Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **MNRL-S, MNDL-S, FFL / MNSDB-DR, FFT**

Introduction

This hearing dealt with two applications pursuant to the *Residential Tenancy Act* (the Act). Landlord FD's application for:

- authorization to retain all or a portion of the security deposit and pet damage deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- a monetary order for unpaid rent and for damage to the rental unit, in the amount of $2,822.08 pursuant to section 67; and
- authorization to recover the filing fee for this application from the Tenant pursuant to section 72.

And the Tenant's application against both Landlords for:

- monetary order for $3,295 representing two times the amount of the security deposit and pet damage deposit, pursuant to sections 38 and 62 of the Act; and
- authorization to recover the filing fee for this application from the Landlord pursuant to section 72.

The Tenant attended the hearing. Landlord SD attended on behalf of both Landlords.

Both parties agreed that they served their notice of dispute resolution proceeding package and supporting documentary evidence on the other in accordance with the Act.

Issues to be Decided

Is Landlord FD entitled to:

1) a monetary order for $2,822.08;
2) recover the filing fee; and
3) retain the security deposit and the pet damage deposit in partial satisfaction of the monetary orders made?

Is the Tenant entitled to:

1) a monetary order of $3,295; and
2) recover the filing fee?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

Landlord FD and the Tenant entered into a written tenancy agreement starting February 1, 2019. Monthly rent was $2,295 and is payable on the first of each month. The Tenant paid FD a security deposit of $1,147.50 and a pet damage deposit of $500 (collectively, the Deposits), which FD continues to hold in trust for the Tenant.

The Tenant testified that she moved out of the rental unit on November 1, 2022. SD was unsure when the Tenant moved out, as she did not enter the rental unit until November 10, at which time she observed that the Tenant had moved out.

The Tenant provided the Landlords with her forwarding address via registered mail on November 23, 2022. FD made her application on December 26.

The parties agreed that FD did not conduct either a move-in condition inspection report at the beginning of the tenancy or a move-out condition inspection report at the end of the tenancy.

The Tenant testified that on June 21, 2022, SD advised her via text message that FD would be returning to Canada. On June 23, SD texted the Tenant that the Tenant must agree to a rent increase above the prescribed amount set out in the *Residential Tenancy Regulation*, otherwise FD would move into the rental unit. On June 28, the Tenant advised SD that she would not be able to pay anymore rent, and SD reply "Ok [Tenant] so as of Nov 1 2022 [FD] will move in."

On October 14, 2022 the Tenant delivered a letter to FD and SD stating:

> This letter will constitute as written notice of my intent to vacate [the rental unit] on November 15, 2022 1:00 PM. Due to constant interference by both yourselves and selling agent, you have not only made our stay at [the rental unit] uncomfortable, but unhealthy. I have lost my rights to reasonable privacy as well

as freedom from unreasonable disturbances, therefore making our housing standards unfit enough to live in.

At the hearing however, the Tenant stated her reason for vacating the rental unit on November 1 was because the SD told her that her daughter was moving in on that date and she was moving out of the rental unit in accordance with that wish.

The Tenant did not pay any rent for the month of November. SD argued that the Tenant did not give the required amount of notice before ending the tenancy, and that the soonest the October 14 letter could have ended the tenancy in accordance with the Act would have been the end of November. She seeks to payment of November's rent.

SD testified that the Tenant did not clean the rental unit prior to moving out. She stated that the carpets were dirty, and that they were covered in cat vomit and cat hair. She submitted an invoice dated November 13, 2022 from a carpet cleaning company which stated that there were "multiple unknown spots. Some spots possible cat related spots" and "Very heavy soil on hall and stairs. Heavy soil in bedrooms." This invoice indicated that SD paid $327.08 for the carpets to be cleaned.

The Tenant admitted that she had a cat but testified that she had the carpets cleaned in mid-July. She denied leaving the carpets uncleaned when she moved out. She testified, and the Landlord did not dispute, that after she moved out, but before the Landlord had the carpets cleaned, the Landlord conducted multiple showings of the rental unit. She argued that these showings were the likely cause of the unclean carpet.

SD testified that the Tenant stained the garage floor. In support of this she provided numerous photographs of the garage floor which appeared to have stains of an unknown origin on them. SD testified that contractor to power wash the garage at a cost of $200. She submitted a receipt supporting this amount into evidence.

The Tenant testified that the stains depicted in the photographs were there at the start of the tenancy and that she did not cause them.

Analysis

1. Landlord's Application

    a. November Rent

Section 44 of the Act sets out how a tenancy may be ended. This includes by way of a tenant's notice (section 44(1)(a)(i)), a landlord's notice for the landlord's use of property (section 44(1)(a)(v)), and by mutual agreement (section 44(1)(c).

If a landlord wants to end a tenancy for a landlord's use of property, they must comply with the requirements set out at section 49 of the Act, which include serving a notice to end tenancy using the approved form. The Landlord did not do this. As such, I do not find the tenancy ended by way of section 49.

The Act requires that for a tenancy to end by way of agreement between the Landlord and Tenant that the agreement be "in writing". After reviewing the text messages entered into evidence, I do not find they amount to an agreement between the parties. Rather they amount to demands made by the Landlord which were refused by the Tenant, and the Landlord's statement as to the consequences of that refusal (FD would move in). This is not sufficient to create an "agreement" between the parties.

I must also note that the tactic taken by SD in these text messages his wholly outside what is permitted by the act. A landlord is not permitted to evict a tenant who does not agree to a rent increase beyond the maximum allowable amount set out by the Act. Had the Tenant refused to vacate on November 1, the Landlord would not have been able to rely on the text message exchange as a basis to evict her.

That being said, the Tenant did vacate the rental unit on November 1. Section 45 of the Act states how a Tenant may end a tenancy. It requires that the Tenant give at least one month's notice, and at the move out date is the day before the date rent is due. As the Tenant's rent was due on the first day of the month, the earliest effective date that a notice to end tenancy issued on October 14 could have been was November 30.

Of these options, I find that the tenancy could only have ended by way of a Tenant's notice, and that the tenancy ended on November 30, the earliest valid date the tenancy could be ended. Per section 53 of the Act, the effective date of the Tenant's notice to end tenancy letter is automatically changed to the earliest date that complies with the required notice period.

As such, I find that the Tenant breached the Act by failing to pay any rent for the month of November.

Residential Tenancy Branch Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due: In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

The first three points are easily satisfied by the Landlord. However, I do not find that the Landlord satisfies the fourth point, as she did not acted reasonably to minimize her loss. I find that by engaging in tactics not permitted by the Act in an attempt to extract a rent increase from the Tenant gave the Tenant a false impression that the tenancy was ending, or in the alternative that the Landlord was content for the tenancy to end, on November 1. I do not find it appropriate now to order the Tenant to pay any amount for the month of November given that the conduct of the Landlord more than likely contributed to the Tenant's choice to move out of the rental unit on November 1.

I accept that the Landlord's intentions for the rental unit may have changed since the June 28 text message. Indeed, the Tenant's October 14 letter refers to a selling agent, suggesting that the Landlord may have considered selling the rental unit as opposed to moving into it. However, this possible change of intention does not cause me to find that the Landlord acted reasonably to minimize their loss.

The effect of the June 28 text message was to cause the Tenant to believe that the Landlord wanted her out of the rental unit on November 1. There may have been other factors which caused the Tenant to accept this (such as the alleged loss of privacy and the unreasonable disturbance is referred to in her October 14 letter). However, the existence of the June 28 text message stating that FD would be moving into the rental unit on November 1 is sufficient to cause the Landlord to fail the fourth part of the test set out above. As such, I dismiss without leave to reapply the Landlord's application to recover rent for the month of November.

b. Damage to rental unit

i. Carpet

Based on the testimony of the parties, I do find that:

1) it is more likely than not that the Tenant did not adequately clean up after her cat prior to moving out of the rental unit, but

2) the Landlord did not establish it is more likely than not that the Tenant caused the carpets to be soiled in the hall, stairs, or bedrooms.

As no move out condition inspection was conducted, I cannot say what the state of the rental unit was when the tenancy ended on November 1, 2023. I accept the Tenant's undisputed testimony that after she vacated the rental unit was shown to prospective renters or purchasers prior to the carpets being cleaned on November 13. As such, I cannot say it is more likely than not that the soiling of the hallway, stairs, or bedroom carpets was caused by the Tenant as opposed to any of these visitors.

However, as the Tenant owns a cat, and as I do not think it likely that a visitor to the rental unit would bring their cat with them when they viewed the rental unit, I find it more likely than not that any damage to the carpet apparently caused by a cat is attributable to the Tenant's cat.

I accept that the Tenant had the carpets cleaned in July 2022, and that this could have dealt with any stains caused by her cat at that time. However, this does not remove the possibility that her cat caused damage to the carpet in between July and November. The Tenant has a responsibility to return the rental unit in a reasonably clean condition to the Landlord at the end of the tenancy. This includes cleaning any stains caused by her cat. Based on the carpet cleaning invoice, I find that the Tenant did not adequately clean the damage to the carpet caused by her cat prior to leaving the rental unit.

The carpet cleaning invoice does not specify which portion of the expense was attributable to the cleaning of the cat damage and which was attributable to the cleaning of the hallway, stairs, and bedroom. In the circumstances offended appropriate to allocate half the cost of the cleaning invoice to the cleaning of the cat damage. Accordingly, I order the Tenant to pay FD $163.54.

ii. Garage

As noted above, the Landlord did not conduct a move in condition inspection. There is also no documentary evidence before me which shows the state of the garage floor at the start of the tenancy. FD bears the onus to prove it is more likely than not that the Tenant damaged the garage floor. On the evidence before me, I cannot determine whether or not the Tenant caused the stains in the garage, as I have nothing to compare the photographs taken at the end of the tenancy to. As such, I find that FD has failed to discharge her evidentiary burden.

I dismiss this portion of FD's application without leave to reapply.

c. Filing Fee

As the Tenant has been overwhelmingly successful in this application, I dismiss FD's application to recover the filing fee.

2. Tenant's Application

The Tenant has made her application against both FD and SD. However, the tenancy agreement only specifies FD as a landlord. Additionally, SD testified that she acted as FD's agent throughout the tenancy. Accordingly, I do not find that SD is a party to the tenancy agreement, and I do not find it appropriate that she be held liable for any breaches of the agreement or the Act. I dismissed the Tenant's application against SD, in its entirety, without leave to reapply. The Tenant's application against FD remains.

Section 38(1) of the Act requires that within 15 days of the later of either the tenancy ending or the landlord receiving the tenant's forwarding address, the landlord must either return the security and pet damage deposit, in full, to the tenant or make an application claiming against these deposits.

As stated above, I find that the tenancy ended on November 30, 2022 (the corrected effective date of the tenant's notice) and that the tenant provided her forwarding address to the landlord on November 23. FD made her application on December 26, 2022, more than 15 days after either of these dates.

As such, I find that FD reached section 38(1) of the Act. Section 38(6) states that if a landlord does not comply with this section 38(1), the landlord must pay the tenant double the amount of the deposit. As there is nothing in evidence to suggest that the Tenant's right to recover the Deposits has been extinguished, I order FD to pay the Tenant $3,295.

As the Tenant has been successful in her application, I order FD to reimburse the Tenant her filing fee ($100).

Conclusion

Pursuant to section 67 of the Act, I order the Tenant to pay FD $163.54.

Pursuant to sections 65 and 72 of the Act, I order FD to pay the Tenant $3,395.00.

These amounts should be set off against each other. Accordingly, I attach a monetary order in the Tenant's favour for $3,231.46.

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 18, 2023

Residential Tenancy Branch