



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNRL-S, MNDL-S, MNDCL-S, LRSD, FFL, MNDCT, FFT

Introduction

The hearing occurred by conference call based on an Application for Dispute Resolution (Application) filed by the Landlords on August 28, 2023, and an Application filed by the Tenant on July 19, 2023.

The Landlords applied:

- a Monetary Order for unpaid rent under section 67 of the Act
- a Monetary Order for damage to the rental unit or common areas under sections 32 and 67 of the Act
- a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act
- authorization to retain all or a portion of the Tenant's security deposit in partial satisfaction of the Monetary Order requested under section 38 of the Act
- authorization to recover the filing fee for this application from the Tenant under section 72 of the Act

The Tenant applied:

- a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act
- authorization to recover the filing fee for this application from the Landlord under section 72 of the Act

Issue(s) to be Decided

1. Are the Landlords entitled to a Monetary Order for unpaid rent under section 67 of the Act?

2. Are the Landlords entitled to a Monetary Order for damage to the rental unit or common areas under sections 32 and 67 of the Act?
3. Are the Landlords entitled to a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act?
4. Are the Landlords entitled to authorization to retain all or a portion of the Tenant's security deposit in partial satisfaction of the Monetary Order requested under section 38 of the Act?
5. Are the Landlords entitled to authorization to recover the filing fee for this application from the Tenant under section 72 of the Act?
6. Is the Tenant entitled to a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act?
7. Is the Tenant entitled to authorization to recover the filing fee for this application from the Landlord under section 72 of the Act?

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

- I find that the Tenant was served in accordance with section 89(1) of the Act.
- I find that Landlord T.G. and Landlord J.G. were served in accordance with section 89(1) of the Act.

Service of Evidence

- Based on the submissions before me, I find that the Landlords' evidence was served to the Tenant in accordance with section 88 of the Act.
- Based on the submissions before me, I find that the Tenant's evidence was served to the Landlords in accordance with section 88 of the Act.

Preliminary Matters – Evidence

While both parties served most of their evidence in accordance with section 88 of the Act, each party also served some of their evidence after the deadline for service, therefore any evidence served after the service deadline will not be considered in this decision.

Background and Evidence

I have reviewed all evidence, including the testimony of both parties but will refer only to what I find relevant for my decision.

Evidence and testimony provided by the parties indicates that the tenancy began on August 16, 2020, with a monthly rent of \$1,650.00 due on the first of each month. A security deposit of \$800.00 and a pet damage deposit of \$800.00 were paid by the

Tenant at the start of the tenancy. The rent at the time the tenancy ended was \$1,850.00 and the deposits are held by the Landlord.

According to the Landlords, a new six-month lease ending on August 31, 2023, was agreed to by the parties. They further testified that the Tenant gave notice on July 19, 2023, that she would be ending the Tenancy on August 19, 2023. A copy of the notice was submitted as evidence. The Landlords claim that because the Tenant did not give proper notice to end the tenancy, they are entitled to one month's rent for August 2023. The Landlords testified that the Tenant subsequently advised them that she was out of the unit on August 1, 2023, but still had some belongings to remove and some cleaning and repairs to do to the unit before the Landlords could take back possession. They stated that after the Tenant failed to confirm a move-out inspection date they set a date and advised her that one would be done on August 9, 2023. According to the Landlords, the Tenant attended the inspection and indicated that she would have all of her belongings removed and the unit cleaned by August 11, 2023. The Landlords testified that when the tenant failed to complete the removal of her belongings and the cleaning of the unit as of August 11, 2023, they locked the Tenant out of the property. A copy of the move-in/ move-out inspection report was submitted as evidence.

The Landlords claimed that the Tenant and other occupants caused extensive damage to the rental unit including to the flooring, cabinets, walls and window screens and covers in the amount of \$17,064.41. Pictures and copies of receipts and quotes were submitted by the Landlords as evidence.

The Landlords claimed that because the repairs could not be completed until December 4, 2023, due to the lack of availability of quotes, products and services, and the unit could not be rented out until the repairs were complete, the Tenant owes them \$6,600.00 in lost rental revenue based on the new monthly rent rate of \$2,200.00 that they could have charged to a new tenant for September to November 2023.

The Landlords claimed \$2,440.00 for time spent preparing for the Arbitration process.

The Tenant testified that she attended the August 9, 2023, move-out inspection as required by the Landlords even though the unit was not yet ready for a move-out inspection. She stated that she was delayed in completing the removal of her final belongings and the cleaning and repairing of the unit as she was relying on the help of others. She further stated that she had hired a cleaner, purchased paint and was planning to bring in someone to repair the window screen and do the painting and any other repairs needed in the unit not including the carpets which she had had cleaned. The Tenant acknowledged that she was responsible for the paint damage in the spare room where she had spilled a can of paint. She stated that following the August 9, 2023, move-out inspection, the Landlords gave her until 5:30 pm on August 11, 2023, to complete her move out, cleaning and repairs and then subsequently locked her out when she wasn't able to meet their deadline thereby preventing her from completing the

cleaning and repairs. Pictures of the condition of the unit prior to being locked out were submitted by the Tenant as evidence.

The Tenant testified that she had to move out of the unit on short notice due to a mouse infestation situation and an on-going leaky roof issue. She stated that mice had gotten into her food, destroyed some of her furniture and had attempted to attack her. The Tenant testified that the Landlords were aware of the situation but had failed to solve it therefore she needed to get out of the unit as soon as possible for health and safety reasons. Correspondence between the parties and pictures including a dead mouse, mouse waste and alleged mouse damage to a couch and carpets were submitted by the Tenant and Landlords as evidence.

The Tenant stated that because she needed to pay rent at her new residence, she did not pay her August 2023 for the unit she was in the process of moving out of. According to the Tenant, because the Landlords failed to address the emergency situation regarding the mice infestation, she had no choice but to move out and that had the Landlords addressed the issue she would not have ended the tenancy. She claims, therefore, that the Landlords owe her \$3,300.00 for the rent and deposits required at her new residence as well as \$160.95 for the costs associated with the move. Copies of her moving expenses were submitted as evidence.

The Tenant testified that her boyfriend's car was impounded by a local tow company at the strata's request because the Landlords failed to update the strata with a description of his vehicle and plate number causing it to be incorrectly identified as an unauthorized vehicle. She stated that, due to the fact her boyfriend was unable to afford the impound fees, he was unable to drive to work and therefore lost his employment. The Tenant is claiming \$524.60 for impound fees. A copy of a receipt for impound fees was submitted as evidence.

The Tenant further testified that the Landlords illegally raised her monthly rent \$200.00 when the new six-month fixed tenancy agreement was signed and therefore is requesting the Landlords repay her \$1,200.00 for the six-month illegal rent increase. The Tenant stated that the Landlords also illegally charged her 3% per day for late rental payments in the amount of \$70.00. She stated that although she had agreed to both of these terms in the new lease agreement, she believes that the terms are not legal.

The Landlords testified that while there was an issue with mice, it did not constitute an infestation and the matter was promptly dealt with therefore the Tenants decision to move out was her own and any costs associated with her move out are not their responsibility.

The Landlords position regarding the impounding of the Tenant's boyfriend's vehicle is that the Landlords provided the vehicle information to the strata as and when the information was provided by the Tenant and that the Tenant's boyfriend's inability or

choice to delay in paying the necessary impound fees are not the responsibility of the Landlords.

The Landlords stated that the Tenant agreed to the rent increase and the late fee charges and therefore the increase and late fee charges are valid.

The Tenant and Landlord both testified that the Tenant agreed to allow the Landlords to keep her security and pet deposits in compensation for any unpaid rent and damages the Tenant was unable to rectify before completing her move out.

Analysis

Are the Landlords entitled to a Monetary Order for unpaid rent?

Section 26 of the Act states that a tenant must pay rent to the landlord, regardless of whether the landlord complies with the Act, regulations or tenancy agreement, unless the tenant has a right to deduct all or a portion of rent under the Act.

Based on the evidence before me, I find that the Landlord has established a claim for unpaid rent owing for August 2023.

Section 45(1) of the Act states that “a tenant may end a periodic tenancy by giving the landlord notice to end tenancy effective on a date that

- a) is not earlier than one month after the date the landlord receives the notice, and
- b) 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 31(1.1) of the Act states that “a landlord must not change the locks or other means of access to the rental unit unless

- a) the tenant agrees to the change, and
- b) the landlord provides the tenant with new keys or other means of access to the rental unit.

I find, based on the evidence and testimony of the parties that the Tenant did not give notice in accordance with section 45(1) of the Act and therefore the Tenant owes the Landlord rent for in the amount of \$656.45, for the period August 1 to 11, 2023 during which the Tenant had access to the rental unit. I find that the Tenant is not required to pay any rent for the balance of August 2023 as the Landlord deprived the Tenant of access to the rental unit during the period in which a tenancy agreement was still in effect in breach of section 31(1.1) of the Act.

Therefore, I find the Landlords are entitled to a monetary award for unpaid rent under section 67 of the Act, in the amount of \$656.45.

Are the Landlords entitled to a Monetary Order for damage to the rental unit or common areas?

Section 35 of the Act establishes that, at the end of the tenancy, a landlord must inspect the condition of the rental unit with the tenant, the landlord must complete a condition inspection report with both the landlord and the tenant signing the condition report.

Section 32(3) of the Act states that a tenant must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

To be awarded compensation for a breach of the Act, the landlord must prove:

- the tenant has failed to comply with the Act, regulation or tenancy agreement
- loss or damage has resulted from this failure to comply
- the amount of or value of the damage or loss
- the landlord acted reasonably to minimize that damage or loss

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find that the Landlord has not established a claim for damage to the rental unit or common areas.

I find that the Landlord, by locking the Tenant out of the unit on August 11, 2023, in breach of section 31(1.1) of the Act, prevented the Tenant from completing the cleaning of the unit and any repairs required therefore the Tenant was deprived of the opportunity to address any issues raised in the move-out inspection report. I further find that some of the issues identified in the move-in/ move-out report preexisted the tenancy and, based on the evidence, testimony of the parties and on the balance of probabilities, that mice entering the unit caused some of the damage suffered by the unit including the carpets throughout the property.

I find, however, based on the Tenant's own admission, that the carpet in one bedroom was damaged by a can of paint that the Tenant spilled herself. I further find that as the Tenant had agreed to allow the Landlords to keep her security and pet deposits, the cost of this damage, in consideration of the age of the carpet, has been compensated for by the Tenant.

For the above reasons, the Landlords' application for a Monetary Order for damage to the rental unit or common areas under sections 32 and 67 of the Act is dismissed without leave to reapply.

Are the Landlords entitled to a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement?

To be awarded compensation for a breach of the Act, the landlord must prove:

- the tenant has failed to comply with the Act, regulation or tenancy agreement
- loss or damage has resulted from this failure to comply
- the amount of or value of the damage or loss
- the landlord acted reasonably to minimize that damage or loss

I find that the Landlords decision to lock the Tenant out prevented the Tenant from making any repairs and therefore any repairs the Landlords determined had to be made before rerenting the unit and any subsequent delays that occurred in securing the desired product or services was a direct result of the decision of the Landlords. I therefore find that the Landlord is not entitled to lost rent for the period September to November 2023.

I find that any time and money spent preparing an application for dispute resolution or responding to an application for dispute resolution is expended at the sole discretion of the party initiating or responding to an application and therefore no compensation is due either party engaged in a voluntary arbitration process.

For the above reasons, the Landlords' application for a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act is dismissed, without leave to reapply.

Are the Landlords entitled to retain all or a portion of the Tenant's security deposit in partial satisfaction of the monetary award requested?

Section 38 of the Act states that within 15 days of either the tenancy ending or the date that the landlord receives the tenant's forwarding address in writing, whichever is later, a landlord must repay a security deposit to the tenant or make an application for dispute resolution to claim against it. As the forwarding address was not provided and the Landlord made their application on August 28, 2023, I find that the Landlord did make their application within 15 days of the tenancy ending/the forwarding address being provided.

Section 36 (2) of the Act states that, unless the tenant has abandoned the rental unit, the right of a landlord to claim against a security deposit for damage to the rental unit is extinguished if, having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

I find that the Landlords conducted move-in and move-out inspections with the Tenant and provided a copies of the report to the Tenant in accordance with the Act.

I further find that the Tenant authorized the Landlords to keep her security and pet deposits for unpaid rent and damage caused to the carpet in the spare room.

Under section 72 of the Act, I allow the Landlord to retain the Tenant's security and pet damage deposits of \$1,632.18, including interest, in full satisfaction of the monetary award for August 2023 unpaid rent, damage to the bedroom carpet and the Landlords' filing fee.

Are the Landlords entitled to recover the filing fee for this application from the Tenant?

As the Landlords were successful in their application, I find that the Landlords are entitled to recover the \$100.00 filing fee paid for this application under section 72 of the Act.

Is the Tenant entitled to a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act?

To be awarded compensation for a breach of the Act, the Tenant must prove:

- the Landlord has failed to comply with the Act, regulation or tenancy agreement
- loss or damage has resulted from this failure to comply
- the amount of or value of the damage or loss
- the Tenant acted reasonably to minimize that damage or loss

I find that it was the Tenant's own decision to move out of the rental unit rather than to file for dispute resolution to secure emergency repairs or services if required or engage the Landlords in further discussions to remediate the situation and therefore the Landlords are not responsible for any costs associated with moving or with additional rental costs.

I find that it was the Tenant's responsibility to ensure the Landlords and by way of the Landlords, the strata, were provided with the necessary required to avoid having the Tenant's boyfriend's vehicle from being towed and that the boyfriend was not a Tenant of the Landlords but rather was an occupant allowed on the property by the Tenant and that the Landlords therefore had no obligations to him. I also find that the delay in securing the release of the vehicle and the associated costs and outcomes were based on the decisions and actions of the person to whom the property belonged and therefore not the responsibility of the Landlords.

I find that the Tenant agreed to the \$200.00 increase in rent as well as the 3% in daily late fees therefore the Landlords have acted in accordance with section 43 of the Act.

For the above reasons, the Tenant's application for a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act is dismissed, without leave to reapply.

Is the Tenant entitled to authorization to recover the filing fee for this application from the Landlord under section 72 of the Act?

As the Tenant was not successful in this application, the Tenant's application for authorization to recover the filing fee for this application from the Landlords under section 72 of the Act is dismissed, without leave to reapply.

Conclusion

The Landlords application for a monetary award for unpaid rent under section 67 of the Act is granted.

The Landlords' application for a Monetary Order for damage to the rental unit or common areas under sections 32 and 67 of the Act is dismissed without leave to reapply.

The Landlords' application for a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act is dismissed, without leave to reapply.

The Tenant's application for a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act is dismissed, without leave to reapply.

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 04, 2024

Residential Tenancy Branch