Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNRL-S, FFL

Introduction

The tenant filed an Application for Dispute Resolution on March 18, 2021 seeking compensation for unpaid utilities, and damage to the rental unit after the end of the tenancy. Also, they seek reimbursement 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 September 27, 2021.

Both parties attended the conference call hearing. The landlord provided notice of this hearing and documentary evidence to the tenant and the Residential Tenancy Branch. They provided this material to the tenant at their workplace, and for surety also provided this via email. The tenant confirmed receipt of this material. The tenant did not provide documents as evidence for this hearing.

At the outset, I explained the process and both parties had the opportunity to ask questions and present oral testimony during the hearing.

Issues to be Decided

Is the landlord entitled to compensation for unpaid utilities pursuant to s. 67 of the *Act*?

Is the landlord entitled to compensation for damage in the rental unit, pursuant to s. 67 of the *Act*?

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

Background and Evidence

The landlord provided a copy of the tenancy agreement that both parties signed on March 1, 2020. This provides for the basic rent amount of $1,350, and shows the tenant paid a security deposit of $675. This agreement was for a fixed term starting on March 1, 2020 and ending on February 1, 2021.

The agreement specifies that the "tenant pays 1/3 of all utilities – electricity, water, gas, garbage, recycling/collection." An Addendum to the agreement sets out one additional term, initialled by the tenant: "No smoking in suite."

The tenant advised the landlord they wished to end the tenancy. This was for the scheduled end-of-tenancy date as set out in the fixed-term tenancy agreement. The landlord took no issue with the manner or timing of this notice to them. The parties met at the end of the tenancy to review the condition of the unit with the tenant. There is no document attesting to the condition of the rental unit, neither at the start nor the end of the tenancy.

utility amounts owing

In their evidence, the landlord provided copies of bills for gas and electricity. This was for the amounts through to mid-February, the nearest billing period prior to the end of the tenancy. Dividing these amounts by 1/3, as per the tenancy agreement, the landlord provided the amounts of $42.35 for gas, and $203.66 for electricity.

The landlord advised the tenant of these amounts by email on March 4, showing the bill amounts. The landlord again advised the tenant by text message on March 6. The tenant stated they received these bills when the landlord visited their workplace on March; however, the landlord's recall was that they merely informed the tenant of these amounts and only provided copies of the bills in their evidence for this hearing. The tenant in the hearing described how they were expecting a return of the security deposit.

The total for these unpaid utilities is $246.01.

smoke remediation

The largest portion of the tenant's claim is for smoke remediation. After the end of tenancy and the final meeting had by the parties, the landlord discovered the smell had permeated furniture and walls and the ceiling. The landlord presented in the hearing that they were familiar with the smell of cannabis which became clear to them here. They submit the odour

was obscured by the tenant at the time of the condition inspection meeting, this with incense, sprays, and/or bleaches.

Once a new tenant for the rental unit arrived, they told the landlord they could not move into the rental unit because of the lingering odour and would not do so. They moved in their boxes; however, they refused to stay there. For this, the landlord claims $150 as loss of rent for 3 days.

The upstairs tenant is a manager of a remediation company. They provided an estimate to the landlord based on their assessment on March 1, 2021. This itemized estimate appears in the tenant's evidence. This includes ozone treatment, odour counteractant, 4 hours of cleaning technician time, and hauling away debris for 2 hours time for ½ pickup truck load. The sum total for this work, as provided on the estimate, is $1,584.78. The landlord provided that they themselves did a lot of the work.

The estimate notes that the technician attended to "clean and remove smoke odour (pot smoke)." This involved the use of ozone and "hydroxl" to remove the odour, and "chem sponge ceiling." This specified: "pictures of sponge showing the smoke on the textured ceiling." The estimate also noted the owner had already cleaned walls and floors sufficiently. "Job completed" is indicated as "03/03.2021".

The mattress was removed. The estimate noted in particular that the mattress was "non salvageable from smoke odor". The landlord added this to the claim as a $500 loss.

Additionally, the landlord claims $255 for replacement baseboard heaters. This is because the heaters collected a smell, i.e., retained or captured the odour of smoke during the tenancy. This "resonates within the heaters."

In the hearing, the tenant noted that they did a walk-through in the rental unit with the landlord at the end of the tenancy. The landlord did not mention any smoke smell at that time. The landlord's description of this is that the tenant masked the smell at the time of the final inspection.

other damages and cleaning

Additionally, the landlord undertook cleaning on their own; this is in a series of photos the landlord provided in their evidence. In the hearing the landlord noted the tenant had painted areas in the rental unit on their own; the landlord undertook painting to restore the unit to its original state. Part of this cleaning was for paint removal out of a bathtub drain; allegedly the

tenant poured paint into the bathtub drain. The tenant denied this, and stated “I would never do that. . . I’ve done different paint projects.” An image of paint stains around the drain is present in one photo submitted by the landlord. Additionally, the landlord showed an image of black wall streaks above baseboard heaters. The landlord calculated 10.75 hours, at $20 for a piece of their claim totalling $215.

The landlord noted a specific estimate from a plumber for 1 hour at $150. This was to finally assist in clearing a sink drain, after the landlord’s own attempts failed. A video and photo of the stuck sink is in the landlord’s evidence.

sold/removed furniture items

The landlord claims a combined $500 for furniture items they allege were sold or otherwise removed by the tenant. This includes a custom-made bench that the landlord provided evidence for the tenant’s sale as their online posting. This bench was made by the landlord and they claim $200 as the amount posted by the tenant online. On this, the tenant did not recall any specific information about the bench.

The other missing items for which the landlord claims $300 are 2 chairs, a mirror, and a tv wall mount. The tenant offered to return this from their workplace; however, the landlord did not oblige this offer. The landlord provided a receipt from their original purchase of chairs, showing $119.99 and $164.99 prices for chairs.

The tenant provided that they did sell some furniture items for the landlord. These were items from the furnished rental unit that the landlord had previously used as Airbnb. The tenant recalled that the agreement at the start of the tenancy was for the tenant to sell items for the landlord, thereby enabling the tenant to furnish the suite in their own way. They sold over 6 items for the landlord after getting their permission on each of those items.

The landlord provided that they emailed to the tenant regarding missing items on March 4. They asked the tenant to return the bench and other furniture; otherwise, they would claim $500 from the security deposit. After no reply, they decided to file their Application for compensation.

The tenant maintained they offered for the landlord to come by their workplace where they held these items for the landlord. The landlord stated they received a call from the tenant’s family member that was “threatening” so they decided not to go to the tenant’s workplace to retrieve the items.

Analysis

Under s. 7 of the *Act*, a landlord or tenant who does not comply with the legislation or their tenancy agreement must compensate the other for damage or loss. Additionally, the party who claims compensation must do whatever is reasonable to minimize the damage or loss. Pursuant to s. 67 of the *Act*, I shall determine the amount of compensation that is due, and order that the responsible party pay compensation to the other party if I determine that the claim is valid.

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.

utility amounts owing

I find the landlord presented ample evidence to show there were utility amounts outstanding. They calculated the value of 1/3 of the utilities accurately based on this evidence and showed that they presented this information to the tenant almost immediately after the end of the tenancy.

The tenant did not challenge this information on utilities in the hearing. Based on what is set out in the tenancy agreement, I grant the landlord $246.01 for these utilities.

smoke remediation

From the landlord's evidence I am satisfied of the presence of odour. There was no record of the final meeting between the parties; however, the landlord attested to its presence, and I find there is sufficient evidence of a record of consultation with a restoration service. This was immediately after the end of the tenancy; therefore, in this regard I find the landlord minimized their loss by having the work completed expediently.

The tenant did not counter or deny the landlord's testimony of a lingering odour. They pointed to an initial discussion they had with the landlord about the no smoking policy; however, I give

weight to the record of restoration service as independently verifying an odour. I find it more likely than not the odour was not detectable by the landlord at the time of the condition meeting.

The landlord testified they did the non-specialist or equipment-derived work on this part. I subtract the charge for hauling away the mattress and the associated labour cost for that. I award the landlord $1,346.06, including GST; it appears the invoice does not include PST.

Based on the estimate/report from the remediation service, I am satisfied that the mattress had to go. The landlord did not provide age or condition of said mattress. I grant $300 for this portion of the landlord's claim.

The landlord did not provide proof of the loss of the following month's rent. There is insufficient evidence such as a rent ledger and the new tenant's rent amount is unknown. I make no award for this.

I am not satisfied of the need for baseboard heater replacement. There are images showing how heat from these scorched the wall space immediately above; however, the landlord's claim here is for how the heaters trap odour. I am not satisfied from their description that heater replacement is necessary, and find it more plausible, based on the evidence, that smoke would permeate walls and furniture and present more of a problem in this way. Also, the landlord provided estimates only, without evidence showing there was a replacement.

other damages and cleaning

Based on the landlord's photos and video, I am satisfied of the need for extra cleaning. There are specific items to clean and/or rectify. This involved the smoke odour removal; I find this entailed extra work for cleaning walls and other areas in the rental unit, in addition to specifics shown in the photos. For this piece, I award $215.

The landlord did not provide evidence they paid a plumber for the work and I cannot determine if they did so. I make no award for this piece.

sold/removed furniture items

I am not satisfied the sale of the bench was authorized by the landlord. The landlord's submission here is that the tenant posted the item online for sale, asking $200. The landlord then noted the ad went down. I find this was without the landlord's approval. Given there were

other items sold by the tenant, with some sort of approval by the landlord I find it is not implausible that the tenant would go ahead with some other item, which is this bench.

There is no evidence to show when the landlord made this discovery of the bench being for sale and the landlord did not explain that they queried the tenant on this. Given the principle of an applicant minimizing their loss as per the *Act* s. 7(2), I have difficulty rectifying the landlord's more recent attempt to seek compensation for this. Also, I find there was some arrangement in place whereby the tenant could sell some furniture items – it is more implausible that the tenant would go ahead with this entirely on their own without some discussion on that, albeit on an item the landlord did not want sold. It appears the landlord did not pursue this with the tenant at the time of the posted notice and did not consider it a theft of property. For these reasons, I grant no award for this bench.

I find it odd that the tenant would take it upon themselves to remove furniture items for use at their own place of work, minus some communication on this. This has something to do with the rental unit being fully furnished. I find the tenant was forthcoming on this point, admitting that certain items were at their place of work. This has caused inconvenience to the landlord to retrieve the items, and it is understandable that the landlord would hesitate to do so at the time they had filed their Application. With these missing items, however, I find the landlord does have the opportunity to still retrieve these items, minus any evidence to the contrary. Making a claim for their damage, as opposed to retrieving them, is not an effort at mitigating their loss. For this reason, I make no award for these furniture items. I find it acceptable for the landlord to retrieve these items.

I find the landlord was successful in their claim and rightfully deserves compensation of the Application filing fee.

The *Act* s. 72(2) gives an arbitrator the authority to make a deduction from the security deposit held by the landlord. The landlord has established a claim of $2,207.07. After setting off the security deposit, there is a balance of $1,532.07. I am authorizing the landlord to keep the security deposit amount and award the balance of $1,532.07 for monetary compensation.

Conclusion

Pursuant to s. 67 and s. 72 *Act*, I grant the landlord a Monetary Order for $1,532.07. I provide the landlord with this Order in the above terms, and they must serve it to the tenant as soon as possible. Should the tenant fail to comply with this Order, the landlord may file it in the Small Claims Division of the Provincial Court where it will 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 22, 2021

Residential Tenancy Branch