that the Landlord failed to file within the 15-day time limit and did not return the security deposit such that s. 38(6) has been triggered.

Looking at the Landlord's monetary claims, 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.

Dealing first with the mould allegation, I note that ss. 32(2) and 32(3) of the *Act* impose an obligation on tenants to maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access and to repair damage to the rental unit or common areas that are caused by their actions or neglect or by a person permitted on the residential property by the tenant. Further, s. 37(2) of the *Act* imposes an obligation on tenants to leave the rental unit in a reasonably clean and undamaged state, except for reasonable wear and tear, and to give the landlord all keys in their possession giving access to the rental unit or the residential property. Policy Guideline 1 defines reasonable wear and tear as the "natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion."

The Landlord alleges that mould build-up within the rental unit was caused by the Tenants. However, I am not at all convinced that the Landlord has demonstrated that this is the case. As early as January 2020, the Tenants reported issues of mould to the Landlord's representative. A photograph dated from December 2019 show that mould was present at that time. It appears nothing was done by the Landlord to repair or

remediate the issue, with photographs over the following years showing the mould getting worse.

The Landlord argued that the Tenant did not wipe down the corners as moisture build-up is common in winter. I would note that it is not a general requirement for a properly built and maintained property for its occupants to wipe down moisture build-up that accumulates on wall surfaces within the conditioned space. If there is moisture building up, it is indicative of other issues. Frankly, it appears more likely than not that the mould had another cause due to moisture ingress elsewhere and that the Landlord was likely in breach of their obligation under s. 32(1) of the *Act* to maintain and repair the property.

I find that the Landlord has failed to demonstrate that the mould damage was caused by the Tenant. This aspect of the claim is dismissed without leave to reapply.

The Landlord also seeks compensation for the loss of rental income for March 2022 due to improper notice from the Tenants. As per s. 45(4) of the *Act*, a tenant's notice to end tenancy must comply with s. 52 of the *Act*, namely that it state the rental unit address, be signed and dated, and state the correct effective date. Though I am satisfied that a text message was sent on January 31, 2022 indicating the tenancy would end on February 28, 2022, it could not comply with s. 52 of the *Act* as it was not signed and dated. I find that the Tenants breached s. 45(4) of the *Act* and did provide improper notice.

According to the Landlord, an advertisement was posted on February 1, 2022, though the Landlord had poor luck in securing another tenant due to the condition of the rental unit. I am not satisfied that the issues in securing another tenant is attributable to the Tenants' conduct. It is not enough to claim a tenant's notice is deficient when seeking compensation. There must be a logical connection between the breach and the claim. In other words, the claim for damages must be caused by the breach.

In this case, the rental unit was ridden with mould. The Landlord attributes this to the Tenants, though as explained above, it is more likely the result of inadequate repair and maintenance by the Landlord. Repairs had also been initiated by the Landlord sometime in February 2022, only turning off prospective tenants further. I have no evidence to show the state of the rental unit in February 2022, though on balance it is clear that the less than appealing state of the rental unit was more likely due to causes outside of the Tenants control.

I find that the Landlord has failed to demonstrate that its loss of rental income is attributable to the Tenants' breach of s. 45 of the *Act*. This portion of the Landlord's claim is also dismissed.

Finally, the Landlord seeks the costs of cleaning the rental unit. I have been provided with video of both parties and photographs by the Landlord. I agree with the Landlord that the rental unit was left in less than a reasonably clean condition. The Tenants left a towel on the rack, had not cleaned the bathrooms at all, and left garbage in the rental unit. The overall state of cleanliness is acknowledged, tacitly, by the Tenant in his text message to the property manager on March 1, 2022. I find that the Tenants breached s. 37(2) of the *Act* giving rise to the Landlord's claim for damages.

However, the Landlord's evidence also includes an invoice for March 11, 2022 for the drywall repair. The invoice for the rental unit cleaning is dated March 15, 2022. It appears likely that at least a portion of the cleaning costs are attributable to the drywall repairs for which the Tenants are not responsible. Taking this into account, I find that the appropriate course is to split the cleaning costs such that the Tenants are responsible for $165.38 ($330.75 ÷ 2).

The Landlord has demonstrated a monetary claim for $165.38 and the Tenants are entitled to double the return of the security deposit, which in this case is $1,600.00. Offsetting these amounts, the Tenants are entitled to $1,434.62 ($1,600.00 - $165.38).

Conclusion

The Tenants are entitled to double the return of their security deposit totalling $1,600.00 ($800.00 x 2) as per s. 38 of the *Act*.

The Landlord has demonstrated a monetary claim totalling $165.38. All other aspects of the Landlord's monetary claim are dismissed without leave to reapply.

I find that the Tenants were successful and the Landlord was unsuccessful. Accordingly, I order pursuant to s. 72(1) of the *Act* that the Landlord pay the Tenants filing fee of $100.00. The Landlord's claim under s. 72(1) of the *Act* is dismissed without leave to reapply.

Taking the amounts above into account, I order pursuant to ss. 38(6), 67, and 72(1) of the *Act* that the Landlord pay **$1,534.62** to the Tenants ($1,600.00 (double security deposit) + $100.00 (Filing fee) - $165.38 (Landlord monetary claim)).

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: January 09, 2023

Residential Tenancy Branch