Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

A matter regarding FORGE PROJECTS 2 INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL-S, MNDL-S, FFL

Introduction

On June 29, 2022, the Landlord made an Application for a Dispute Resolution Proceeding 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*.

T.P. attended the hearing as an agent for the Landlord, and the Tenant attended the hearing as well. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed 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.

T.P. advised that the Notice of Hearing and evidence package was served to the Tenant by registered mail on July 15, 2022, but this package was returned to sender (the registered mail tracking number is noted on the first page of this Decision). She included a screen shot of this tracking receipt, and she confirmed the address that this package was sent to.

The Tenant confirmed the address that the Landlord sent this package to was accurate, and that he provided this address to an agent of the Landlord by text message on or

around June 14, 2022. He acknowledged that this was supposed to be his forwarding address; however, he stated that he did not move there, and he never provided another forwarding address in writing to the Landlord.

Based on this undisputed testimony, I am satisfied that the Tenant provided a forwarding address to the Landlord, and that the Landlord in turn served the Notice of Hearing and evidence package to that address. As such, I am satisfied that the Tenant was deemed to have received the Landlord's Notice of Hearing and evidence package five days after it was mailed. In addition, I have accepted the Landlord's evidence and will consider it when rendering this Decision.

The Tenant advised that he did not serve his evidence to the Landlord. As such, this evidence will be excluded and not 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.

All parties agreed that the tenancy started on June 15, 2021, for a fixed length of time until December 15, 2022; however, the Tenant gave up vacant possession of the rental unit on June 18, 2022. Rent was established at an amount of $6,000.00 per month and was due on the last day of each month. A security deposit of $3,00.00 was also paid. A

copy of the signed tenancy agreement was submitted as documentary evidence for consideration.

T.P. advised that the rental unit was brand new at the start of the tenancy and that a move-in inspection report was completed with the Tenant on June 14, 2021. The Tenant confirmed that this was move-in inspection report was completed. As well, T.P. stated that a move-out inspection report was not completed as the Tenant gave up vacant possession of the rental unit without providing any written notification.

She then advised that the Landlord was seeking compensation in the amount of **$6,000.00** for June 2022 rent because the Tenant's rent cheque, and replacement rent cheque, both went NSF. She referenced the documentary evidence to support this position.

The Tenant advised that he was in contact with an agent of the Landlord regarding his inability to honour the tenancy agreement and that he phoned this person to inform them that he was moving out. He acknowledged that his cheques bounced and that he did not pay any monies for June 2022 rent.

T.P. advised that the Landlord was seeking compensation in the amount of **$100.00** for the cost of a move-out fee charged by the strata. She testified that the relevant bylaws permitting this charge were included with the tenancy agreement, that the Tenant initialed these documents, and she referenced the relevant documentary evidence to support this position.

The Tenant advised that he moved in before the strata was created and that he does not remember being provided with any bylaws.

T.P. advised that the Landlord was seeking compensation in the amount of **$33,000.00** because the Tenant signed a fixed-term tenancy agreement until December 15, 2022, but did not honour it. She was informed that the Landlord is not permitted to simply request compensation for the remaining months of rent without attempting to mitigate their losses first.

She testified that after discovering that the Tenant gave up vacant possession of the rental unit, the unit was listed immediately, but it was "likely listed" for $6,800.00 per month instead. She then "guessed" that the rent was dropped to $6,500.00 per month "probably two weeks" later. She stated that there was some interest in the rental unit in

mid-to-late August 2022, and that the unit was eventually re-rented for October 1, 2022, at an amount of $5,900.00 per month. As such, the Landlord's rental loss was actually **$18,000.00**.

The Tenant advised that he saw the unit listed on June 22, 2022, for $6,800.00 per month, and that he watched this listing for approximately eight days. After this point, the listing disappeared, so he believed it was re-rented. He testified that he did not see the rental unit being advertised again, so he stopped following it as it was his belief that it was re-rented.

Finally, T.P. advised that the Landlord was seeking compensation in the amount of **$440.00** because the Tenant scratched, stained, and dented the walls in the rental unit and the lobby area. She testified that it took their in-house warranty team eight hours to repair all the damage, and she referenced the pictures submitted as documentary evidence to support this position.

The Tenant refuted that he caused the damage alleged by the Landlord as he moved out carefully. He acknowledged causing one area of damage on the outside of a door that was approximately 3/4" long. As well, he suggested that he be allowed to fix this himself when speaking with an agent of the Landlord. He submitted that anything else the Landlord is claiming for is reasonable wear and tear.

Analysis

Upon consideration of the evidence 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 Regulation* (the "*Regulation*") 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, as the undisputed evidence is that a move-in inspection report was conducted and signed by both parties, and that a move-out inspection report was not conducted as the Tenant did not give any written notice to end the tenancy, 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(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, a forwarding address was provided by the Tenant on or around June 14, 2022, and the Landlord filed to claim against the deposit on June 29, 2022. As such, I am satisfied that the Landlord made this Application within 15 days of receiving the 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?

Moreover, I note that when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. Given the contradictory testimony and positions of the parties, I may also turn to a determination of credibility. I have considered the parties' testimonies, their content and demeanour, as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy.

With respect to the Landlord's claim for compensation in the amount of $6,000.00 for June 2022 rent, the consistent and undisputed evidence before me is that the Tenant failed to pay this. As such, I grant the Landlord a monetary award in the amount of **$6,000.00** to satisfy this claim.

With respect to the Landlord's claim for compensation in the amount of $100.00 for the cost of the move-out fee, there is no documentary evidence presented before me that corroborates that the strata bylaws were presented to the Tenant at the start of the

tenancy. Moreover, there has been no signed Form K provided as documentary evidence, which would indicate that the Tenant has received those bylaws. As such, I dismiss this claim in its entirety.

With respect to the Landlord's claim for compensation in the amounts of $18,000.00, there is no dispute that the parties entered into a fixed-term tenancy agreement from June 15, 2021, ending on December 31, 2022. Yet, the tenancy effectively ended when the Tenant up vacant possession of the rental unit on June 18, 2022.

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. In claims for loss of rental income in circumstances where the Tenant ends the tenancy contrary to the provisions of the Legislation, the Landlord claiming loss of rental income must make reasonable efforts to re-rent the rental unit.

As well, I have included the following excerpts from this policy guideline that are relevant to this Decision.

> **Loss of Rental Income**
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> When a tenant ends a tenancy before the end date of the tenancy agreement or in contravention of the RTA or MHPTA, the landlord has a duty to minimize loss of rental income. This means a landlord must try to:
>
> 1. re-rent the rental unit at a rent that is reasonable for the unit or site; and
> 2. re-rent the unit as soon as possible.
>
> **D. PROOF OF EFFORT TO MINIMIZE DAMAGE OR LOSS**
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> The person claiming compensation has the burden of proving they minimized the damage or loss. If a landlord is claiming compensation for lost rental income, evidence showing the steps taken to rent the rental unit should be submitted or the claim may be reduced or denied. If a landlord is claiming a loss because they rented the rental unit for less money than under the previous tenancy, or they were unable to rent the unit, evidence like advertisements showing the price of rent for similar rental units, or evidence of the vacancy rate in the location of the rental unit may be relevant.

When reviewing the totality of the evidence before me, there is no dispute that the parties entered into a fixed-term tenancy agreement, yet the tenancy effectively ended

because the Tenant gave up vacant possession of the rental unit on June 18, 2022. Sections 44 and 45 of the *Act* set out how tenancies end and also specifies that the Tenant must give written notice to end a tenancy. As well, this notice cannot be effective earlier than “one month after the date the landlord receives the notice, not earlier than the date specified in the tenancy agreement as the end of the tenancy, and is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.” Section 52 of the *Act* sets out the form and content of a notice to end a tenancy.

There are few ways under the *Act* that the Tenant could break a fixed term tenancy without consequences. One would be if there was a signed mutual agreement to end the tenancy. The other would be if there was a breach of a material term of the tenancy, and if the Tenant then asked the Landlord in writing to correct this breach within a reasonable period of time. Moreover, in that warning letter, the Tenant would stipulate that they would be ending the tenancy if the Landlord did not correct this breach of a material term within that time period. However, there is no evidence before me of either of these scenarios, nor was there any evidence that the Tenant provided any written notice to end his tenancy.

Given that the Tenant signed a tenancy agreement binding him to the terms of that agreement, I find the Tenant did not validly end this tenancy without consequences. Ultimately, I am satisfied that the Tenant was not permitted to break the fixed term tenancy early in the manner that he did. As such, I do not find that the Tenant ended the tenancy in accordance with the *Act*. Therefore, I find that the Tenant vacated the rental unit contrary to Sections 45 and 52 of the *Act*.

Furthermore, I find that the evidence indicates that as a result of the Tenant’s actions, the Landlord could have suffered a rental loss. In addition, it is evident that the Tenant gave the Landlord insufficient notification that he was ending the tenancy and not honouring the tenancy agreement. Given that the Tenant gave up vacant possession of the rental unit on June 18, 2022, I am satisfied that the Landlord was given little notice to start advertising to re-rent the unit.

As the Landlord had been given minimal notification that the Tenant would be ending the fixed term tenancy early, I am satisfied that the Landlord was put in a position that it would have likely been difficult to re-rent the unit for July 1, 2022, because by that point, most prospective tenants would have already found a new place to live. However, I find it important to note here that the Landlord was obligated to mitigate their loss, and while

ads for the rental unit were posted immediately, I do not accept that the Landlord adequately mitigated this loss as contemplated by the *Act* as the Landlord was asking for $6,800.00 per month.

Given that the Landlord sought a new tenant for more rent than the existing Tenant was paying, this would not be considered reasonable mitigation. While the new tenant ultimately rented the unit for October 1, 2022, at $5,900.00 per month, I note that there was no documentary evidence submitted of when the Landlord advertised the rental unit for $6,000.00 per month, or less, in an attempt to recover the rental loss due to the Tenant breaking the fixed-term tenancy early. T.P. could only "guess" when the asking price for rent was reduced to $6,500.00 per month, and she could not testify as to when this unit was advertised for $6,000.00 per month, or less. As I am not satisfied that the Landlord satisfactorily mitigated this loss, I dismiss this claim in its entirety.

Finally, regarding the Landlord's claim for compensation in the amount of $440.00 for cleaning and repair of damage caused to the rental unit, I note that there was no dispute that the rental unit was brand new at the start of the tenancy, and the signed move-in inspection report appears to confirm as much. Moreover, there was documentary evidence presented to demonstrate the extent of the damage and repairs, and an invoice submitted to support the cost to remedy this damage. While the Tenant acknowledged causing some damage, but claimed that any other issues were ordinary wear and tear, given that the rental unit was brand new at the start of the tenancy, I find the Landlord's evidence to be more compelling and persuasive, based on a balance of probabilities. I reject that the damages illustrated are as a result of normal wear and tear. As such, I am satisfied that the Landlord has provided sufficient documentary evidence to substantiate that the Tenant was negligent for this damage, and I grant the Landlord a monetary award in the amount of **$440.00** to satisfy this claim.

As the Landlord was partially successful in these claims, I find that the Landlord is entitled to recover the $100.00 filing fee paid for this Application.

Pursuant to Sections 38, 67, and 72 of the *Act*, I grant the Landlord a Monetary Order as follows:

Calculation of Monetary Award Payable by the Tenant to the Landlord

Rental arrears for June 2022	$6,000.00
Repair of damages	$440.00

Filing fee	$100.00
Security deposit	-$3,000.00
TOTAL MONETARY AWARD	**$3,540.00**

Conclusion

The Landlord is provided with a Monetary Order in the amount of **$3,540.00** in the above terms, and the Tenant must be served with **this Order** as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in 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: March 22, 2023

Residential Tenancy Branch