Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNDCL-S, MNRL-S, FFL

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:

- Unpaid rent;
- Compensation for monetary loss or other money owed;
- Compensation for damage to the rental unit;
- Recovery of the filing fee; and
- Authorization to withhold the Tenant's security deposit toward money owed.

The hearing was convened by telephone conference call and was attended by the Landlord, the Tenant, and the Tenant's support person, all of whom provided affirmed testimony. The Tenant acknowledged receipt of the Applicational and Notice of Hearing and raised no arguments or concerns regarding service. As result, the hearing proceeded as scheduled. As both parties acknowledged receipt of each other's documentary evidence and raised no concerns regarding the acceptance or consideration of this evidence by me, I therefore accepted the documentary evidence from both parties for consideration. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

Although I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Rules of Procedure, I refer only to the relevant and determinative facts, evidence and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be emailed to them at the email addresses provided in the Application.

Preliminary Matters

In the hearing the Landlord stated that the Tenant had provided false information during the hearing that they did not anticipate and requested permission to submit additional documentary evidence for my consideration to refute this unanticipated and false testimony. After accepting submissions from both parties regarding this request, I determined that it was reasonable to allow the Landlord to provide additional documentary evidence for me review in response to testimony provided by the Tenant and their support person in the hearing, provided the Tenant also received an opportunity to respond to this new evidence. Pursuant to rule 3.19 of the Rules of Procedure, I therefore granted the Landlord's request and made the following orders.

I ordered the Landlord to submit their additional documentary evidence to the Branch, and serve it on the Tenant, no later than 11:59 P.M. on August 16, 2020. I ordered the Tenant to submit to the Branch, and serve on the Landlord, any additional evidence in response to this additional evidence from the Landlord no later than 11:59 P.M. on August 23, 2020.

Documentary evidence was received by the Branch from the Landlord on August 19, 2020, after the deadline stated above. Further to this, correspondence from the Tenant was received by the Branch on August 21, 2020, stating that the Landlord's evidence was sent to them on August 18, 2020, and received by them on August 19, 2020, outside of the allowable timeframe. They also stated that the Landlord's additional documentary evidence was illegible and out of order.

As the Landlord's additional documentary evidence was sent and received by the Tenant and the Branch after the deadline set out above, I therefore exclude it from consideration in this matter.

Issue(s) to be Decided

Is the Landlord entitled to unpaid rent/loss of rent?

Is the Landlord entitled to compensation for monetary loss or other money owed?

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

Is the Landlord entitled to recovery of the filing fee?

Is the Landlord entitled to withhold the Tenant's security deposit toward money owed?

Background and Evidence

The tenancy agreement in the documentary evidence before me, signed by the parties on October 3, 2018, states that the one year fixed-term tenancy commenced on October 1, 2018, that rent in the amount of $2,300.00 is due on the first day of each month, and that a security deposit in the amount of $1,150.00 was paid, which the Landlord still holds. Email correspondence in the documentary evidence before me indicates that when the first fixed-term ended, the parties entered into another one year fixed-term tenancy agreement under the same terms and conditions.

The parties agreed that the Tenant gave written notice on March 24, 2020, to end their tenancy effective March 31, 2020; however, they disputed why this notice was given. The Landlord stated that the Tenant and their roommates were having difficulty paying rent and as a result, the Tenant gave notice to end the tenancy. The Tenant and their support person stated that they were effectively evicted by the Landlord, who requested that they vacate the rental unit, and as a result, the Tenant gave notice to do so.

The parties agreed that move-in and move-out condition inspections were completed in compliance with the Act and regulations at the start and the end of the tenancy and the Landlord submitted a copy of the condition inspection report for my review and consideration. They also agreed that the tenancy ended on March 31, 2020, and that the Landlord received the Tenant's forwarding address on that date via the move-out condition inspection report.

The Landlord stated that the Tenant did not leave the rental unit reasonably clean and undamaged, except for reasonable wear and tear, as required at the end of the tenancy, and sought compensation in the amount of $3,880.97, less the $1,150.00 security deposit paid by the Tenant, for repairs, cleaning, and maintenance costs. In support of their claim the Landlord submitted photographs of the rental unit prior to the Tenant's occupancy of it, photographs of the rental unit at the end of the tenancy, the condition inspection reports, and an accounting of costs incurred to clean the rental unit, have the hot tub serviced, take items to the dump, replace the locks, replace damaged or missing items and make repairs.

While the Tenant agreed that they are responsible for carpet cleaning, as they did not have the carpets cleaned at the end of the tenancy, they argued that the amount sought by the Landlord for carpet cleaning is unreasonable, as they have previously had the

carpets cleaned at a lower cost. They also argued that they should not be responsible for these costs as they had to move out quickly. The Tenant argued that the Landlord is not entitled to compensation for changing the locks, hot tub maintenance, or dump fees as they returned all of the keys, cleaned and maintained the hot tub throughout the tenancy, and left nothing behind to be taken to the dump. They also argued that the maintenance of major appliances, such as a hot tub, are the responsibility of landlords under Residential Tenancy Policy Guideline #1. Further to this, the Tenant stated that the rental unit was left reasonably clean at the end of the tenancy as they and their roommates had cleaned it for over 8 hours.

The Landlord sought recovery of costs incurred to repair or replace various items in the rental unit, such as light bulbs and light fixtures, holes in the walls, the front door lock, the kitchen floors and cabinets, a kitchen sink stopper, a refrigerator door handle, the living room fan and blinds, a bathroom cabinet and the master bedroom drapes. However, the Tenant denied damaging any items and argued that in any event, any damage cause by them or their roommates constitutes reasonable wear and tear. The Tenant and their support person also stated that most of the items in the rental unit were likely past their useful life, and therefore the Tenant should not be responsible for repairing or replacing them. The Landlord denied that the rental unit or the items contained therein were past their useful life stating that the rental unit was painted 4- 5 years ago, that many items in the rental unit were replaced in the last 10-12 years, that the fridge and carpets were only 7 years old, and that the hardwood flooring and kitchen were replaced 13 years ago.

Although the Tenant acknowledged taking a bathroom cabinet belonging to the Landlord from the rental unit, they stated that they were advised by the Landlord to remove everything from the rental unit, and so they did. While the Landlord acknowledged advising the Tenant to remove everything from the rental unit, they stated that this referred only to the Tenant's possession and the possessions of their roommates, not items belonging to the Landlord or the rental unit.

The Landlord also sought $2,300.00 in lost rent. Although the Landlord stated that the rental unit could not be re-rented for three months, they only sought $2,300.00 from the Tenant for lost rent as a result of breaking the fixed-term tenancy agreement early and giving short notice. In support of this claim the Landlord submitted a copy of an advertisement of the rental unit. Although the Tenant did not deny breaking the fixed-term tenancy agreement and ending the tenancy without proper notice, they argued that they should not be responsible for any lost rent as the Landlord essentially evicted them by asking them to move out due to non-payment of rent. The Tenant stated that they did

not want to “screw the Landlord over” so they gave notice to end their tenancy effective March 31, 2020, via text message on March 24, 2020.

The Landlord also sought recovery of the filing fee.

Analysis

Based on the documentary evidence and testimony before me for review, I find the following as fact:

- neither party extinguished their rights in relation to the security deposit;
- the Tenant authorised the Landlord to retain their $1,150.00 security deposit for damage and cleaning costs as shown on the move-out condition inspection report;
- the Tenant provided their forwarding address to the Landlord in writing on March 31, 2020;
- a fixed term tenancy agreement was in place at the time the Tenant gave notice to end their tenancy, with an end date of September 30, 2020; and
- rent in the amount of $2,300.00 was due on the first day of each month.

As the Landlord filed their Application seeking retention of the Tenant’s security deposit on April 7, 2020, less than 15 days after March 31, 2020, which is the end of the tenancy and the date the Tenant provided their forwarding address in writing to the Landlord, I find that the Landlord therefore complied with section 38(1) of the Act.

Although the Tenant argued that they should not be responsible for lost rent as they were essentially evicted, I do not agree. No notice to end tenancy was served on the Tenant by the Landlord and regardless of the reason the Tenant chose to give notice to end their tenancy, the fact remains that they gave the Landlord written and verbal notice on March 24, 2020, that they would be ending their tenancy effective March 31, 2020. As a result, I find that the Tenant ended their own tenancy pursuant to section 44(1)(a) of the Act.

Section 45(2) of the Act states that a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice, is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and 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. As a result, I find that the earliest date that the Tenant could have lawfully ended their tenancy without breaking their fixed-term tenancy agreement

was September 30, 2020. Further to this, even if the tenancy had been periodic (month to month) at the time the Tenant gave notice to end their tenancy, which it was not, the earliest date that the Tenant could have ended their tenancy in accordance with section 45(1) of the Act by giving notice on March 24, 2020, was April 30, 2020.

As a result of the above, I find that the Tenant breached section 45(2) of the Act when they ended their fixed term tenancy agreement six months early and on short notice. 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 a 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.

Based on the Landlord's affirmed testimony and the documentary evidence before me, I am satisfied that the Landlord made reasonable attempts to re-rent the rental unit at a reasonably economic rate as soon as possible and that they suffered a loss of at least $2,300.00 in rent as a result of the Tenant's breach of section 45(2) of the Act. As a result, I grant the Landlord's claim for $2,300.00 in lost or unpaid rent.

Although the Tenant acknowledged that it was their responsibility to clean the carpets, or to have them cleaned, at the end of the tenancy, they argued that they could not have this done due to the short timeline for moving out. They also argued that the costs sought by the Landlord are unreasonable as they previously had it done for $150.00. I do not accept either of these arguments. As stated above, I have already found that the Tenant gave notice to end their tenancy and I therefore find that only they are responsible for the short turn-around time for moving out. Further to this, I find that the Tenant's responsibility under section 37(2)(a) of the Act to leave the rental unit reasonably clean at the end of the tenancy is not in any way affected, waved or reduced by the amount of time they had to vacate the rental unit after giving notice. As a result, I find that it was the Tenant's responsibility to have the carpets cleaned at the end of the tenancy in accordance with section 37(2)(a) of the Act and Policy Guideline #1.

I therefore find that the Tenant breached section 37(2)(a) of the Act and Policy Guideline #1 by failing to have the carpets cleaned at the end of the tenancy and that the Landlord was therefore entitled to have this done at the Tenant's expense. Although the Tenant argued that the Landlord could have had the carpets cleaned at a lower cost, they submitted no documentary evidence to support this testimony and the costs sought for carpet cleaning by the Landlord seem reasonable to me. As a result, I find

that the Landlord mitigated their loss by having the carpets cleaned at a reasonably economic rate, albeit not the rate the Tenant would have liked, and I therefore grant their claim for $296.73 in carpet cleaning costs.

Although the Tenant argued that the rental unit was left reasonably clean and undamaged at the end of the tenancy, except for reasonable wear and tear, I do not agree. The photographs and the move out condition inspection report, which was signed by the Tenant, clearly show that the rental unit was not left reasonably clean or undamaged at the end of the tenancy. Further to this, the Tenant signed the section of the condition inspection report acknowledging that the condition of the rental unit was as stated in the report and authorized the Landlord to retain their $1,150.00 security deposit as a result.

Although the Tenant argued that any damage constitutes reasonable wear and tear, Policy Guideline #1 defines wear and tear as natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. Policy Guideline #1 also states that tenants are responsible to replace light bulbs in the rental unit throughout the tenancy. In consideration of the above and having viewed the photographic evidence of the Landlord as well as the condition inspection reports, and taking into consideration the testimony of the Landlord in the hearing regarding the age of the damaged items, I am satisfied that the damage noted by the Landlord in the move-out condition inspection report and the Application constitutes more than reasonable wear and tear. I am also satisfied by the Landlord's testimony that none of the items repaired or replaced were past their useful life at set out in Policy Guideline #40. Based on the above, I therefore grant the Landlord's claim for retention of the Tenant's $1,150.00 security deposit and recovery of the remaining $978.98 for cleaning costs, light bulb replacement, and repairs.

Despite the above, I agree with the Tenant that the Landlord is responsible for maintenance of major appliances pursuant to Policy Guideline #1, including the hot tub, and that they should not be responsible for the replacement of the front door lock as they returned all keys to the Landlord. Further to this, I also accept that no items were left behind by the Tenant as the Landlord presented no evidence that this was the case. As a result, I dismiss the Landlord's claims for $25.00 in hot tub servicing costs, $39.89 for the cost of replacing the front door lock, and $32.00 in dump fees.

Although the Tenant argued that they removed a bathroom cabinet as a result of being told by the Landlord to remove "everything" from the rental unit, I find it more likely than not that the Landlord was referring specifically to the Tenant's possession and the

possessions of their roommates, and not to the Landlord's possessions or items rented to the Tenant under the tenancy agreement. As a result, I find that the Landlord is entitled to the $165.57 sought for replacement of the bathroom cabinet.

As the Landlord was largely successful in their Application, I also grant them recovery of the $100.00 filing fee pursuant to section 72(1) of the Act. Pursuant to section 67 of the Act, I therefore find that the Landlord is entitled to a Monetary Order in the amount of $3,841.28.

Conclusion

Pursuant to section 67 of the *Act*, I grant the Landlord a Monetary Order in the amount of **$3,841.28**. 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: September 9, 2020

Residential Tenancy Branch