Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNRL-S, MNDL-S, FFL, MNSDB-DR, FFT

Introduction

In this dispute, the landlord seeks a monetary order (including a claim against a portion of the tenants' security and pet damage deposits) for loss of rent and various cleaning costs pursuant to section 67 of the *Residential Tenancy Act* (the "Act"). Conversely, the tenants seek a monetary order for the return of their security and pet damage deposits, including a doubling of a portion of those deposits, pursuant to section 38 of the Act.

Both parties seek recovery of the application filing fees under section 72 of the Act.

The landlord filed an application for dispute resolution on June 24, 2020 and the tenants filed an application for dispute resolution on September 23, 2020. The tenants' application was brought forward from a hearing scheduled on January 15, 2021, and both applications were heard before me on October 15, 2020.

The landlord and the tenants attended the hearing and were given a full opportunity to be heard, present testimony, make submissions, and call witnesses.

No general issues of service were raised by the parties. However, the tenants noted that while they received the landlord's Notice of Dispute Resolution Proceeding on or about June 24, 2020, they did not receive the landlord's evidence until September 28, 2020. The *Rules of Procedure* permit an applicant to serve their evidence on a respondent not less than 14 days before a hearing; in this case, the landlord served his evidence in compliance with the *Rules of Procedure,* and I make no adverse findings as to the service of the landlord's evidence.

I have only reviewed and considered oral and documentary evidence submitted meeting the requirements of the *Rules of Procedure,* to which I was referred, and which was relevant to determining the issues of these applications.

Issues

1. Is the landlord entitled to some or all of the compensation claimed?

2. Are the tenants entitled to the return of some or all of their security and pet damage deposits, and, if so, are they entitled to a doubling of any of those amounts?

3. Is either party entitled to recovery of their application filing fee?

Background and Evidence

The tenancy in this dispute began on January 15, 2019 and ended on June 15, 2020. Monthly rent was $1,890.00, and the tenants paid a security deposit of $925.00 and a pet damage deposit of $925.00. Both deposits are currently held in trust by the landlord pending the resolution of these applications.

Submitted into evidence was a copy of the written tenancy agreement. There is, as will be seen in a moment, a dispute as to when the monthly rent was due.

In his claim for compensation, the landlord seeks the following amounts: (1) $189.00 for professional cleaning, (2) $31.95 for a repair to a blind shade, (3) $125.00 for the loss of value of a chipped quartz countertop, a scratched stainless steel bathroom frame, and one additional large scratch in the floor, (4) $945.00 for unpaid rent for the latter half of June 2020, (5) the $100.00 application filing fee, and (6) $70.61 for Canada Post registered mail costs.

I explained to the landlord that this latter claim for mail expenses are not compensable under the Act, and that I could not consider this amount; the landlord said that he understood. In total, then, the landlord seeks $1,390.95 in compensation, against which he seeks to apply the amount of the security and pet damage deposits.

In respect of his claim for the unpaid rent, the landlord testified that the tenants sent him an email on May 14, 2020 in which they notified him that they would be ending the tenancy effective June 15, 2020. A copy of this email was submitted into evidence.

In the email, the tenants write as follows (redacted in this Decision for *Freedom of Information and Protection of Privacy Act* purposes):

> Hi [Landlord],

> Well we have some bittersweet news, we will be moving to a new place, and though you have been over and above as a landlord, we would like give our notice for June 15th.
>
> Please know that your open communication and understanding has been a big motivator to stay, however we just felt it was time for a bit more outdoor space. We've noticed there's someone in the building looking to move and rent within the building, and are happy to provide that info.
>
> If you need more photos just let us know, Brit can take some.
>
> Let us know what you need from us, I guess you may need some viewings to happen as well so as that happens feel free to call or text if that's easier [redacted]
>
> Thanks yet again and talk to you soon,
>
> [tenants]

The landlord responds 25 minutes later to the email, and writes:

> Hi [tenants],
>
> Thank you so much for the kind words. I'm sad to see you move on but I can completely understand and wish you all the best. You've been great tenants and I'd be happy to provide a reference for you in the future should you ever need one.
>
> I would be very appreciative if you could pass on the information of the person looking to rent and if it isn't too much trouble than I will definitely take you up on the offer for some updated photos of the unit to help with listing.
>
> Let me know if there is anything you need from me and I'll be in touch about any need to set up viewings etc.
>
> Thanks again,

There is further back and forth emails between the parties, mostly in relation to prospective tenants, showings, and other issues related to the rental unit. On June 3, 2020, the landlord emails the tenants and says that he was unable to find a new tenant for June 15 and then points out the relevant portions of the Act pertaining to end of

tenancy notice provisions. There is no mention in that email of any concerns with respect to only half a month's rent, which was paid by the tenants on June 1. He ends the email with the statement, "By paying June rent you would still be considered tenants for the month so are able to stay for those last 2 weeks."

Later that afternoon, the tenant A.J. responds to the landlord, and writes as follow (emphasis in original):

> As noted in the same example you quoted, we would be liable for the full month's rent *unless we have written permission from the landlord.* Our lease contract states 30 days' written notice to end tenancy, which we gave. Given your acknowledgement of our notice to end tenancy and subsequent acceptance of the half months' rent, we took this to mean you had agreed a mid-month move was OK, especially as you stated you were looking for a mid month tenant. We have moved forward with a lease sign and moving plans for the 15th. Personally, I've done this many times in the past and never known it to be an issue, plus we had a mid month move in date as well at the beginning of this tenancy.

The tenants testified that they assumed during the tenancy that, while they paid rent on the first of the month, that the billing period – that is, the date on which rent was legally due – was the 15th of each month. And, thus, when they paid the rent for June 2020, they only paid the rent for up to June 15, 2020.

During the tenants' testimony, I reviewed page 1 of the tenancy agreement, clause 7, which states the following: "Rent in full must be received by the landlord on or before the first calendar day of each month, unless the parties agree in writing in advance to a different date or dates." The tenants explained that while they always paid rent on the first of the month, their assumption was that this was essentially a payment in advance of the 15th to 15th billing, or payment cycle. Conversely, the landlord argued that the tenancy agreement supports his interpretation and position that rent for the full month was due on the first day of that month.

It should be noted that the tenancy agreement states that the tenancy began on January 15, 2019 and that it was a fixed term tenancy ending on December 31, 2019. The tenancy then converted to a monthly tenancy thereafter. (Clause 5 of the agreement.)

The landlord argued that the tenants did not provide him with sufficient notice to end the tenancy as required by clause 39 of the tenancy agreement. And, which reflects the

requirements for ending a tenancy under the Act. He testified that, while the tenants gave notice on May 14, 2020 to end the tenancy effective June 15, 2020, he expected and assumed that the tenants would be paying the full rent for June on June 1. He only received half of the rent, however. Further, he argued that he exercised due diligence in finding a new tenant to mitigate his loss of rent for June but was unable to do so in time.

In their testimony and submissions, the tenants argued that when they gave their notice on May 14, they waited for confirmation from the landlord that the notice was acceptable. They referred me to the language used by the landlord in that email, in which he says that he is sorry to see them go. “We took that as confirmation that it [the ending of the tenancy on June 15] was all good,” remarked the tenant A.J. Further, she said that “in all respects, we thought we were all on the same page.” The tenants lamented the fact that the landlord in fact later foresaw a problem with the manner in which the tenants ended the tenancy but failed to act upon that problem. “If known, we would have changed our mind,” they added.

In respect of the landlord’s claim for cleaning costs, he testified that a Condition Inspection Report (the “Report”) was completed at both the start and at the end of the tenancy. He submitted an invoice for cleaning that was professionally done. The Report contains various ✓ marks for the different areas of the rental unit, and, rather contradictory, there appears to be tick marks next to all but one of the “C” notations. It should be noted that ✓ marks indicate that the rental unit condition is “Satisfactory,” while a “C” notation denotes that the item “Needs Cleaning.”

There is in the Report only one instance of a “C” entry where the ✓ does not appear alongside it, and that is for the master bedroom’s “blinds, curtains, drapes.” In support of his claim the landlord submitted various photographs of “before and after” states of the rental unit. The “before” photographs depicted the state of various parts of the rental unit after the tenants’ cleaner cleaned the rental unit, and the “after” photographs were of those same areas after the landlord’s professional cleaner cleaned the rental unit.

The tenants testified that they hired a professional cleaner to clean the rental unit upon them vacating. The landlord disputed that it was a professional cleaner who did this work, as the invoice for the cleaner did not include any name or number. Submitted into evidence by the tenants were two move-out videos, which provide the viewer with a walk-through of the rental unit (including a brief moment where the tenant opens a dirty drawer, and which the landlord later refers to as evidence that the rental unit was not professional cleaned).

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.

A. LANDLORD'S CLAIM

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

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?

The above-noted criteria are based on sections 7 and 67 of the Act, which state:

> 7 (1) 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.
>
> (2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.
>
> . . .
>
> 67 Without limiting the general authority in section 62 (3) *[director's authority respecting dispute resolution proceedings]*, if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

1. Claim for Loss of Rent

The landlord's claim for loss of rent arises from the dispute over whether the tenants provided sufficient notice to end the tenancy. If, as the tenants claim, they provided proper notice (or, in the alternative, the parties mutually agreed to end the tenancy), then the landlord was paid rent in compliance with the tenancy agreement and the Act. If, however, they did not, then the landlord will have a claim for the loss of rent for two weeks in June.

Section 44 of the Act enumerates the different ways in which a tenancy may end. One method is where a tenant gives notice (section 44(1)(a)(i)). Another way is where "the landlord and tenant agree in writing to end the tenancy" (section 44(1)(c)).

In this dispute, the tenants argument was two-pronged: they argued that the rental period ran from the middle of the month to the middle of the next month (the landlord disputed this). Alternatively, they argued that the tenancy ended by way of mutual agreement. Indeed, they testified that they were not entirely sure of whether their notice would be accepted by the landlord, so they waited to hear from the landlord regarding whether their communication about ending the tenancy was acceptable. The landlord responded later that day, and it is worth repeating for the purpose of this analysis:

> Thank you so much for the kind words. I'm sad to see you move on but I can completely understand and wish you all the best. You've been great tenants and I'd be happy to provide a reference for you in the future should you ever need one.
>
> I would be very appreciative if you could pass on the information of the person looking to rent and if it isn't too much trouble than I will definitely take you up on the offer for some updated photos of the unit to help with listing.
>
> Let me know if there is anything you need from me and I'll be in touch about any need to set up viewings etc.

There is, I find, nothing in this communication indicating, subtly or implicitly or otherwise, that the landlord did not agree with the tenancy ending effective June 15, 2020. None of the subsequent email communication from the landlord gave any hint that he disputed – that is, that he did not agree in writing that the tenancy would end on the above-noted date – until June 3, 2020, and this was after he had already received rent for the remaining two week period but then, faced with the prospect of not having a tenant for

June 15, quickly tried to retract any suggestion that he had agreed to the tenants' notice. By all reasonable interpretation of the landlord's response to the tenants' communication, I must find that the landlord and the tenants agreed in writing that the tenancy would end effective June 15, 2020. As such, the tenants were only liable for rent until that date, and not beyond.

Having found that the tenants did not breach the Act in regard to how the tenancy came to an end, the remaining three criteria need not be addressed. This aspect of the landlord's claim is therefore dismissed without leave to reapply.

2. Claim for Damages for Loss of Value to Property

In respect of the landlord's claim for compensation in the amount of $125.00 due to a chipped quart countertop, a scratched frame, and a scratch on the floor, the landlord was unable to provide any evidence that might establish the value of the loss in value of those aspects of his property. While some level of subjective assessment often enters into such claims, $125.00 was not based on a portion of percentage of the value of the underlying property. Indeed, without such evidence or a more persuasive argument as to how the dollar figure was calculated, a loss of such a low dollar amount is more akin to property devaluation resulting from normal wear and tear. Indeed, scratches and chips to countertop are, I find, almost always the result of normal wear and tear.

In summary, I conclude that the landlord has not proven the value or loss in respect of this aspect of his claim. As this criterion was not proven, and as there is no evidence that the damage was caused by anything other than reasonable wear and tear, I need not consider the other three criteria. This aspect of the landlord's claim is dismissed without leave to reapply.

3. Claim for Cleaning and Damages

Regarding the claim for the repair to the blind shade, the Condition Inspection Report reports that the blinds were satisfactory upon move-in but were damaged and "blind handles chewed" upon move-out. The landlord's photograph submitted of the blind handles supports the Report's information.

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.

The chewing of blind handles is not, I find, damage that can be ascribed to reasonable wear and tear. As such, I must conclude that the tenants breached section 37(2) of the Act, that the cost of $31.95 to repair the blinds would not have occurred but for the tenants' negligence, and that the amount is both established by way of documentary evidence and is reasonable.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I therefore find on a balance of probabilities that the landlord has met the onus of proving his claim for $31.95 for the blind damage.

Regarding the professional cleaning costs, while the tenants submitted a walk-through video that, upon first viewing, depicts a clean rental unit, the landlord's photographs of various cleaning that was required leads me to conclude that the tenants did not leave the rental unit reasonably clean, as required by section 37(2) of the Act. Certainly, while the landlord handed over a rental unit with the toilet not being cleaned at the start of the tenancy, the portions of the rental unit that required cleaning at the end of the tenancy are difference parts than the toilet. The landlord's photographs, coupled with the Condition Inspection Report, lead me to find that section 37(2) of the Act was breached.

$189.00 in professional cleaning costs (which is established by way of a receipt/invoice, and the amount being more than reasonable) would not have been incurred by the landlord but for the tenants' breach of section 37(2) of the Act.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving his claim for professional cleaning costs in the amount of $189.00.

4. Claim for Mail Costs

As explained to the parties during the hearing, the only costs or expense related to a dispute filed with the Residential Tenancy Branch is the application filing fee. Ancillary or litigation-related costs, such as Canada Post registered mail costs, cannot be claimed.

The landlord's claim for mailing costs of $70.61 cannot, therefore, be considered.

5. Claim for Application Filing Fee

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 partly successful in his application, I grant a portion of his claim for reimbursement of the filing fee and award him $50.00.

B. TENANTS' CLAIM

1. Claim for Return of Deposits

Section 38(1) of the Act states the following regarding what a landlord's obligations are at the end of the tenancy with respect to security and pet damage deposits:

> Except as provided in subsection (3) or (4) (a), within 15 days after the later of
>
> (a) the date the tenancy ends, and
> (b) the date the landlord receives the tenant's forwarding address in writing,
>
> the landlord must do one of the following:
>
> (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
> (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

In this dispute, the tenancy ended on June 15, 2020 and the tenants testified that they provided their forwarding address to the landlord during the move-out on that same date. The landlord did not dispute this testimony. On June 24, 2020, the landlord filed his application for dispute resolution claiming against the security and pet damage deposits. Thus, he made his application within the 15-day limitation period and he made his application claiming against the deposits. It should be noted at this point that a landlord is not required to return a portion of a security deposit if he or she is only claiming against a portion of that deposit. Rather, the entire amount may be held in trust by a landlord pending the outcome or resolution of a dispute under the Act.

Given the above, I find that the landlord complied with the Act in respect of handling the deposits, and thus I make no further finding as to whether the tenants are entitled to a doubling of the deposits. Rather, the only matter which remains to be addressed is the return of the balance of the deposits not retained by the landlord.

2. Claim for Application Filing Fee

Having found that the landlord did not breach section 38 of the Act, I dismiss the tenants' application for recovery of the application filing fee.

C. SUMMARY OF AWARD AND RETURN OF DEPOSITS

The landlord is hereby awarded $270.95. This amount is comprised of $189.00 for the cleaning costs, $31.95 for the blind damage, and $50.00 for the application filing fee.

The landlord is authorized to retain $270.95 of the tenants' security and pet damage deposits in full satisfaction of the above-noted award. The landlord is ordered to immediately return the balance of the tenants' security and pet damage deposits in the amount of $1,579.05. A monetary order is granted to the tenants should it be necessary to enforce this order; this order is issued in conjunction with this Decision to the tenants.

Conclusion

I hereby grant the landlord's application, in part. While the tenants' application is dismissed, they are entitled to a return of the portion of their deposits.

This decision is made on authority delegated to me under section 9.1(1) of the Act.

Dated: October 20, 2020

Residential Tenancy Branch