Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

The landlord filed an Application for Dispute Resolution (the "Application") on September 9, 2020 seeking compensation for: unpaid rent; monetary loss or other money owed; and damage caused by the tenant. They also seek compensation for the Application filing fee.

The matter proceeded by way of a hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the "*Act*") on October 30, 2020. Both parties attended the conference call hearing. In the call I explained the process and provided each attending party the opportunity to ask questions.

In the hearing, the landlord stated they used registered mail to deliver the notice of this hearing; that document indicated the date and time and contact information for this conference call. The notice of this hearing was generated at the Residential Tenancy Branch on September 15, 2020. A Canada Post receipt shows they sent this information on September 18, 2020. They provided their prepared documentary evidence to the tenant in two packages in person on October 15 and again on October 22.

In the hearing the tenant stated they received the notice of this hearing and the landlord's evidence. The tenant stated they did not have all photos that the landlord placed into evidence. The tenant stated in the hearing they are familiar with the issues and did have the chance to provide documentary evidence. The tenant stated their desire to proceed on the issues. I advised if individual pieces of evidence arose that they felt needed proper disclosure, I would examine that fully and ascertain whether the information gap was detrimental to them. The hearing proceeded on this basis.

The tenant also prepared documentary evidence for this hearing. The landlord advised they received the same.

Issue(s) to be Decided

- Is the landlord entitled to a monetary order for recovery of rent/utilities, monetary loss, and/or compensation for damage pursuant to section 67 of the *Act*?

- Is the landlord entitled to recover the filing fee for this Application pursuant to section 72 of the *Act*?

Background and Evidence

I have reviewed all written submissions and evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this section.

The landlord provided a copy of the tenancy agreement and spoke to its relevant terms in the hearing. Both parties signed the tenancy agreement on July 9, 2019. The monthly rental amount was $1,420, inclusive of a parking fee of $70. The tenant paid a security deposit amount of $710 on the same date.

The tenancy started on September 1, 2019 for a fixed term ending August 31, 2020. A term on the agreement provides: “At the end of this time the tenancy will continue on a month to month basis, or another fixed length of time, unless the tenant gives notice to end the tenancy at least one clear month before the end of the term.”

1. landlord’s claim for rent based on tenant’s improper notice

The tenant initiated the end of tenancy. They provided their July 31, 2020 email to the landlord; they state this shows acceptance of their notice by the landlord. In the tenant’s submission, this is the landlord “stating [they] will begin marketing the suite in the morning.” This is “proving [the landlord] was not ‘sleeping & on vacation’ as stated in [their] dispute resolution package”.

The landlord’s response to this, at 11:17pm includes the landlord’s statement that “I have not had full and Proper Notice to Vacate.” And: “I should have had that, in writing,

in my hand, by end of Business, today, July 31, dated as such to be effective for moveoutbof [*sic*] August 31. A casual email does not suffice." At the start of their response, the landlord stated: "I will begin Marketing the Suite, tomorrow."

The tenant provided a copy of an email they sent to the landlord on August 1, 2020. It states: "This is my official One Month Notice to End Tenancy notice to vacate the premises on August 31st 2020. Due to Covid-19 guidelines it is recommended that electronic transfer of information rather than a hard copy be used whenever possible." In their submission, the tenant provided the copy of a notice of rent increase from the landlord – in the past the landlord attached this to an email to send it to the tenant so the tenant states this is a double-standard on the use of email.

The tenant stated in the hearing that they also taped a letter to the door on August 1; however, the landlord states they returned on August 1 but did not see this on their door until August 3. The landlord provided a copy of this handwritten letter in the evidence where the tenant provided the August 31 tenancy end date.

The landlord provided that they began marketing on August 4th. They provided a copy of an October 1, 2020 rent receipt for the next tenant who moved into the unit. In the landlord's submission this shows they were "unable to find a suitable tenant til September 13, & had to reduce the Rent from $1420 per mth to $1380 per Mth. for one year lease."

On their Application, the landlord claims the amount of $1,420 for the September 2020 rent. This was due to the tenant's improper notice to end the tenancy.

2. landlord's claim to damages and security deposit

The parties met on August 31, 2020 to review the state of the rental unit upon the tenant's move out. A condition inspection report was signed by the landlord on August 31, 2020. It documents their observations and notes "tenant refused to sign Inspection". It noted specific points throughout. Photos were provided by the landlord showing damage to the driveway, a stairwell, paint on walls that is of a different colour, and kitchen curtains.

In their evidence, the tenant provided a photo of a letter they wrote to the landlord, stated to be "delivered in person on August 31, 2020." This letter provides their request for the full "damage deposit" to the forwarding address provided. Additionally, above their signature, they wrote the statement: "Walk through inspection was unreasonable".

In a written submission on this, the tenant states: “It was excessive beyond reasonable expectation. I spent 2 days cleaning and it was virtually spotless.”

They also provided a copy of a document entitled ‘Information for Vacating Tenants’. This lists 18 separate items plus a ‘Minimum Charge’ for each item. It states it is “a guide for cleaning, together with [their] minimum charges if [they] have to do any cleaning or repairs.” The document is filled in with written amounts throughout, signed by the landlord on August 24, 2020.

On their Application, the landlord listed $1,192.50 for this portion of their monetary claim. In the hearing, they presented that the cost was lowered to $689.16 because they “enlisted the friend of [their] daughter and gave a cost discount.” The landlord presented a ‘List of Costs of Damage + Cleaning’. This has the total owing at $689.16. A separate document dated “2020-10-10” gives the details of costs for cleaning and provides details of individual items listed on the Condition Inspection Report that the tenant did not sign.

In their evidence, the landlord provided a receipt for curtain cleaning ($419.16) and cleaning ($87.50). The landlord’s worksheet includes amounts for their own time to find a reliable cleaner, travel to/from suite, and an extra cleaning charge from the cleaner ($132.50).

On their Application, the landlord added the amount for the security deposit, $710. They made this claim as “compensation for [their] monetary loss or other money owed” and stated, “Tenant refused to sign move out inspection.”

The tenant prepared a list of points entitled ‘Overview of Case’ and a number of photos containing descriptions. On my review, their list contains the following points, directly copied here:

- Aug 24 2020 [landlord] sent 4 page “Information for Vacating Tenants” . . . first two pages many items cross out and hand written orders to hire professional floor contractor -- specific dry Cleaners and produce receipts as well as pay for [the landlord’s] time to supervise
- Additional instructions . . .included . . . require chandeliers and fans to be dismantled and cleaned inside and out which would require electricians and ladders or scaffolding
- garbage cans could not be used by the tenant between dates of Aug 24 and Aug 31

- [the landlord] claimed virtually everything was a problem and that no damage deposit would be paid

The tenant's photos show their "evidence of clean and empty apartment with no damage beyond regular wear and tear." Photos also include the tenant's explanation of the parking area stains.

Analysis

1. landlord's claim for rent based on tenant's improper notice

The landlord takes issue with the way in which the tenant advised of the end of tenancy. They assert this is not proper notice to vacate. This forms the basis for their claim for the September 2020 rent, where the notice from the tenant was not sent in proper format, here being an email.

The *Act* section 45(2) sets out that a tenant may end a fixed-term tenancy by giving notice on a date that is "not earlier than one month after the date the landlord receives the notice". This section also specifies that a notice to end tenancy must comply with section 52.

Relevant to a notice coming from a tenant, section 52 specifies that a notice must be in writing and must: a) be signed and dated by the tenant giving the notice; b) give the address of the rental unit; and c) state the effective date of the notice.

In their same-day response to the tenant's email on July 31, 2020, the landlord stated: "I have not had full and Proper Notice to Vacate . . . I should have had that, in writing, in my hand, by end of Business, today, July 31, dated as such to be effective for . . . August 31. A casual email does not suffice."

I find the tenant did not serve their notice to end tenancy properly. The manner in which they informed the landlord was not an acceptable method as per the *Act*. On a strict interpretation of the *Act*, the notice to end tenancy must be signed and dated by the tenant giving the notice. An email does not bear a proper signature, despite it being an established means of communication between the parties.

The tenant draws the comparison between their email to advise of the ending tenancy and the landlord's notification of a rent increase. I draw the distinction where the

landlord attached a completed notice form to their email – this bears the landlord's signature on a separate document advising of the same. Pandemic alternative methods are in place governing documents with strict established guidelines; an example of this would be an application for dispute resolution and important timelines for the exchange of evidence in that process.

I find the landlord presents a valid claim for September's rent, $1,420. I find the end of tenancy was pushed back due to improper delivery of the notice to end tenancy.

2. landlord's claim for damages and security deposit

The *Act* section 37(2) requires a tenant, when vacating a rental unit, to leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and give the landlord keys and other means of access.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide enough evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

As set out above, the landlord's worksheet identifies three areas in their claim for damages. To determine the landlord's eligibility for compensation, I carefully examine the evidence they presented for each item, to establish whether they have met the burden of proof.

The landlord imposed a specific cleaning instruction to the tenant for cleaning the curtains. On the 'Information for Vacating Tenants' they listed a specific cleaner for this purpose. This is "cost plus $50 my time" – presumably this is for supervision. An additional sheet specifies this particular cleaner is their preference because of "less expensive cleaners used by tenants, resulting in spots & streaks on draperies."

I find this particular instruction given to the tenant places a heavy burden on correct cleaning procedures. The landlord gave specific instructions on cleaning the draperies less than one week prior to the end of tenancy. Presumably, for a bigger job and a specific cleaner, this could reasonably take over one week for a cleaning job, which

would easily leave the proper hanging with specific instructions not accomplished by the move-out date.

This extra burden placed on the tenant is not in line with section 37(2) of the *Act*, where the only expectation placed on the tenant is that the unit is reasonably clean and undamaged. The landlord has not mitigated this cost by any meaning of the word by imposing the burden of using the specific cleaner – as shown by receipt – and within a very short timeline. If this was a specific instruction and wish of the landlord, in all fairness these instructions should have been provided at the beginning of the tenancy.

Further, the value of the curtains as reflective of the overall rental unit value is not established. A policy guideline establishes the useful life of building elements. These are set lifespans for specific building components in place, used when arbitrators make decisions about damage claims. The policy guideline is in place to give a statement of the policy intent of the legislation. Drapes are described as a furnishing, the useful life is 10 years, an acceptable period of use under normal circumstances. The age of the draperies has relevance to determining specific care instructions; however, the landlord has not established special considerations regarding the age of the drapes.

I find the landlord has not established the true value of damage here – there was no evidence of damage or stains to the draperies requiring this level of cleaning. That being the case, there is no breach of the *Act* or the tenancy agreement by the tenant that creates an obligation for them to clean these items. Further, by specifying a specific cleaner and imposing this on the tenant within a very short timeframe, the landlord is far from mitigating the costs.

It is an overly oppressive instruction and appears punitive in nature. The landlord receives no compensation for this claimed amount for cleaning the curtains, re-hanging, and their own travel time to accomplish this. This reduces the landlord's claim for damages by $531.66.

For more general cleaning, the landlord claims $50 of their own (two hours) time to find a "reliable, available Cleaner". They do not specify the criteria they used in making this determination. If it is with regard to what they present as a "heritage" home, that designation or status of the rental unit is not established. The landlord stated they reduced their claim because they "enlisted the friend of [their] daughter and gave a cost discount." I find this does not match up with the two hours necessary to find a reliable cleaner.

Further, the invoice from the cleaner is for 2.5 hours of time. I find that "specialized" and "deep" cleaning is not established from what the cleaner set out. There are no photos to show the need for extra cleaning of the kind described. In contrast to this, the tenant provided a series of photos showing the state of the unit when they moved out. I find this is what is required by section 37 of the *Act*: reasonably clean and without damage.

I find one other facet of the evidence shows the inflexible nature of the burden the landlord imposes on the tenant with very tall cleaning orders. The disassembly and reassembly of a chandelier for cleaning purposes is extreme. I find this lends weight to the evidence of the tenant showing the landlord imposed an unobtainable level of cleanliness in a very short timeframe.

In regard to cleaning, I find the tenant has fulfilled their obligation with respect to the *Act* and the tenancy agreement. There is no compensation to the landlord for these amounts. This reduces the amount of the landlord's claim further by $137.50.

The $20 for a new kitchen curtain establishes that it is of insignificant value and I make no award for this amount. Further, the landlord did not present a receipt for this claimed amount; therefore, they have not proved the value thereof.

In sum, the landlord shall receive no compensation for what they presented were damages caused by the tenant.

The landlord added to their claim the entire amount of the security deposit of $710. On their Application they specified that this was because the tenant did not sign the Condition Inspection Report that they presented at the move-out meeting on August 31.

The *Act* section 36 specifies when a tenant's right to the return of the security deposit is extinguished in relation to a final condition inspection meeting. The tenant's right is extinguished, as per 36(1)(b), where they have not participated in the meeting itself. This section does *not* set out extinguishment of that right where they did not sign the report. The landlord's right to retain the security deposit is not granted where the tenant did not sign the report; therefore, I make no award for this amount to the landlord on this portion of their claim.

The landlord has properly made a claim to offset the security deposit and has the right to do so. This is applying the amount of the security deposit held by the landlord against an award for compensation. The landlord is holding this amount of $710. I

order this amount deducted from the total of the rent compensation of $1,420. This is an application of section 72(2)(b) of the *Act*.

As the landlord is successful in this application for compensation, I find that the landlord is entitled to recover the $100.00 filing fee.

Conclusion

Pursuant to sections 67 and 72 of the *Act*, I grant the landlord a Monetary Order in the amount of $810 for compensation set out above and the recovery of the filing fee for this hearing application. 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 *Act*.

Dated: November 23, 2020

Residential Tenancy Branch