



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes L: MNRL, MNDL, MNDCL, FFL
 T: MNSDS-DR, FFT

Introduction

This hearing addressed the Landlord's Application for Dispute Resolution under the *Residential Tenancy Act* (the Act) for:

- 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; and,
- authorization to recover the filing fee for the Landlord's application from the Tenant under section 72 of the Act.

This hearing also concerns the Tenant's Application for Dispute Resolution under the Act for:

- a Monetary Order for the return of all or a portion of their security deposit and/or pet damage deposit under sections 38 and 67 of the Act; and,
- authorization to recover the filing fee for the Tenant's application from the Landlord under section 72 of the Act.

Landlord R.S.D. attended the hearing.

Tenant R.S.S.I. was represented by legal counsel A.Z., and representative D.K.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package) and Evidence

The Landlord stated he served the proceeding package to the Tenant in person at the Tenant's principal office on January 25, 2024. Tenant's counsel confirmed receipt of the Landlord's proceeding package and copies of the Landlord's evidence.

Tenant's counsel stated that the Tenant's proceeding package, including copies of its evidence, was sent to the Landlord by Canada Post registered mail on April 12, 2024, and the Tenant had confirmed delivery. The Landlord confirmed receipt and an opportunity to review the Tenant's evidence prior to the hearing.

Preliminary Matters

At the start of the hearing, an issue arose regarding whether Landlord R.S.D.'s was a "landlord" under the Act as the owners of the rental unit, his parents, passed away July 26, 2021 according to the R.S.D.'s testimony. No grant of probate had issued for his parent's estate. Section 1 defines a landlord as:

"landlord", in relation to a rental unit, includes any of the following:

- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
 - (i) permits occupation of the rental unit under a tenancy agreement, or
 - (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;
- (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);
- (c) a person, other than a tenant occupying the rental unit, who
 - (i) is entitled to possession of the rental unit, and
 - (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;
- (d) a former landlord, when the context requires this;

In this case, R.S.D. is named as the "landlord" on the parties' written tenancy agreement. Additionally, evidence submitted indicates that after his parent's death, his lawyers were in contact with the Tenant regarding issues of rent and moving out. R.S.D. also testified that he retained the property manager to advertise and find suitable

renters for the unit, and after that agency's services ended, he managed the property for his parents.

Based upon the evidence presented, I find R.S.D. is a "landlord" as defined in section 1 of the Act regarding matters concerning this tenancy.

Issues for Decision

Is the Landlord entitled to a Monetary Order for unpaid rent?

Is the Landlord entitled to a Monetary Order for damage to the rental unit or common areas?

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

Is the Tenant entitled to a Monetary Order for the return of all or a portion of its security deposit?

Is either party entitled to recover the filing fee for this application from the other party?

Background and Evidence

I have reviewed the evidence, and have considered the testimony of the parties, but will refer only to what I find relevant to my decision.

Evidence presented establishes the tenancy began on April 1, 2018, on a month-to-month basis. The monthly rental rate on the tenancy agreement was \$2,300.00 due on the first day of the month. The Landlord testified that at the time the tenancy ended, monthly rent was \$2,600.00 but no copies of rent increase notices during the course of the tenancy were provided in evidence. The Tenant provided the Landlord with a security deposit in the amount of \$1,150.00 on March 21, 2018, which the Landlord stated he continues to hold in trust. A copy of the tenancy agreement was provided in evidence. The Landlord testified that his then-property manager signed the tenancy agreement on his behalf and conducted the move-in inspection. A copy of the move-in inspection report was not submitted.

On February 10, 2023, the Tenant gave the Landlord's lawyer one month's notice that the Tenant would vacate the rental unit on March 15, 2023. The Tenant also provided its forwarding address in that email to the Landlord. The tenancy ended on March 15, 2023. The Landlord testified that no move-out condition inspection was conducted by the parties of the rental unit. The Landlord also stated that he did inspect the rental unit during the tenancy but did not prepare any written condition reports. The Tenant

provided copies of email correspondence between it and the Landlord's lawyer regarding a move-out inspection, but was informed by the lawyer on February 27, 2023, that he was "waiting for instructions" from the client. The Tenant provided a copy of an email dated April 18, 2023, wherein the Tenant notes that the Landlord was not returning the security deposit.

The Tenant also submitted email correspondence with the Landlord's attorney(s) regarding the issue of payment of rent. In an email dated November 29, 2023, the Tenant indicated when payments for rent had been made that the Landlord or his lawyer was attempting to track.

The Landlord filed this application requesting monetary compensation for damage to the unit: namely, for \$480.00 for alleged damage to the fireplace; and, \$6,050.00 for repair to the interior walls of the unit. The Landlord also requested unpaid rent in the amount of \$100.00, and lost rent in the amount of \$12,150.00.

The Tenant filed its application requesting double its security deposit, plus interest.

Analysis

Rule 6.6 Residential Tenancy Branch Rules of Procedure addresses the standard and burden of proof in a dispute resolution hearing:

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

In this case, each party bears the burden of proof to establish the claims raised by that party in their application.

Is the Landlord entitled to a Monetary Order for unpaid utilities?

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.

The Landlord testified that he was requesting \$100.00 in unpaid rent from the Tenant. The Landlord admitted that he did not have a Tenant ledger or accounting statement or

other documentary evidence to establish the shortfall. On the other hand, the Landlord produced email exchanges with the Landlord's prior counsel discussing and outlining the payment of rent during the tenancy. Notably, Landlord's then-counsel did not raise any issue of unpaid rent and at no time during the tenancy did the Landlord provide evidence that he pursued a claim of unpaid rent against the Tenant. I find the Landlord has failed to submit sufficient evidence that, on a balance of probabilities, the Tenant owes unpaid rent to the Landlord.

For the above reasons, the Landlord's application for a Monetary Order for unpaid rent under section 67 of the Act is dismissed, without leave to reapply.

Is the Landlord 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 the Landlord has not provided sufficient evidence to establish a claim for damage to the rental unit or common areas.

The Landlord submitted photographs of damage to walls in the rental unit which he stated was the result of the Tenant's occupation. The Landlord obtained an estimate from a drywall repair contractor who was willing to do the work on his own (rather than through his employer) for \$6,050.00. The Landlord stated he received this quote for the work by text message from the individual on April 18, 2023. The Landlord did not provide a copy of the text message containing this estimate.

The Landlord also requested \$480.00 in damage to the fireplace. The Landlord did not provide a copy of a repair estimate, stating he found the replacement part on-line. He did not recall the date he obtained that repair cost.

The Tenant disputed that it was responsible for the damage, and submitted an advertisement for the rental unit posted in April 2023. The photographs in the advertisement show the rental unit to be partially furnished and in good condition, with no wall damage. In the alternative, the Tenant provided its own estimate for the cost of repairs based upon a contractor's review of the Landlord's photographs of the damage. The Tenant's estimate was approximately \$3,000.00 for repair to the walls in the unit. The Landlord disputed the repairs could be done for this amount and that the contractor could properly evaluate the scope of repairs based solely upon a review of the photographs he submitted for this hearing.

The Landlord stated that although a move-in inspection was done by the property manager employed by the Landlord at the commencement of the tenancy, no move-out inspection report was done. Additionally, during the term of the tenancy, the Landlord stated that he would inspect the rental unit from time-to-time but prepared no written reports regarding its condition.

I find the Landlord has not provided sufficient probative evidence to establish, by a balance of probabilities, that the Tenant is responsible for the damage to the rental unit claimed by the Landlord in his application and for compensation in the amount requested.

For these reasons, the Landlord's application for a Monetary Order for compensation for damage to the rental unit under section 67 of the Act is dismissed, without leave to reapply.

Is the Landlord 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

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 money owed or compensation for damage or loss under the Act, regulation or tenancy agreement.

The Landlord contends that the Tenant is responsible for lost rent in the amount of \$12,150.00 resulting from damage to the rental unit that precluded him from promptly re-letting the premises. The Landlord explained that the basement portion of the rental unit required repair work which he performed predominantly during his weekend hours as he felt comfortable undertaking those minor repairs. He stated that he was able to

re-let the basement unit on May 1, 2023, for \$1,200.00 per month, and calculated his lost rent for the basement suite at \$1,800.00.

The Landlord stated that he showed the main floor level of the rental unit to potential tenants, but the damage to the walls dissuaded these potential tenants from renting the unit. The Landlord did not provide evidence of any affirmative steps taken by him to re-let the unit. He stated that he was successful in renting it on August 1, 2023 for \$2,300.00 per month.

The Tenant did not provide sufficient evidence to establish his efforts to re-rent the unit and what monthly rental rate between the end of the subject tenancy and to the time the Landlord was successful in finding tenants.

As I have previously held, there is a paucity of evidence provided by the Landlord to conclude the Tenant was responsible for the alleged condition of the unit (holes in wall, damage to fireplace and similar) that would support a finding that the Landlord could not re-let the unit. Moreover, the Landlord did not provide evidence of his efforts to re-let the unit sooner or at a reduced rate. The Landlord's evidence does establish that he was successful in eventually re-letting the main floor at \$2,300.00 and the basement suite at \$1,800.00.

Therefore, I find the Landlord is not entitled to a Monetary Order for money owed or compensation for lost rent under the Act, regulation or tenancy agreement under section 67 of the Act. The Landlord's application for a Monetary Order for compensation for lost rent under section 67 of the Act is dismissed, without leave to reapply.

Is the Tenant entitled to a Monetary Order for the return of all or a portion of their security and/or pet damage deposit?

Section 38(4) allows a landlord to retain from a security and/or pet damage deposit if, at the end of the tenancy, the tenant agrees in writing that the landlord may retain an amount to pay a liability or obligation of the tenant.

If the landlord does not have the tenant's agreement in writing to retain all or a portion of the security and/or pet damage deposit, section 38(1) 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, the landlord must either repay any security or pet damage deposit or make an application for dispute resolution claiming against the security deposit or the pet damage deposit.

Section 38(6) of the Act states that if the landlord does not return the deposit(s) or file a claim against the tenant within fifteen days, the landlord must pay the tenant double the amount of the deposit(s).

Based on the evidence before me, I find the Landlord was deemed served with the Tenants' forwarding address on February 10, 2023, when the Tenant provided Landlord's then-counsel of the Tenant's notice to end tenancy. I further find that the Landlord was obligated to obtain the Tenant's written consent to keep the security deposit or to file an application no later than 15 days after receiving the Tenant's forwarding address or the tenancy ending, whichever is later. In this case, the Landlord testified he continues to hold the Tenant's security deposit. The Landlord did not file an application for damage to the rental unit until January 19, 2024, well beyond the 15-day period after the tenancy ended on March 15, 2023.

Furthermore, no written documentation of the Tenant's consent that the Landlord retain the security deposit was provided in evidence. I find that there is no evidence provided to show that the Landlord had the Tenant's agreement in writing to retain the security deposit or that the Landlord applied for dispute resolution within 15 days of receiving the Tenant's forwarding address to retain a portion of the security deposit as required under section 38(1).

Under section 38(6) of the Act, I find that the Landlord must pay the Tenant double the security deposit, plus interest on the initial deposit only, as the Landlord has not complied with section 38(1) of the Act.

Therefore, I find the Tenant is entitled to a Monetary Order for the return of its security deposit under sections 38 and 67 of the Act, in the amount of \$2,300.00, plus applicable interest.

The issue of the security deposit has now been conclusively dealt with in this hearing.

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

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

The Landlord was not successful in his application and I find the Landlord is not entitled to recover his \$100.00 filing fee for this application under section 72 of the Act.

Conclusion

The Landlord's application is dismissed in its entirety, without leave to reapply.

The Tenant's application is granted.

I grant the Tenant a Monetary Order in the amount of **\$2,434.27** under the following terms:

Monetary Issue	Granted Amount
a Monetary Order for double the security deposit (\$1,150.00 x 2) under section 38(6)	\$2,300.00
Interest on the initial security deposit	\$34.27
Authorization to recover the filing fee from the Landlord under section 72 of the Act	\$100.00
Total Amount	\$2,434.27

The Tenant is provided with this Order in the above terms and the Landlord must be served with **this Order** as soon as possible. Should the Landlord 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: May 15, 2024

Residential Tenancy Branch