Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing dealt with an Application for Dispute Resolution (the "Application") that was filed by the Landlord under the *Residential Tenancy Act* (the "*Act*"), seeking compensation for damage to the rental unit, compensation for unpaid rent, authorization to withhold the security deposit against any amounts owed by the Tenant and recovery of the filing fee.

This hearing also dealt with a cross-Application filed by the Tenant under the *Act* seeking the return of double his security deposit, compensation for damage or loss under the *Act*, the regulation, or the tenancy agreement, and recovery of the filing fee.

The hearing was originally convened by telephone conference call on August 7, 2018, at 1:30 P.M. The hearing was adjourned twice due to service issues and time constraints and subsequently reconvened on September 27, 2018, and
November 20, 2018. Interim decisions were rendered in relation to these hearings on August 7, 2018, and September 28, 2018, copies of which were sent to the parties in the manner requested by them in the hearings. During all three hearings the parties present provided affirmed testimony and for the sake of brevity, I will not repeat here the matters discussed or findings of fact made in either of the above noted interim decisions. As a result, the interim decisions should be read in conjunction with this decision.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter pursuant to the Residential Tenancy Branch Rules of Procedure; However, I refer only to the relevant facts and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favour will be e-mailed to them at the e-mail address confirmed in the hearings.

Preliminary Matters

At the conclusion of the hearing on September 27, 2018, the parties were provided the opportunity to submit additional evidence for consideration at the hearing scheduled for November 20, 2018. At the reconvened hearing on November 20, 2018, I confirmed that the

parties had served and received any additional evidence on the Branch and each other as required and neither party took issue with regards to the acceptance, timing or service method for this evidence. As a result, I have accepted all additional documentary evidence submitted by the parties for consideration.

Issue(s) to be Decided

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

Is the Landlord entitled to compensation for unpaid rent?

Is the Landlord entitled to withhold the security deposit against any monies owed by the Tenant?

Is the Tenant entitled to the return of double their security deposit?

Is the Tenant entitled to compensation for damage or loss under the *Act*, the regulation, or the tenancy agreement?

Is either party entitled to recovery of the filing fee?

Background and Evidence

The parties agreed that the tenancy commenced on April 15, 2013, and ended on December 16, 2017. The parties also agreed that at the time the tenancy ended, rent in the amount of $1,814.75 was due on the 15th day of each month and that a $900.00 security deposit was paid by the Tenant at the start of the tenancy, which the Landlord still holds.

Although the Landlord provided justifications for why a move-in condition inspection and a move-in condition inspection report were not completed, such as the friendship between her mother and the Tennant, ultimately the parties were in agreement that neither a move-in condition inspection nor a move-in condition inspection report were completed at the start of the tenancy. Although they disputed whether a move-out condition inspection was scheduled and completed, they agreed that a move-out condition inspection report was not completed. Although the parties were in agreement that the rental unit was at least partially furnished at the start of the tenancy, they disputed the list of items included with the rental and whether any of these items were damaged or not returned. The Landlord stated that the rental unit came fully furnished with linens, cookware, dishes and cutlery, small kitchen appliances and some furniture, such as a bed and mattress. In support of this testimony the Landlord provided a letter from her mother, who is friends with the Tenant, stating that the apartment was furnished and specifically mentioning a set of pots and pans that was provided to the Tenant by the Landlord for his use during the tenancy.

The Landlord testified that at the end of the tenancy, the Tenant failed to return the majority of the linen and kitchen items provided at the start of the tenancy or left them in damaged and unusable condition and provided a detailed list of the items damaged or not returned and the amounts sought for each item. The Landlord also provided e-mail correspondence regarding additional time granted to the Tenant to return the missing items and a copy of a note she stated was written by the Tenant stating that when he opened his moving boxes, he would return any items belonging to her. The Landlord also testified that a new mattress was purchased for the Tenant during the tenancy and was left in unusable condition as there were personal fluid stains on it. In total, the Landlord sought $1,027.97 for the replacement of these items. In support of her testimony the Landlord provided a copy of the tenancy agreement, copies of e-mail correspondence, several photographs of the stained mattress and damaged pans, a witness statement, a note allegedly authored by the Tenant, a list of items provided and either damaged or not returned, and price verification for several of the items claimed such as the set of pots and pans and the mattress.

Although the Tenant agreed that a new bed was purchased for him during the tenancy and that linens were provided at the start of the tenancy, he testified that he returned the linens at the start of the tenancy as he prefers not to use used linens and that he was downsizing from a large home and therefore brought most of his own furniture and possessions, such as kitchen items. As a result, the Tenant denied that the rental unit was fully furnished or that he had either failed to return or damaged any kitchen items or linens. Further to this, the Tenant denied staining the mattress and stated that this was never brought to his attention by the Landlord prior to vacating the rental unit.

The Landlord testified that the Tenant failed to return one of the two key fobs given to him throughout the tenancy and sought $75.00 for its replacement. The Tenant acknowledged receiving the two fobs but stated that one of them did not work and he was required to purchase a new fob himself. Further to this, the Tenant stated that the non-functional key fob was returned to a building concierge and therefore he should not be responsible for this cost. The Landlord responded by stating that should the Tenant have in fact returned the key fob to a concierge, it was never returned to her and that in any event, she is the Landlord and all keys and access devices for the building and rental unit need to be returned to her under the *Act*, not a building concierge.

The Landlord stated that the rental unit was not clean at the end of the tenancy and sought $78.23 for the cost of hiring a cleaner and the purchase of a mop and sponge as well as $120.00 in costs to repair a wall and a broken cupboard shelf. When asked, the Landlord testified that the rental unit was last painted approximately two years prior and that the paint had been stripped to the drywall in several areas of the den by the Tenant, which is not reasonable wear and tear or aging, requiring the drywall to be filled and the wall painted. The Landlord stated that she did not have an invoice for the work but provided photographs of the damage for my review. The Tenant denied damaging the cupboard shelf or the wall and testified that they left the rental unit reasonably clean and undamaged at the end of the tenancy, except for

reasonable wear and tear or damage present prior to the commencement of the tenancy. The Tenant stated that the Landlord did not complete a move-in condition inspection or report and has no evidence these were not damaged at the start of the tenancy and also stated that the Landlord has not provided any invoice the $120.00 she claimed to have spent on these repairs. The Tenant also testified that he hired his own cleaner on December 13, 2017, who cleaned the apartment for 4-5 hours and therefore the rental unit was left reasonably clean. The Tennant did not submit any evidence to corroborate this testimony stating that he had paid the cleaner in cash and did not obtain a receipt.

The Landlord also sought $117.16 for overholding the rental unit by two days as she stated that the Tenant gave written notice stating that he was ending the tenancy effective December 14, 2017, only paid rent up to and including December 14, 2017, and was not out of the rental unit until December 16, 2017. Further to this, the Landlord sought $180.00 (six hours at $20.00/hour) for time spent organizing and hiring the cleaner and replacing items damaged or not returned at the end of the tenancy as she had another tenant scheduled to start their tenancy shortly thereafter and the rental unit needed to be clean and fully furnished. In support of her testimony the Landlord provided several e-mail chains regarding the Tenant's request to end the tenancy.

The Tenant denied that the end of the tenancy was set as December 14, 2017, and testified that he paid rent up unit until December 16, 2017. However, the Tenant could not provide any verification that rent was paid for the period of time after December 14, 2017, and the last rent acknowledged as paid for and received by the Landlord by both parties was for the period of November 15, 2017, to December 14, 2017. The Tenant stated that he should not be responsible for the $117.16 sought as the Landlord tricked him and there was no agreement that he move out by December 14, 2017. As he previously denied the allegations of the Landlord that he damaged the rental unit, damaged or failed to return items provided to him as part of the tenancy agreement, or left the rental unit unclean, he also disputed the Landlord's $180.00 claim for time spent organizing the cleaning and repair of the rental unit or the replacement of items.

The Landlord sought $1,814.75 in unpaid rent for August and provided a copy of the cancelled August rent cheque in support of her testimony that August rent is outstanding. Although the parties disputed the reason for which August rent was cancelled, ultimately they both agreed that rent for August 2017 was outstanding. Finally, the Landlord sought $7.50 for a dishonored cheque surcharge from the bank. However, the parties agreed in the hearing that this was dealt with as part of a previous matter.

The Tenant testified that he sent his forwarding address in writing to the Landlord on December 19, 2017, by registered mail and provided me with the registered mail tracking print out and registered mail tracking number which show that the registered mail was received on December 21, 2017. He also provided me with a copy of the letter sent to the Landlord containing his forwarding address. The Tenant stated that the Landlord failed to return his security deposit to

him or to complete move-in or move-out condition inspections and reports as required, and as a result, the Tenant sought $1,800.00 for the return of double his $900.00 security deposit. The Landlord acknowledged receiving the Tenant's forwarding address in writing but stated that it was not received until December 28, 2017. As previously stated, the Landlord acknowledged that they did not complete a move-in condition inspection or condition inspection reports at either the start or end of the tenancy, however, the Landlord disputed that no condition inspection was completed at the end of the tenancy. The Landlord testified that a move-out condition inspection was initially scheduled for 2:00 PM on December 14, 2017, and was rescheduled until 10:00 AM on December 15, 2017, when the Tenant was not ready at the scheduled time. The Landlord stated that as the Tenant had still not moved out as of 10:00 AM on December 15, 2017, she attempted to inspect the rental unit with the Tenant at the time of move out on December 16, 2017, but the Tenant was hostile and the inspection could not be completed. The Tenant denied these allegations.

The Tenant testified that his rental unit was uninhabitable for a period of 5-6 weeks due to a flood and sought a total of $2,294.75 (one month plus 8 days of rent) for loss of use and quiet enjoyment during the flood and repairs. While the parties agreed that a flood occurred in the rental unit on May 6, 2017, due to piping issues in the walls of the strata building, they disagreed about the extent of the damage, the duration of the repairs, and the extent of inconvenience suffered by the Tenant. The Tenant alleged that 3-4 industrial fans were placed in his rental unit for approximately two weeks, which were exceptionally loud and exacerbated his breathing problems. The Landlord disputed this testimony stating that the fans were only present for 3-5 days. The parties agreed that the flooring and some drywall were impacted by the flood in the bathroom and the living room but disputed whether flooring in the bedroom was ever damaged. In any event, the Landlord conceded that the flooring in the bedroom was none the less removed and replaced due to the way in which the flooring had been originally laid.

The Tenant stated that for a period of 5-6 weeks the concrete was exposed and the bathroom was inaccessible and as a result, he could not reside in the rental unit and only returned to it to work during the day. Further to this, the Tenant stated that his clothing and furniture were removed. The Landlord denied that the repairs took 5-6 weeks stating that the flooring, which was the last of the required repairs, was replaced May 19, 2017, and that the toilet, which was not impacted by the floor, was replaced the day after the Tenant complained that it was not working. As a result, the Landlord stated that the rental unit was perfectly habitable between the flood on May 6, 2017, and the final repairs on May 19, 2017. While the Landlord acknowledged that furniture was removed and returned by the insurance provider for a brief period when the floors were replaced, she called into questions the Tenant's testimony that he did not reside in the rental unit after the flood and during the repairs as he did not provide any proof of his accommodation elsewhere during this time. Both parties provided significant documentary evidence in support of their testimony including but not limited to e-mail correspondence, invoices for work completed, correspondence from the strata and insurance provider and the restoration company, and photographs of the rental unit

Analysis

Section 7 of the *Act* states that if a landlord or tenant does not comply with the *Act*, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. It also states that landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with the *Act*, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Rule 6.6 of the Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities and that the onus to prove their case is on the person making the claim. As a result, I find that the parties are each responsible to satisfy me on a balance of probabilities, meaning that it is more likely than not, that they are entitled to the amounts sought in their monetary claims.

The Landlord testified that the rental unit was fully furnished at the start of the tenancy and provided me with a detailed accounting of items she claimed were damaged or not returned; however, the Tenant denied that this was the case and the written tenancy agreement in the documentary evidence before me for consideration states only that furniture and sheets and towels are included in the payment of rent. Although a witness statement was submitted in support of the Landlord's testimony that the rental unit was in fact furnished, the witness statement only specifically mentions one of the items disputed as being provided, a specific set of pots and pans for which the Landlord is claiming $156.72. Although I agree that the tenancy agreement states that "furniture" and "sheets and towels" are included, no further description was provided in the tenancy agreement and the parties are in agreement that no list of included items were provided to the Tenant at the start of the tenancy. Given the contradictory testimony of the parties and the absence of any signed or other documentary evidence clearly establishing exactly which items and how many of each were provided to the Tenant at the start of the tenancy, I therefore find that I am not satisfied that the Tenant was in fact provided with a fully furnished rental unit at the start of the tenancy as alleged by the Landlord. As a result, I am not satisfied that the Landlord is entitled to the amounts sought for the replacement of linens and kitchen items. However, given the witness statement submitted by the Landlord which corroborates her testimony in relation to a specific set of pots and pans, I am satisfied, on a balance of probabilities, that this set of pots and pans was in fact provided to the Tenant during the tenancy and not returned. As a result, I grant the Landlord's claim seeking $156.72 for the replacement of this set.

Both parties also agreed that a new mattress was provided to the Tenant during the tenancy and despite the Tenant's testimony to the contrary, I am satisfied by the Landlord and the documentary evidence provided by her in the form of photographs, that the Tenant did indeed stain this mattress with bodily fluids throughout the tenancy in such a manner that it could not be used by another occupant or the Landlord. As a result, I also grant the Landlord's claim for the

$334.88 sought for its replacement. The remaining $693.09 in monetary claims for linens and kitchen items is dismissed without leave to reapply.

Although the Tenant testified that he returned a key fob to the building concierge, I find that section 37 of the *Act* clearly states that when a tenant vacates the rental unit at the end of a tenancy, they must give the landlord all keys or other devices that allow access to and within the residential property. There is no evidence before me to support that the building concierge is an agent for the Landlord and it is clear from the testimony of both parties that this second key fob was never returned to the Landlord. As a result, I am satisfied that it was not returned to the Landlord as required in section 37 of the *Act* and I therefore grant the Landlord's $75.00 claim for its replacement.

Although the parties disputed the reason for which a $1,814.75 rent cheque for August of 2017 was cancelled, ultimately they both agreed that this amount is owed as the Tenant resided in the rental unit during August of 2017 and that this rent amount remains outstanding. As a result, I grant the Landlord's claim for $1,814.75 in outstanding rent for August of 2017.

I am also satisfied based on the documentary evidence and testimony before me that rent, which was payable on the 15th day of each month, covered the period from the 15th day of the month in which rent was paid, to the 14th day of the following month, that the Tenant ended the tenancy by giving written notice to do so, that the tenancy was set to end on December 14, 2017, and that the Tenant only paid rent up to and including December 14, 2017. Policy Guideline #3 states that if a tenant remains in possession of the premises (overholds) after the tenancy agreement has ended, the tenant will be liable to pay occupation rent on a per diem basis until the landlord recovers possession of the premises. As a result, I also grant the Landlord's claim for rent for
December 15-16, 2017; however, I have only granted the Landlord $117.08, not the $117.16 claimed: $1,814.75/31 days = $58.54 x 2 = $117.08.

Section 37 of the *Act* states that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. For the benefit of the parties I find it important to note here that the standard for cleanliness is a reasonableness standard, not one of perfection. Both parties were in agreement that no move-in or move-out condition inspection reports were completed in compliance with sections 23 and 35 of the *Act* or sections 18, 19, and 20 of the regulation. Residential Tenancy Policy Guideline (the "Policy Guideline") #1 states that the tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with above noted standard and is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest(s).

The parties disputed whether the rental unit was left reasonably clean at the end of the tenancy and whether damage to the walls of the den and a cupboard were caused during the course of the tenancy. As stated above, no condition inspection report was completed at the start of the

tenancy. Given the absence of a move-in condition inspection report and the contradictory testimony of the parties in relation to this damage, I am not satisfied by the Landlord that the damage did not already exist at the start of the tenancy. As a result, I dismiss the Landlord's claim for $120.00 in repair costs without leave to reapply. Further to this, I also dismiss the Landlord's claim for $78.23 in cleaning costs without leave to reapply as the parties disputed the condition of the rental unit at the end of the tenancy and the Landlord submitted no documentary evidence, other than a $60.00 invoice for cleaning and a receipt for $18.23 for the purchase of a mop and sponge, to corroborate her claim that the rental unit was not left at least reasonably clean at the end of the tenancy.

As I am not satisfied that the rental unit was indeed fully furnished, that the Tenant failed to return any items provided to him for his use during the tenancy in acceptable condition (with the exception of the above noted mattress and pot and pan set) or that the rental unit was not left reasonably clean and undamaged at the end of the tenancy, I am therefore not satisfied that the Landlord is entitled to the $180.00 sought for time spent arranging cleaning and repairs or for procuring items for the rental unit in preparation for the next tenant. As a result, I dismiss this claim without leave to reapply.

The parties were in agreement that the tenancy ended on December 16, 2017, and that the Landlord still holds the Tenant's $900.00 security deposit. Although they disputed the date upon which the Tenant's forwarding address was received by the Landlord in writing, I am satisfied by the Tenant's testimony and documentary evidence, including a copy of the letter containing their forwarding address, the registered mail tracking number, and a copy of the registered mail delivery receipt from the mail service provider, that the letter containing the Tenant's forwarding address was received by the Landlord on December 21, 2018. Section 38 (1) of the *Act* states that except as provided in subsection (3) or (4) (a), of the *Act*, within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations or make an application for dispute resolution claiming against the security deposit or pet damage deposit.

There is no evidence before me from either party that the Landlord had authority to withhold all or a portion of the Tenant's security deposit at the end of the tenancy pursuant to sections 38 (3) or 38 (4) (a) of the *Act*. However, records at the residential Tenancy Branch (the "Branch") show that the Landlord's Application seeking to retain the Tenant's security deposit for damage to the rental unit and other losses was filed on January 4, 2018. As a result, I find that the Landlord complied with section 38(1) of the *Act* as the Application was filed less than 15 days after the date the Landlord received the Tenant's forwarding address in writing, which was later than the date the tenancy ended.

Although it is clear from the testimony of both parties that the Landlord extinguished their right to claim against the Tenant's security deposit for damage to the rental unit pursuant to sections 24

and 36 of the *Act*, by failing to comply with the *Act* and regulation in relation to the completion of condition inspections and reposts; as stated above, the Landlord filed their application within the 15 day time limit prescribed in section 38(1) of the *Act* and as the Landlord's Application sought to retain the Tenant's security deposit for more than just damage to the rental unit, I find that their right to file these other claims and to request retention of the Tenant's security deposit against these other claims is unaffected by the Landlord's failure to comply with sections 23 and 35 of the *Act*. Based on the above, I therefore dismiss the Tenant's Application seeking double the amount of their security deposit pursuant to section 38(6) without leave to reapply as I find that the Landlord filed their Application within the prescribed time limits set out in section 38(1) of the *Act* and was entitled to both file the Application and to withhold the security deposit pending the outcome of the hearing.

Although the Tenant claimed that the rental unit was uninhabitable for 5-6 weeks due to flooding and repairs, and that he is therefore entitled to the reimbursement of $2,294.75 in rent paid during this time period, I do not agree. The documentary evidence before me from the insurance company, the restoration company, and the floor installer clearly establish that the leak began in the early hours of the morning on May 6, 2017, and that the last portion of the repairs, which was the re-installation of flooring, was completed on May 19, 2017. In total, the documentary evidence establishes that the rental unit was only affected by the flood and any subsequent repairs for 14 days. As a result, I am not satisfied that the repairs took 5-6 weeks as alleged by the Tenant. Further to this, the Tenant provided no documentary evidence in support of his claim that he was required to reside elsewhere, such as receipts for alternate accommodation, and testified in the hearing that he worked out of the rental unit during the flooding and repairs as his computers and office could not be moved. In addition to this, I am not satisfied by the Tenant that the toilet was inaccessible at all times during the repairs as the documentary evidence from the Landlord clearly shows that the industrial fans did not impede access to the bathroom and that the toilet, which was having functionality issues unrelated to the flooding and repairs, was replaced the day following the Tenant's complaint. Based on the above, I find that the Tenant has therefore failed to satisfy me, on a balance of probabilities, that the rental unit was either uninhabitable or that he is entitled to the $2,294.75 in rent reimbursement sought.

Despite the foregoing, it is clear to me that the Tenant did suffer at least some level of inconvenience and loss of use during the 2 week period in which the rental unit was impacted by the flooding and repairs. Section 28 of the *Act* states that a tenant is entitled to quiet enjoyment of a rental unit including freedom from unreasonable disturbance and exclusive possession of the rental unit and Policy Guideline #16 states that damage or loss is not limited to physical property only but also includes loss of access to any part of the rental property and loss of quiet enjoyment. Policy Guideline #16 also states that "Nominal damages", which are a minimal award, may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right. Although I am not satisfied that the Tenant has proven either that he suffered a significant loss or that the value of any such loss suffered is as claimed, I am none the less satisfied that the Tenant's right to quiet enjoyment and exclusive use and possession of the rental unit was

infringed upon as a result of the flooding and subsequent repairs. As a result, I grant the Tenant nominal damages in the amount of $350.00; $25.00 per day for the 14 days in which the rental unit was impacted by the flooding and subsequent repairs.

As both parties were largely unsuccessful in their claims, I find that they must each bear the cost of their own filing fee.

Based on the above and pursuant to sections 67 and 72 of the *Act* and Policy Guideline # 17, the Landlord is therefore entitled to retain the Tenant's $900.00 security deposit in full, and to receive a Monetary Order in the amount of $1,248.43: $2,498.43 for rent and other losses, less the $350.00 owed to the Tenant in nominal damages, less the $900.00 security deposit withheld by the Landlord.

Conclusion

Pursuant to section 67 of the *Act*, I grant the Landlord a Monetary Order in the amount of $1,248.43. The Landlord is provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible. Should the Tenant 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: December 19, 2018

Residential Tenancy Branch