Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: MNDCL-S, MNDL-S, FFL
Tenant: MNSD, FFT

Introduction

This hearing dealt with cross applications for dispute resolution filed by the parties under the *Residential Tenancy Act* (the "Act").

The landlord's application for dispute resolution was made on August 14, 2019 (the "landlord's application") for which they sought the following relief under the Act:

1. compensation for various damages and cleaning costs related to the rental unit, pursuant to section 67 of the Act;
2. compensation for lost rent, pursuant to section 67 of the Act; and,
3. recovery of the filing fee pursuant to section 72 of the Act.

The tenant's application for dispute resolution was made on August 12, 2019 (the "tenant's application") for which they sought the following:

1. return of their security deposit pursuant to section 38 of the Act; and,
2. recovery of the filing fee pursuant to section 72 of the Act.

A dispute resolution hearing (the arbitration) was held on Thursday, November 28, 2019 at 1:30 PM. The landlord attended the hearing before me and was given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses. Sixteen minutes into the hearing the tenant dialed in; he apologized for being late and explained that he had some sort of trouble finding the conference numbers. I note that the tenant missed most of the landlord's testimony, and in the interest of time and procedural fairness I briefly summarized what had been presented thus far.

While neither party raised any issues with respect to their exchange of evidence, it did not appear that the tenant served the landlord with the Notice of Dispute Resolution Hearing as it pertained to his application. As such, I dismiss the tenant's application without leave to reapply. Given the tenant's failure to properly serve the Notice in compliance with the Act and the *Rules of Procedure,* he will not be entitled to any recovery of the filing fee pursuant to section 72 of the Act. However, this dismissal does not preclude the tenant from receiving a full or partial return of his security deposit should the landlord be unsuccessful in their claim.

On a second unrelated matter I note that the landlord named both the tenant and another occupant in the landlord's application. I confirmed that only the tenant appears on the tenancy agreement and that the landlord's application ought to be amended to remove the name of the occupant as a party to this action; the landlord agreed.

Finally, I have reviewed all oral and documentary evidence submitted but only relevant evidence pertaining to the issues of the landlord's application is considered here.

Issues

In this decision I must decide whether the landlord is entitled to compensation for various damages and cleaning to the rental unit. I must also decide if the landlord is entitled to recovery of the filing fee.

Background and Evidence

The landlord testified that the tenancy began on October 1, 2017 and ended on July 31, 2019. Monthly rent was $3,100.00 and the tenant paid a security deposit of $1,550.00, which is currently held in trust. There was no pet damage deposit.

A copy of a written tenancy agreement, along with a short addendum, was submitted into evidence.

In this action, the landlord claims compensation for the following items and related costs allegedly caused by the tenant and/or the occupants living with the tenant during the tenancy:

1. fixing, patching and painting damaged walls in bedrooms, bathroom, hall, and entrance in the amount of $1,155.00;
2. pressure washing the balcony in the amount of $130.00;
3. cleaning the kitchen, bathroom and blinds in the amount of $112.50;
4. replacing a unique, broken toilet seat in the amount of $112.68;
5. repairing a broken transition in the dining room and kitchen in the amount of $157.50;
6. a cost for storing the tenant's boat in the driveway in the amount of $220.00; and,
7. a loss of partial rent for August 1 to August 15 in the amount of $1,575.00.

The total amount claimed, excluding the $100.00 filing fee, is $3,355.00. Receipts and invoices for most of the above-noted items were submitted into evidence. The landlord also submitted photographs relating to most of the above-noted items.

Submitted into evidence was a copy of a Condition Inspection Report (the "Report"); the Report indicated that a move-in inspection occurred on October 1, 2017. No move-out inspection date appears. There is a third party whose name ("A.S.") appears where the tenant's name would normally appear in two places on page two of the Report. No amounts of deductions appear, nor are there any dates. I note that under the column "Condition at Beginning of Tenancy" there are damage codes (for example, "S" for scratched, "D" for damaged, etc.) for a few items. However, there are no codes for the vast majority of the items listed on the Report. What is also conspicuous is the complete absence of any condition codes under the column titled "Condition at End of Tenancy," with the lone exception of "3 holes patched up" written next to the bedroom ceiling line.

The landlord testified that, due to the damage and cleaning required to be done at the end of the tenancy, her new tenants were unwilling (or unable) to move into the rental unit until all the work was completed. This resulted in the landlord losing some rent.

Regarding the tenant's boat being left on the driveway, the landlord did some research and calculated the similar cost of storing boats to be in the amount of $20.00 per day for a total of $220.00 representing the 11 days that the tenant did not remove the boat.

While he was not present during most of the landlord's testimony, the tenant appeared to be familiar with the claims made. He denied all of the claims regarding cleaning and damages made by the landlord and noted that the rental unit was "in bad shape when I moved in" but that they "left the place absolutely spotless" when they moved out. While admitting that the place was not the same at the end of the tenancy as it was when he moved in, any such damage was, he argued, due to reasonable wear and tear. The tenant submitted photographs purportedly showing a clean and nice rental unit. He noted that the toilet seat was always loose. He said that he had mopped the balcony. In summary, the tenant argued that the landlord was "trying to upgrade the place at our expense."

As for the boat, the tenant submitted that the other tenants had no problem with the boat and that there were six parking spots available on the property; he said that there was "never any talk about boat storage costs" with the landlord. He explained that he had packed the key for the padlock which secured the boat in his moving boxes and had to go in search of it. (The landlord earlier testified that the tenant's wife had taken the keys with her on her annual summer trip to Russia.)

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that 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 this case, the onus is on the landlord to prove each claim on a balance of probabilities.

Section 7 of the Act states that if a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Further. section 67 of the Act states that if damage or loss results from a party not complying with the Act, the regulations or a tenancy agreement, an arbitrator may determine the amount of, and order that party to pay, compensation to the other party.

When an applicant seeks compensation under the Act, they must prove on a balance of probabilities all four of the following criteria to be awarded compensation:

1. has the respondent party to a tenancy agreement failed to comply with the Act, regulations, or the tenancy agreement?
2. if yes, did the loss or damage result from the non-compliance?
3. has the applicant proven the amount or value of their damage or loss?
4. has the applicant done whatever is reasonable to minimize the damage or loss?

In this case, I will address what I categorize as three different subject matters of the landlord's claim. The first subject matter is everything related to the cleaning and damage allegedly caused by the tenant. The second is the loss of rent. The third is the boat storage costs.

Regarding the first subject matter, the landlord testified about the various cleaning and damages to the rental unit and submitted photographic evidence to support her testimony, along with invoices and receipts. However, the tenant vehemently disputes that claim, and submitted various photographs of the rental unit that contradict the landlord's case. (I note that neither party's photographs were dated; they could have been taken at any time and have little probative value.) And, while invoices and receipts support an argument that costs or expenses may have been borne by the landlord, they do not prove causation. At the end of the day, all I have are two contradictory positions of the landlord and the tenant.

Indeed, the only piece of remaining documentary evidence that might have shed light on the condition of the rental unit at the start of and at the end of the tenancy – and thus may have supported the landlord's claim that the tenant left the rental unit in a worse condition than when they moved in – is the Condition Inspection Report. How important is a condition inspection report? Frequently, it is the most important piece of evidence in such disputes. Indeed, section 21 of the *Residential Tenancy Regulation* states that

> In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

The Report submitted in this application is anything but complete. Almost no condition codes are included for practically the entire Report. There are no dates for the final inspection and no signatures. And, despite what the landlord said about the tenant refusing to sign the Report on the last day, it was the landlord's responsibility to complete the Report as is required by section 23(4) of the Act. It is rather unusual that the landlord – who purports to be a professional property manager – would have failed to complete the Report in even the most rudimentary manner.

Subsection 37(2) 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.
When two parties to a dispute provide equally reasonable accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. In this case, I find that the landlord has failed to provide any evidence to prove that the tenant breached subsection 37(2) of the Act and that they, the tenant, are liable for the damages and cleaning costs as claimed. Both parties have contradictory arguments, and both parties have contradictory photographic evidence. And the landlord was unable to provide any additional evidence – such as a properly completed and evidentiarily useful Condition Inspection Report – to meet the onus of proving her case.

Given the above, I dismiss this aspect of the landlord's claim without leave to reapply.

Flowing from this finding, then, I am unable to find that the new tenants were, in fact, unable or unwilling to move into the rental unit on August 1, 2019 due to the unproven damages and cleaning activities. I cannot accept the landlord's hearsay evidence regarding what the new tenants may have said about why

they could not move into the rental unit. There is no supporting evidence nor any witness testimony to prove the landlord's claim that the new tenants did not move in for the reasons given.

Taking into consideration the landlord's testimony and lack of evidence, and applying the law to the facts, I find on a balance of probabilities that the landlord has not met the onus of proving her claim in relation to the loss of rent. As such, I dismiss this aspect of the landlord's claim without leave to reapply.

Third, and turning to the issue of the boat being left in the driveway, the tenant did not dispute that he had left his boat on the driveway for the eleven days as claimed by the landlord. The landlord submits a claim for an arbitrary amount of $220.00 to reflect storage costs; the tenant disputes this amount and claims that nobody was bothered by the boat being on the driveway and that there was never any discussion as to costs. I note that the tenancy agreement provides parking for two vehicles.

Section 37 (1) and (2) of the Act states that

> (1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.
>
> (2) When a tenant vacates a rental unit, the tenant must
> (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and [. . .]

I interpret the Act's phrase "reasonably clean" to include the requirement that a tenant has removed all their personal property. This includes vehicles and boats. Despite the tenant's contention that the presence of the boat did not bother the other tenants, and despite that there was no discussion with the landlord about potential storage costs, the tenant nevertheless stored the boat on the landlord's property in breach of the Act.

The landlord has not proven a significant loss resulting from the tenant's failure to remove the boat. No evidence that the presence of the boat prevented her from earning a profit was presented. As such, I do not find that the amount claimed by the landlord in the amount of $220.00 is based on any actual or significant loss.

Nevertheless, given that it has been proven that there was a breach of the Act I award nominal damages. "Nominal damages" are a minimal award and may be awarded where there has been no significant loss, or, where no significant loss has been proven, but where it has been proven that there has been an infraction of a legal right.

In this case, I award the landlord nominal damages in the amount of $100.00 to reflect the tenant's breach of the Act.

Finally, section 72(1) of the Act provides that an arbitrator may order payment of a fee under section 59(2)(c) by one party to a dispute resolution proceeding to another party. A successful party is generally entitled to recovery of the filing fee. As the landlord was largely unsuccessful in her application, I dismiss the claim for recovery of the filing fee.

Conclusion

I grant the landlord a monetary award in the amount of $100.00 as nominal damages for the tenant's breach of section 37 of the Act. The landlord may retain $100.00 of the tenant's security deposit in full satisfaction of this award. All other claims by the landlord are dismissed without leave to reapply.

I order that the landlord forthwith return the balance of the tenant's security deposit in the amount of $1,450.00. A corresponding monetary order granted to the tenant is issued along with this decision should enforcement of this order be necessary.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: November 29, 2019

Residential Tenancy Branch