# Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

A matter regarding AUTOMIND GROUP ENTERPRISES LTD. and [tenant name suppressed to protect privacy]

## DECISION

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

Introduction

The Landlord filed an Application for Dispute Resolution on December 5, 2022 seeking compensation for rent amounts owing, damage to the rental unit, and reimbursement of the Application filing fee.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the "*Act*") on September 5, 2023. Both the Landlord and the Tenants (hereinafter the "Tenant") attended the hearing. The Tenant confirmed they received the Notice of Dispute Resolution Proceeding from the Landlord and the Landlord's prepared documents for evidence. The Landlord also confirmed they received prepared evidence from the Tenant for this hearing.

Issue(s) to be Decided

Is the Landlord entitled to compensation for rent owing, and/or alleged damage in the rental unit, 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

In the hearing, the Landlord presented that they had this rental unit available for the Tenant who was in their employ at the time. As indicated on their Application and in the tenancy agreement they provided as evidence, the tenancy started on July 1, 2015.

The Landlord presented that the Tenant paid a security deposit amount of $500 at the start of the tenancy. Specifically, this is shown on the tenancy agreement as paid by the Tenant on July 5, 2015. The Landlord checked their books during the hearing and stated that their ledger shows that amount paid by draft on July 5, 2015. The Landlord also pointed to the fact that the Tenant did sign the tenancy agreement. On the Landlord's copy, the Tenant's signature is dated July 2, 2015.

The Tenant stated they did not pay such a deposit. On an individual piece of evidence showing the third page of the agreement, the Tenant noted:

> Our landlord never asked for either damage or pet deposit. It was put "on paper" for looks only as we were moving for a job they were supplying they said there was no need to collect.

In the hearing the Tenant described the security deposit as "waived" because the Landlord undertook to move the Tenant to the rental unit locale where the Tenant could take up work for the Landlord. The Landlord verified there was a relocation cost, and "most likely the deposit was deducted from the first month's rent".

Regarding the move-out from the rental unit, the Landlord on their Application provided the following:

> On October 19, 2022, tenant verbally informed us [the Tenant] will move out on October 31 and it does not have 30 days notice. We will take [the Tenant's] verbal notice on October 19, so [the Tenant] is owing us rent from November 01-18, $1500x18/30=$900.

In the hearing, the Landlord clarified that they only learned of the Tenant's move out from the rental unit because of some request that came to them regarding a reference for the Tenant. The Tenant provided a record of this landlord reference they requested from the Landlord, with a requestor contacting the Landlord for said reference on October 18, 2022. The Landlord stated they would end the arrangement with the rental unit, and also the Tenant, however they recalled the Tenant stated that they were entitled to stay in the rental unit until the end of the month.

The Landlord also stated that their instruction to their agent about this tenancy was to receive the key from the Tenant when the Tenant actually moved out.

The Tenant provided a different version, describing an employee of the Landlord visiting to the Tenant's workplace to request the keys returned. The Tenant stated this

constituted instruction from the Landlord to return the key, effectively ending the tenancy immediately.

In mid-December, upon learning about this hearing, the Tenant set this out in an email to the Landlord to explain. This clarifies that from the Tenant's perspective they resigned from their employment on October 19, and the Landlord's employee came on October 20 requesting the key returned, and advised the Tenant that they were to vacate the rental unit by October 21. The Tenant stated this "felt like an eviction notice" and "I was being asked to vacate immediately." They advised the Landlord's employee that their rent was paid until the end of October.

In the hearing, the Landlord reiterated that the Tenant informed them of the end of employment, never telling the Landlord that they would leave from the rental unit. The Landlord is thus filling in an amount for a lack of one month's notice in this situation, based on receiving no notice from the Tenant.

The Landlord obtained a quote dated November 21 for carpet replacement for 1 bedroom in the rental unit. This amount is $1,195.06. The Landlord provided two photos showing the "carpet dirt [that was] too deep and the carpet guy said carpet cleaning will not be able to clean the dirt."

In their response to the Landlord via email on December 16, the Tenant outlined that when they moved into the rental unit in July 2015, they "had to hire a cleaning company and carpet cleaner as the condition of the property was filthy." Further: "The carpet never came clean and the carpet is 14 years old."

In the hearing, the Tenant recalled there was no formal inspection when they first moved into the rental unit; at that time, they had to help the previous tenant move out at the same time. The Landlord never visited to the rental unit, and never asked for an inspection at the beginning of the tenancy. The Tenant recalled "the carpet was soiled beyond belief at that time."

In response, the Landlord stated they did not pay any amounts at the outset for repairs or other cleaning issues at the start. At the same time, they queried why the Tenant did not pursue reimbursement for what they paid earlier on in this tenancy.

Analysis

In the matter of compensation concerning a tenancy, a party that makes an application for monetary compensation against another party has the burden to prove their claim. This burden of proof is based on the balance of probabilities. Awards for compensation are provided in s. 7 and s. 67 of the *Act*.

To be successful in a claim for compensation for damage or loss an 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 find the *Act* s. 48(2) applies to this situation:

> An employer may end the tenancy of an employee in respect of a rental unit rented or provided by the employer to the employee to occupy during the term of employment by giving notice to end the tenancy if the employment is ended.

Following this s. 48(3) sets out that an effective end-of-tenancy date must be "not earlier than one month after the date the tenant receives the notice."

I find as fact, based on the Tenant's more comprehensive account, that they notified the employer – who is also the Landlord – of their resignation from the company on October 19. I find the responsibility for ending the tenancy in a valid legal manner rests with the employer/Landlord, minus any explicit clause in the tenancy agreement stating otherwise. The Landlord did not end the tenancy in the manner set out in s. 48(2) which they are obligated to do.

I find the Tenant's account credible on their recall of events, as set out in their email to the Landlord on December 16, which is relatively near in time to the timeframe of the end of this tenancy, and set out in abundant detail. While the Landlord in the hearing provided that their instruction to their other employee was to obtain the key only when the Tenant was moving out, I find it more likely than not that this was either misinterpreted by that employee who set out to obtain that key, or that employee was

simply shortcutting the end-of-tenancy process. In any case, the burden in this matter rests with the Landlord, and there is no written record of the Landlord notifying the Tenant of this end of tenancy as required by the *Act*.

I find it was the Landlord who did not end the tenancy as per the *Act*. I accept that the Tenant paid in full for the month of October, minus evidence to the contrary; therefore, I grant no compensation to the Landlord for any rent amounts they feel were owed. This was a landlord-tenant relationship and therefore governed by the *Act* which has in place a strict timeline for end-of-tenancy matters.

The *Act* s. 32 sets out that during a tenancy a tenant must repair damage to the rental unit that is caused by actions or neglect of the Tenant.

The *Act* requires condition inspections at the start and end of tenancy; this is to facilitate any claims for damages owing to the actions or negligence of a tenant. The Landlord did not provide evidence of a condition inspection at either the start or the end of this tenancy, as required.

I find the Tenant credible on their recall of moving into the rental unit, with the unit being in a state that fell below what could be deemed reasonable wear and tear from the previous tenant. The Landlord queried why the Tenant did not seek compensation for incidental repairs and/or cleaning that the Tenant paid for on their own; I attribute the nature of the employer-employee relationship as carrying over into this tenancy as the reasonable explanation proffered by the Tenant.

In sum, I find it more likely than not that the carpet itself in the bedroom in question was past its useful life cycle at the start of the tenancy, and not presented to the Tenant at the start of the tenancy in a clean state. \

For this reason, I dismiss the Landlord's claim for compensation for damage in the rental unit.

The Landlord was not successful in this hearing; therefore, I grant no reimbursement of the Application filing fee. As above, I find there was no security deposit paid by the Tenant; therefore, I make no order for any deposit to be returned to the Tenant.

Conclusion

I dismiss the Landlord's Application in its entirety, without leave to reapply.

I make this decision on the authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: September 6, 2023

Residential Tenancy Branch