Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SKYLINE LIVING
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S MNRL-S FFL

Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act). The landlord applied for a monetary order in the amount of $3,380.00 for unpaid rent or utilities, damages to the unit, site or property, to retain the tenant's security deposit towards any amount owing, and to recover the cost of the filing fee.

The hearing began on October 19, 2021 and after 25 minutes the hearing was adjourned due to evidentiary issues. As a result, an Interim Decision was issued dated October 19, 2021 (Interim Decision) and orders were made. The Interim Decision should be read in conjunction with this decision. On November 5, 2021, the hearing reconvened and after 51 minutes, the hearing concluded.

Attending the teleconference hearing was landlord agent RP (October 19, 2021 date only), landlord agent RN (agent), the tenant (attended both dates of hearing) and tenant's legal counsel (attended November 5, 2021 date only) (counsel). The agents and the tenant were affirmed and the hearing process was explained to the parties. A summary of the submissions, testimony and evidence is provided below and includes only that which is relevant to the hearing. Words utilizing the singular shall also include the plural and vice versa where the context requires.

At the reconvened hearing, both parties confirmed that they were served with the appropriate material and had the chance to review that material prior to the hearing. As a result, I find the parties to have been sufficiently served for the purposes of the Act.

Preliminary and Procedural Matters

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 6.11. The parties were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, the parties were informed that if any recording was surreptitiously made and used for any purpose, they will be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation under the Act. Neither party had any questions about my direction pursuant to RTB Rule 6.11.

In addition, the parties confirmed their respective email addresses at the outset of the hearing and stated that they understood that the decision and any applicable orders would be emailed to them.

At the outset of the hearing, the agent confirmed that they were withdrawing loss of June 2021 rent as the landlord was able to re-rent the rental unit for June 1, 2021. As a result, June 2021 rent will not be considered.

Issues to be Decided

- Is the landlord entitled to a monetary order under the Act, and if so, in what amount?
- What should happen to the tenant’s security deposit under the Act?
- Is the landlord entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on September 1, 2020 and was scheduled to revert to a month-to-month tenancy after August 31, 2021. Monthly rent was $1,500.00 per month and was due on the first day of each month. The tenant paid a security deposit of $750.00 at the start of the tenancy, which the landlord continues to hold. The landlord's reduced monetary claim for $1,880.00 is comprised of the following:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Rent for May 2021	$1,500.00
2. Cleaning costs	$280.00
3. Filing fee	$100.00
TOTAL	**$1,880.00**

Regarding item 1, the landlord has claimed $1,500.00 for loss of rent for May 2021. The tenant stated that they had to break the fixed-term lease due to a training course that the tenant was accepted into, which was out of town as part of a work promotion. The tenant provided their notice to the landlord via email to the manager on January 16, 2021 indicating that they would be vacating the rental unit on February 28, 2021. The landlord replied to the tenant's email on January 21, 2021 stating that the tenant is responsible for monthly rent for the unit until it is re-rented.

The agent testified that the landlord did not start advertising the rental unit until the tenant vacated and returned the keys. The agent stated that the reason for this was that in case the tenant changed their mind and did not vacate, the landlord would have two tenancy agreements for the same rental unit. The tenant vacated the rental unit on April 11, 2021 and the agent did not have a specific date when they began to show the rental unit to prospective tenants and instead stated that it would have been after April 11, 2021. The agent stated that they found a new tenant for June 1, 2021 and that the new rent was $1,535.00 per month versus the $1,500.00 rent from the tenant in this matter.

Counsel submitted that the tenant vacated the rental unit as of March 12, 2021 and sent an email to the landlord to advise of such. Counsel referred to RTB Policy Guideline (PG) 5, Duty to Minimize Loss (PG 5), which speaks to the landlord being required to make reasonable efforts to re-rent the rental unit as soon as possible. Counsel submits that had the landlord began to show the unit in March, the landlord would have likely had new tenants for May 2021. Counsel stated that if the company violates PG 5, that is not the fault or responsibility of the tenant. The agent stated that they have had some cases where the tenant remains in the rental unit beyond the date provided as their vacate date and that the landlord does not show a unit until they receive the rental unit keys as their practice as a result.

Regarding item 2, the landlord has claimed $280.00 for cleaning costs and in support of the amount claimed the agent referred to a carpet cleaning invoice dated April 14, 2021 in the amount of $126.00, and an Outgoing Condition Inspection report that did not include a section where the tenant agrees to deductions from their security deposit. Furthermore, the agent referred to photo evidence, which the agent stated supports that

3 hours of cleaning at $40.00 per hour for a total of $120.00 was required. The photo evidence included a missing shower head in the bathtub/shower, and after-cleaning photos. The agent stated that they did not submit before photos, which would have indicated the condition prior to cleaning. Instead, the agent stated that the photos show the cleaning products used to clean the areas shown in the photos. A total of 5 photos were submitted by the landlord.

The tenant stated that the shower head was left in the sink as the tenant did not want to install the shower head in an incorrect way. The tenant affirmed that they had cleaners attend to clean the rental unit at the end of the tenancy. The tenant stated that they could not find the cleaner receipts; however, the tenant testified that they left the rental unit in a reasonably clean condition. The tenant also stated that they were not advised that professional carpet cleaning was required and that the carpets had been cleaned, just not professionally. Counsel submits that the tenant had asked the landlord for the paint colour code, which supports that the tenant wanted to leave the rental unit in good condition. Counsel stated that the photo evidence submitted does not support that the rental unit required cleaning.

Regarding item 3, I will address the filing fee later in this decision.

Analysis

Based on the documentary evidence presented, the testimony of the parties and on the balance of probabilities, I find the following.

Test for damages or loss

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 sections 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what was reasonable to minimize the damage or loss.

In the matter before me, the landlord bears the burden of proof to prove all four parts of the above-noted test for damages or loss.

Item 1 - The landlord has claimed $1,500.00 for loss of rent for May 2021. Section 7 of the Act applies and states:

> **Liability for not complying with this Act or a tenancy agreement**
>
> **7**(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.**
>
> [emphasis added]

In addition, similar wording can be found in RTB PG 5, Duty to Minimize Loss which reads in part:

> **B. REASONABLE EFFORTS TO MINIMIZE LOSSES**
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> A person who suffers damage or loss because their landlord or tenant did not comply with the Act, regulations or tenancy agreement **must make reasonable efforts to minimize the damage or loss.** Usually this duty starts when the person knows that damage or loss is occurring. **The purpose is to ensure the wrongdoer is not held liable for damage or loss that could have reasonably been avoided.**
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> In general, a reasonable effort to minimize loss means taking practical and common-sense steps to prevent or minimize avoidable damage or loss. For example, if a tenant discovers their possessions are being damaged due to a leaking roof, some reasonable steps may be to:
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> • remove and dry the possessions as soon as possible;
> • promptly report the damage and leak to the landlord and request repairs to avoid further damage;
> • file an application for dispute resolution if the landlord fails to carry out the repairs and further damage or loss occurs or is likely to occur.
>
> **Compensation will not be awarded for damage or loss that could have been reasonably avoided.**
>
> [emphasis added]

Given the evidence before me, I find the landlord should have begun showing the rental unit shortly after January 16, 2021, when the landlord was advised in writing that the tenant was breaking their lease and would be vacating the rental unit effective February

28, 2021 or at the very latest March 12, 2021, when the tenant notified the landlord that they had removed their personal items from the rental unit. I find the landlord's practice of waiting until they have the rental unit keys before attempting to minimize their loss to be contrary to section 7(2) of the Act and PG 5, which requires the landlord to minimize their loss. Therefore, I find that the landlord has failed to meet the burden on proof that they are owed loss of May 2021 rent of $1,500.00 as I find the landlord failed to make reasonable attempts to minimize their loss of May 2021 rent by waiting until after April 11, 2021 to show the rental unit. Therefore, **I dismiss** this portion of the landlord's claim due to insufficient evidence, without leave to reapply.

Item 2 - The landlord has claimed $280.00 for cleaning costs. Section 37(2) of the Act states:

> **Leaving the rental unit at the end of a tenancy**
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> **37**(2) When a tenant vacates a rental unit, **the tenant must**
>
> (a)**leave the rental unit reasonably clean**, and undamaged except for reasonable wear and tear, and
>
> [emphasis added]

I have reviewed the photo evidence before me and I find the photo evidence does not support that the rental unit was left in a unreasonably clean condition. I have reached this finding at the landlord provided photos after they stated the cleaning had been completed and not before photos. I also find that receipt for carpet cleaning does not support that the carpets were not reasonably clean at the end of the tenancy without supporting photo evidence. Therefore, I find the landlord has failed to meet the burden of proof that the tenant violated section 37(2)(a) of the Act. I have reached this finding as the tenant testified they did clean the rental unit and the carpets, left the shower head in the sink, and had asked the landlord for the paint colour code before vacating. Given the above, **I dismiss** this portion of the landlord's application, due to insufficient evidence, without leave to reapply.

As the landlord's claim was not successful, I do not grant the landlord the recovery of the cost of the filing fee.

As the landlord continues to hold the tenant's security deposit of **$750.00,** I grant the tenant a monetary order of $750.00, which includes $0.00 in interest under the Act. Should the tenant be required to enforce the monetary order, the landlord is reminded that they could be held liable for all costs related to enforcing the monetary order.

Conclusion

The landlord's claim fails in its entirety.

The tenant is granted a monetary order of $750.00 for the return of their security deposit, which the landlord continues to hold. Should the tenant require enforcement of the monetary order, the monetary order must first be served on the landlord by the tenant and then may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The landlord may be held liable for the costs associated with enforcing the monetary order.

This decision will be emailed to the parties.

The monetary order will be emailed to the tenant only for service on the landlord, if necessary.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: November 10, 2021

Residential Tenancy Branch