Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR MNDCT OLC FFT

Introduction

The tenant filed an Application for Dispute Resolution on June 18, 2021 seeking an order to cancel the '10 Day Notice to End Tenancy for Unpaid Rent or Utilities' (the "10 Day Notice"). Additionally, they seek the landlord's compliance with the legislation and/or the tenancy agreement, monetary compensation, and return of the Application filing fee. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the "*Act*") on October 18, 2021.

The tenant attended the conference call hearing; the landlord did not attend. At the outset of the hearing, I explained the hearing process and the tenant had the opportunity to ask questions and present testimony and evidence in the hearing.

Preliminary Matter – notification to landlord

The tenant provided notice of this hearing to the landlord via registered mail, sent July 15, 2021. This included their prepared documentary evidence. They provided the registered mail tracking number in their evidence. The tracking record they provided shows for the following day "item refused by recipient." Additionally, the tenant provided an image of the envelope used, returned to them with the decal "return to sender."

The tenant provided more materials in line with the amendment they made to the Application. This was also via registered mail on September 27. From the tracking record they were aware the landlord did not retrieve the registered mail from the mail pick-up centre.

For both packages, the tenant used for service to the landlord that address provided on the tenancy agreement. This is where the landlord has their own unit, and "that's where [they live] when they are there." As they stated in the hearing, the tenant was aware that at the time they served their documents, the landlord was present at the address for service, preparing that place for a pending sale.

To proceed with this hearing, I must be satisfied that the tenant made reasonable attempts to serve the landlord with the Notice of Dispute Resolution Proceeding. This means the tenant must provide proof that the documents were served at a verified address in a method allowed under s. 89 of the *Act*, and I must accept that evidence.

From what the tenant set out and showed in their evidence, I find they served the landlord in accordance with s. 89(1)(c) of the *Act*. By applying s. 90(a), I deem the first package received by the landlord on July 20, 2021. I deem the second package received by the landlord on October 2, 2021. On this assurance, I proceed with the decision and weigh the tenant's evidence and testimony below.

Preliminary Matter – tenancy already ended

At the outset, the tenant advised that the tenancy ended when they vacated the rental unit on July 31, 2021. On June 14, they notified the landlord of this date and provided other information about rent payments. Given that the tenancy has ended, I consider the matter of the 10-Day Notice to be concluded and no longer the subject of this dispute resolution. I dismiss this piece of the tenant's Application, without leave to reapply.

Because the tenancy ended, the landlord's compliance with the legislation and/or the tenancy agreement for any ongoing issue is also not the subject of this hearing. I also dismiss this piece of the tenant's Application, without leave to reapply.

Issues to be Decided

Is the tenant entitled to compensation for monetary loss or other money owed, pursuant to s. 67 of the *Act*?

Is the tenant entitled to the Application filing fee, pursuant to s. 72 of the *Act*?

Background and Evidence

The tenant provided a copy of the tenancy agreement between the two parties. Both parties signed this agreement on November 20, 2019 for the tenancy that started on December 15, 2019. The tenant paid a rent amount of $1,250 monthly on the 15th of each month. They paid a security deposit of $625.

On June 14, 2021, the tenant notified the landlord that they wish to end the tenancy, with the final date being July 31, 2021. A copy of this email to the landlord is in the tenant's evidence. This includes the following points:

- The landlord can keep the security deposit for July 1 to July 15 rent.
- The tenant will not pay rent for July 15 to July 31. This is because the tenant paid rent previously for December 15 to 31, 2019; however, they could not enter the unit until December 29. This was because of delays or repairs with a "negligent handyman". This entailed repairs and garbage removal from previous tenants.
- When they did move in, the rental unit was in an "unclean condition".
- There was a malfunctioning freezer throughout the duration of the tenancy.

The landlord responded to this June 14, 2021 email on the same day to say the tenant must pay another month's rent for July 15 to August 14, 2021. The landlord stated: "There is no such thing as $650, but only $1,250 per month." The landlord also responded to say there was a new carpet installed, and a new washer/dryer as requested by the tenant at the start of the tenancy.

In this correspondence, the landlord stated the tenant must pay the full proper amount of monthly rent on July 15th, as is in the tenancy agreement. Should the tenant not pay on time in full, the landlord would hand the matter to a collection agency.

The landlord pursued the matter with a collection agency. The amount sought was $775: $625 in unpaid rent (July 1 – July 15) and $150 for unpaid utilities. The tenant paid this amount to the collection agency on July 29, noting in the hearing that the agency was persistent in pursuing the matter. The tenant also made an e-transfer to the landlord for the rent payment June 15 to June 30.

The tenant offered the $625 security deposit to the landlord as payment for July 15 – July 31. This was in addition to the payment $625 to the collection agency for July 1 –

July 15. The landlord did not return the security deposit to the tenant after the end of the tenancy. The tenant provided their forwarding address to the landlord on September 18. The tenant wrote: “Even though I wrote to her to keep the security deposit for the period July 15 to 31 she continues to try to collect money through the collection agency while keeping my security deposit.”

After this, the collection agency called to inform the tenant that the landlord will accept the security deposit as payment for July 15 to 31; however, the landlord was still demanding rent payment for June 2021. The tenant forwarded their record of payment for the remainder of June, as appears in the evidence. The tenant did not receive confirmation from the agency that acknowledged the landlord accepting the security deposit as rent payment.

The tenant received another letter from the collection agency on August 18, 2021. This is for an amount of $1,332.48, containing some added interest amount. Ostensibly this was for an amount of $1,300 as a June rent payment. When the tenant spoke to the agency about their sign-off on the security deposit to the landlord, the agency informed the tenant they were not aware of that arrangement. After this, the tenant did not hear from the agency again. In the hearing, the tenant presented this as proof of their belief that the landlord was trying to collect more rent payments into August.

The tenant also included a series of emails from 2019 they had with the landlord at the time they moved into the unit initially. This shows the tenant’s message of December 19, 2019: “Please make the suite ready for me by 27 when I return from the city. I expect the floors and bathroom to be finished and the place cleaned. . .All the garbage from the repairs should be taken away.” By December 29, the tenant was still arranging with the landlord for a new washer/dryer.

The tenant claims as follows:

1. $625 for the security deposit returned
2. $625 for the initial two-week period in December when they could not move into the rental unit
3. $150 overcharged on water bill
4. $324 charged for garbage
5. $80 garbage removal and cleaning.

The tenant added these amounts to come to the total of $1,804, as set out on the Monetary Order Worksheet they prepared on September 25, 2021.

In the hearing the tenant corrected the amount of cleaning to be $160. This is as stated (8 hours at $20 per hour) in their written account, for initial cleaning and garbage removal when they moved in. This brings the total amount to $1,884.

The $150 amount listed is for the first utility bill, which was double the normal amount due to 3 water leaks on the property. The tenant paid $300 for 3 months. This is calculated by the tenant to be $150 in overpayment. The tenant sent an image from May 2020 embedded in an email in which the landlord states they will fix the leaking pipe, shown in an attached photo. The tenant also provided three utility bills showing various amounts.

The tenant provided that garbage was included in the basic rent amount; however, the landlord charged for this separately. There are contraindications in this section on the tenancy agreement. The tenant provided a calculated sheet showing amounts of $410 paid for each 6-month period from October 1, 2019 to July 31, 2021. Dividing their portion, as ¼ of the amount paid by four tenants, and only for the timeframe they were present in the unit yields, by the tenant's own calculation, a total of $324. The tenant provided copies of invoices for each of these periods, showing $410 for each of three 6-month periods.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in s. 7 and s. 67 of the *Act*.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient 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.

With respect to the security deposit, I find the tenant was clear to the landlord and the collection agency that their intention was for the landlord to keep the security deposit as

rent for the last two weeks of the tenancy. Applying s. 38(4) of the *Act*, I find the tenant agreed for the landlord to retain that amount. The tenant did receive confirmation from the rental agency that the landlord accepted this. This effectively cancels the tenant's request for the return of the deposit. Though earlier on the tenant protested that they should not pay rent for this time – as a carryover from late entry in December 2019 – I find the tenant conceded that rent was owing to the end of July and gave their approval for use of the security deposit.

In sum, my order here is that the landlord shall retain that deposit as payment for the rent from July 15 to July 31.

The tenant's entry into the rental unit was delayed in mid-December, and the tenant did not enter until December 26. In the tenant's evidence, the December 11 email from the tenant shows they announced to the landlord that they had paid rent at their prior abode to December 20. This date was later extended to December 21st; I find this was done so at the landlord's behest. I find this December 11 message shows a move-in date was still tentative at that time, with December 15 not being possible. At this time, the tenant was asking the landlord for renovations to start on December 16th; I find they did this in anticipation that repairs would be completed by the time they planned to move in on December 20th.

The next relevant message is that of December 19th, where the tenant informed the landlord they were moving their belongings into the unit on the two days following. I find this shows the tenant's entry into the unit – i.e., having access to the actual unit – was not until December 20th. This is days after the tenancy start date – paid for by the tenant – on December 15th.

In the tenant's written statement, they refer to December 26th as the day they entered the rental unit, intending to stay there. This was after a sojourn elsewhere they announced to the landlord, and to which the landlord responded that this sojourn was the choice of the tenant, effectively further setting back their move-in date all on their own. The landlord was communicating with the tenant to set the December 21 move-in date.

I find the tenant not able to enter the unit in order to start their occupancy, until the 21st. I find the landlord was targeting this date for renovation completion. I weigh the residual amount of clean-up and repair remaining after the tenant moved in against the tenant being away for Christmas. I find the tenant contributed to the further late entry into the unit, essentially not being available to do so fully until the 27th. The tenant had access,

albeit in a tenuous state of cleanliness and/or repair. Pushing the date out further was the choice of the tenant.

For this reason, I find the full one-half month of rent is not warranted. Considering the earliest availability of the rental unit to be December 21, I calculate a per-day rate ($40.32) by dividing the monthly rent by the number of days in December. For the timeframe of December 15th to December 20th, this number of days yields $201.60. I award this amount to the tenant, for a fair exchange of the rent they paid for that month without access to the rental unit during that time.

For another piece of the claim, the tenant provided images of utility amounts from the local township. I am unable to determine how the tenant came to the amount of $150 for their claimed amount. Though they stated there was their payment of $300 for a 3-month period, I cannot see this in the evidence they presented. This evidence is not organized, clear and the scanned images provided are not legible. The tenant bears the onus to prove their claim. Based on the evidence provided, I cannot make the determination that this is a fair amount owing. The tenant did not prove the value of their loss, with no calculation thereof. I make no award for this portion of the tenant's claim

Then, the tenant claims $324 for return of garbage utility payments they made over the course of the tenancy. It is not known why the tenant did not dispute this charge earlier on in the tenancy; as such, this is not an effort at mitigation by the tenant here. The tenant submitted copies of invoices from the municipality including this utility charge; however, the tenant did not provide proof in their evidence that they actually paid ¼ of these amounts along the way. Again, it does not appear that the tenant disputed paying this charge, even though the agreement appears to contain a contradiction where garbage collection *is* indicated as being included in the rent, yet a notation on that same page indicates that "1/4 utility bill from Township . . .to be paid by tenant every 6 month." For these reasons, I make no award for this portion of the tenant's claim.

I find the tenant's evidence sufficient to show the initial state of the rental unit. Repairs were incomplete, and there was a need for more extensive cleaning. There is no record of a move-in inspection meeting between the parties to review the state of the rental unit at the start of the tenancy. Based on the evidence, I find the amount claimed by the tenant here for their own efforts at cleaning and rudimentary repairs is justified, and even represents an effort at mitigation. I find the state of the rental unit ongoing through the tenancy required constant follow-up by the tenant on repairs, and further difficulties. For these reasons, I award the tenant the $160 as claimed.

Because the tenant was moderately successful in their claim, I award $50 of the Application filing fee.

Conclusion

I order the landlord to pay the tenant the amount of $411.60 as set out above. I grant the tenant a monetary order for this amount. They must serve this order on the landlord. Should the landlord fail to comply with this monetary order, the tenant may file it in the Provincial Court (Small Claims), where it may be 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 s. 9.1(1) of the *Act*.

Dated: October 20, 2021

Residential Tenancy Branch