



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding Era West Management Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

Landlord: MNRL-S, MNDL-S, MNDCL-S, FFL
Tenant: MNSDB-DR, FFT

Introduction

The Landlord filed an Application for Dispute Resolution on February 6, 2023 seeking compensation for rent owing, damage in the rental unit, and monetary loss/other money owed. They also seek reimbursement of the Application filing fee.

On August 6, 2023 the Tenant applied for the return of the security deposit and the pet damage deposit. They also seek 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 November 14, 2023. Both parties attended the teleconference hearing. At the outset, each party confirmed they received the Notice of Dispute Resolution Proceeding and prepared documentary evidence from the other party. I proceeded with the hearing on this assurance.

Preliminary Matter – additional evidence

In the interim decision I granted the Landlord the opportunity to provide written statements from witnesses. This was in the interest of streamlining the available hearing time in the reconvened hearing. I limited additional evidence to these statements only.

The Landlord and Tenant both provided additional evidence in the interim period. I granted no opportunity for specific evidence only, and was explicit in the interim decision that I would not consider additional evidence. On this basis, I give only the

witness statements the Landlord provided for review; I give no consideration to other material from either the Landlord or the Tenant.

Issues to be Decided

Is the Landlord entitled to compensation for the rent amounts and/or damage in the rental unit and/or other money owed, 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*?

Is the Tenant entitled to return of their security deposit and/or pet damage deposit, pursuant to s. 38 of the *Act*?

Is the Tenant entitled to reimbursement of the Application filing fee?

Background and Evidence

The Landlord and Tenant each provided a copy of the tenancy agreement and both parties agreed on its basic terms in the hearing. The parties signed the agreement in March 2020 for the tenancy starting on April 1, 2020. The rent amount was set at \$1,300 and the Tenant paid a security deposit of \$650 and a pet damage deposit of \$650. This rent amount increased to \$1,319.50 as of January 1, 2023.

The tenancy ended after the Tenant's notification to the Landlord, via text message, on January 8, 2023 to end the tenancy on February 1. The Landlord provided an image of this in their evidence, showing that the Tenant cited the ongoing pest problem as the reason they were moving out. In the hearing, the Tenant re-stated this as the chief reason for ending the tenancy.

The Landlord claims the amount of \$659.75 as compensation. This represents one-half month's rent amount for February 2023. The Landlord had a new tenant start living in the rental unit on February 15, 2023. The Landlord claims this amount because of the Tenant's short notice to end the tenancy that they provided, less than 30 days in advance.

In the hearing, the Tenant stated they did not deny giving the Landlord notice in this manner on January 8, 2023.

The Landlord reviewed the circumstances of the Tenant's move into the rental unit in 2020. This was at the time of social interaction restrictions; therefore, the Landlord asked the Tenant to review the condition of the rental unit on their own, then provide the Landlord with pictures of what they observed to ensure the condition of the rental unit was reviewed by the Tenant at the start of the tenancy. In the hearing, the Tenant stated they would never have turned down the opportunity to complete a proper inspection of the rental unit together with the Landlord. The Landlord relied on the Tenant's own photos/videos as evidence in this hearing to show the condition of the rental unit as at the start of the tenancy.

While the Tenant reiterated that there was no incoming inspection completed, the Landlord stated they provided that form for the Tenant to complete on their own and "it was forgotten."

The Landlord recorded the following on their Application for this hearing, providing \$1,900 as an amount for damage in the rental unit:

Tenant did not clean unit upon moving out – all rooms, windows, kitchen cabinets, bathroom fixtures, etc.; - Tenant did not repair damaged that they, their guests or pets caused to the rental property; - floor in one bedrooms has a hold of 2" x 7" big. The hole goes all the way through the laminated floor to the plywood beneath – 2 mirrored closet doors are missing from one of the bedrooms – 2 bi-fold closet doors are missing from another bedroom

The Landlord completed a copy of the condition inspection report they completed on January 30, 2023. The Tenant signed the document and noted "Tenants given opportunity to attend inspection", and "I do not agree with keeping any deposits. I was not given the opportunity to attend inspections both move in move out."

Throughout each room, the Landlord recorded "not cleaned" throughout the document. There were indications in specific areas of cleaning (e.g., "track & still dirty") and notes setting out specific areas of damage, such as the "large hole in laminate" and "wood screwed to wall/not clean" and "broken window".

The Landlord provided a number of photos showing the condition in the rental unit as of the time the Tenant moved out. These include a number of items left behind, the unkempt/uneven backyard, and a boarded-up window that was broken.

The Landlord also provided an itemized worksheet for all items requiring repair or replacement: this was 24 separate items for a total of \$1,768.94. For clean up, the

Landlord itemized 10 items, for a total of \$537.50. The Landlord entered “1,868.94” and \$537.50 on a signed and dated (September 8) Monetary Order Worksheet, subtotal \$2,406.44.

In the hearing the Tenant on different points about the state of the rental unit during the tenancy:

- the fireplace malfunctioned to such an extent that it produced an excessive amount of soot throughout the rental unit – this made the Tenant sick, and this was part of the reason that they moved out
- the Landlord would undertake cleaning of the fireplace on their own, and this was not a professional job as the problem required
- the Tenant did not clean because pests were a longstanding issue within the rental unit and the Landlord did not repair or maintain the rental unit to end or alleviate this problem – the Tenant described the job of cleaning as a “giant job – too disgusting”.

The Tenant provided some records of their communication to the Landlord on what they presented were major issues, such as the stove causing problems, and at least one issue with the fireplace that left the odour of gas throughout the rental unit. The Tenant provided information and evidence about a rat infestation, and the implications on a person’s health. The Tenant placed these issues squarely on the Landlord’s shoulders, whom they asserted was not willing to hire professionals for repairs, and seemingly ignorant of the effect that placement storage containers next to the rental unit property had on the pest problem.

On these same issues, the Landlord provided statements of neighbouring residents and the replacement tenant from the rental unit. The replacement tenant noted the condition of the rental unit prior to their eventual move-in, in January 2023 – they noted particulars including broken items and lack of cleaning throughout. Other residents noted no pest problems, dependent on their cleaning/maintenance, and good communication with the Landlord. In the hearing, the Landlord described the more rural area of this rental unit as requiring more general attention to cleaning and upkeep on a regular basis, meaning it is not inconceivable that pests could be a problem in this area.

The caretaker at the rental unit property provided a written statement in this matter, noting that they participated in the move-out inspection on January 30. They noted the garbage throughout the rental unit and yard, damage to walls and cracked windows, and dirty spaces throughout. Living near the rental unit during the tenancy, this caretaker in particular noted frequent open doors during the tenancy, and “garbage and or bags of bottles” in the rental unit area.

Analysis

Is the Landlord entitled to compensation for unpaid rent?

The *Act* s. 45(1) covers how a tenant may end a periodic tenancy. It provides that a date shall not be earlier than one month after a landlord receives such notice, and for an end-date that is before the day in the month that rent is payable.

I find as fact that by January 2023 this tenancy reverted to a periodic tenancy as per the tenancy agreement. The Landlord received a notice from the Tenant; however, the Tenant sought to end the tenancy earlier than one month after the Landlord received the notice. Legally speaking, the earliest end-of-tenancy date the Tenant could specify at that time was for the end of February.

I find the Landlord mitigated their loss of rental income here by having a following tenant in place within a relatively short timeframe. I grant the Landlord compensation in the form of a rent amount owing for the interim period from January 30 when the Tenant moved out to February 15 as the Landlord claimed. This amount is \$659.75 as the Landlord provided on their Application.

Is the Landlord entitled to compensation for damage to the rental unit?

The *Act* s. 35 establishes that, at the end of the tenancy, a landlord must inspect the condition of the rental unit with a tenant. As well, a landlord must complete a condition inspection report with both a landlord and a tenant signing that document.

The *Act* s. 24 also establishes this same requirement for the start of a tenancy.

The *Act* s. 32(3) states that a tenant must repair damage to the rental unit that is caused by the actions or neglect of a tenant.

The *Act* s. 37(2) sets out that a tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Under s. 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. In this case, to prove a loss, the Landlord must satisfy the following four elements on a balance of probabilities:

- proof that the damage or loss exists;
- proof that the damage or loss occurred due to the actions or neglect of the Tenant in violation of the *Act*, Regulation, or tenancy agreement
- proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- proof that the Landlord followed s. 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

I find the Landlord did not provide the opportunity to the Tenant to complete an inspection meeting at the start of the tenancy. As per s. 24(2), this precludes the Landlord from claiming against the security deposit or a pet damage deposit for damage to the rental unit.

Despite this provision, which is strict, the *Act* s. 72(2) allows for an arbitrator to deduct any amounts owing from either the security deposit and/or pet damage deposit due to the Tenant. The Landlord properly made a claim against the deposits within 15 days of receiving a forwarding address from the Tenant on January 30, as required.

I find the Landlord provided proof that there was damage/loss in the rental unit. This takes the form of the condition inspection report, documenting room-by-room observations. As well, the Landlord provided a number of pictures that show the state of the rental unit, to be compared to the pictures they provided that show the condition of the unit at the start of the tenancy.

I also find, categorically, that this damage/loss occurred because of the actions of the Tenant during the tenancy. This includes no cleaning of the rental unit at the end of the tenancy, borne out of the Tenant's frustration with the ongoing pest problem during the tenancy. I find the Tenant was making a point about lack of maintenance over this seven-year period which even led them to purchase their own appliances for use. The Tenant stated plainly in the hearing that they did not clean because of the long-standing pest problem, and the job was "too disgusting."

I find the Tenant caused damage/loss in the rental unit because of either their actions or neglect. In the case of this rental unit, the Tenant did not provide sufficient evidence showing that they were persistent in asking for repairs or maintenance and that the Landlord did not respond or undertake some maintenance/repairs. I make this consideration in light of the number of pictures the Landlord provided showing the state of the rental unit at the end of the tenancy.

With respect to the Landlord's proof of the amounts involved to repair and clean the rental unit, I find the information is lacking, wherein the Landlord has relied on photos that are definitely on point, yet the Landlord provides amounts which are seemingly arbitrary for all aspects of work involved, save for select items for which the Landlord provided invoices. As an example, I don't understand how the Landlord arrived at a cost of \$12.50 for the single item of "remove broken window covering tracks and patch up holes in the window casing", which in and of itself is more a matter of repair rather than cleaning which is what the Landlord considered this particular task to be.

For the Landlord's lack of information and detail on the source of their estimates on costs, I disregard the precise amount of \$537.50 they provided for cleaning throughout the rental unit. At the same time, I see the cleaning involved was a sizable task after the Tenant moved out. In line with this, I grant the Landlord \$500 for their large job of cleaning within the rental unit after the end of this tenancy.

For the Landlord's detailed worksheet on repair for damage in the rental unit, I make a similar finding on what the Landlord relied on for estimates throughout. The repair costs for the most part is estimates, with costs varying throughout for what is listed as the same amount of work – for example, "patch up holes" amount varies from \$25 to \$50. Another example: "estimated cost of repairing damaged floor" is not sourced from a reliable source for that type of work. I find throughout these are very rough estimates listed by the Landlord, even though the worksheet appears to be accurate with respect to the number of issues room-by-room.

Therefore, I find this is not a consistent approximation in many regards, with no baseline work estimate such as from a contractor, or the Landlord's own schedule of costs disclosed to the Tenant during the tenancy.

I grant compensation to the Landlord for the amounts that are verified with receipts and shown in the pictures they provided. These are the new heater purchases, closet mirror doors, and a bi-fold door. This total is \$418.79.

In sum, I find the rental unit was reasonably clean and damage-free at the start of the tenancy. This is in stark contrast to what the Landlord presented as to the state of the rental unit at the end of the tenancy, requiring extensive cleaning and repairs throughout.

Is the Landlord entitled to retain all/part of the Tenant's security deposit and/or pet damage deposit?

the *Act* s. 72(2) gives an arbitrator the authority to make a deduction from any deposit held by a landlord. The Landlord has established a claim of \$1,578.54. I authorize the Landlord to keep the full amounts of each deposit -- \$650 each -- in satisfaction of this compensation. After the deduction of \$1,300, there is a balance of \$278.54 owing from the Tenant.

Is the Landlord entitled to recover the filing fee for this Application from the Tenant?

Because the Landlord was successful in this claim, and it was necessary for them to bring this Application in order to rectify the matter, I grant the Landlord reimbursement of \$100 of the Application filing fee. The total award to the Landlord in the form of a Monetary Order is \$378.54.

There is no return of either the security deposit or the pet damage deposit to the Tenant. The Tenant was not successful in this Application; therefore, I grant no reimbursement of the Application filing fee to them.

Conclusion

Pursuant to s. 67 and 72 of the Act, I grant the Landlord a Monetary Order in the amount of \$378.54. I provide the Landlord with this Order, and they must serve this Order to the Tenant as soon as possible. Should the Tenant fail to comply with this Order, the Landlord may file this Order with the Small Claims Division of the Provincial Court where it will be enforced as an Order of that Court.

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: November 17, 2023

Residential Tenancy Branch