Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

The landlord filed an Application for Dispute Resolution (the "Application") on May 19, 2021 seeking an order to recover the money for unpaid rent, other money owed, and for damage to the rental unit. Additionally, the landlord seeks to recover the filing fee for the Application. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the "*Act*") on November 5, 2021. In the conference call hearing I explained the process and provided the attending party the opportunity to ask questions.

Both parties attended the conference call hearing. After having each party in attendance affirm an oath, I explained the process and provided the parties the opportunity to ask questions. The hearing proceeded on the scheduled date and time.

Preliminary Matter

To proceed with this hearing, I must be satisfied that the landlord made reasonable attempts to serve the tenant with the notice of this hearing. This means the landlord must provide proof that the document has been served at a verified address allowed under s. 89 of the *Act*, and I must accept that evidence.

At the outset of the hearing, the tenant stated they did not receive notice of the hearing. They received a reminder from the Residential Tenancy Branch the day prior to the hearing.

The landlord stated they used Canada Post registered mail to send the notice of this hearing to the tenant. That packaged included the evidence the landlord presents in this hearing. The landlord gave testimony that the address they used was that given to

them by the tenant, via email after the end of the tenancy. They provided the image of the Canada Post tracking number they used for this purpose on the mailing label. The tracking number record also provided shows the item unclaimed as of May 31, 2021.

The landlord provided that they asked the post office to "keep the package longer than the usual week or two to give [the tenant] ample time to pick up." The post office kept the item for over 8 weeks. On July 21, the landlord received the package back – an image of the returned package is in the landlord's evidence.

I accept the landlord's evidence that they sent the package to the tenant via registered mail. I find they served notice of this hearing and their evidence in a manner complying with s. 89(1)(c) of the *Act*.

The tenant did not provide documentary evidence in advance. Their testimony in the hearing, as I recorded it, stands as evidence in this hearing.

Issues to be Decided

- Is the landlord entitled to a monetary order for recovery of rent, and/or compensation for damage, and/or other money owed, pursuant to s. 67 of the *Act*?

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

Background and Evidence

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 May 9, 2020 for the tenancy starting on June 1 on a month-to-month basis. The monthly rent amount was $1,650. Both parties in the hearing confirmed the tenant paid a security deposit amount of $825 and that receipt is in the landlord's evidence.

The landlord submitted a copy of the Condition Inspection Report completed at the start of the tenancy, on June 1, 2020. This bears the tenant's signature on page 4 to show they agree with the contents of the report.

As set out by the landlord in the hearing, the tenancy ended after the landlord gave the tenant a notice to end tenancy on March 28, 2021. This set the move-out date for April 30. The tenant did not challenge this notice through a dispute resolution process. By April 30, the landlord did not know if the tenant had already left, or still intended to. The landlord received the keys from the tenant on May 3rd, and on that same day posted a notice of final inspection on the door of the rental unit. The landlord provided a photo of this notice, showing it attached to the rental unit door.

According to the tenant, by the time the landlord issued this notice in March, they were already working on finding another place to live. When the landlord came to the door on April 5th, the tenant stated to the landlord: "I'll be out by the end of the month" and instructed the landlord they could enter after their move out. The landlord's typed replies appear in their evidence: "She told us she was moving out the end of April." and: "We are taking you for your word that you are moving out at the end of April." The tenant maintained they sent the landlord a note; however, the landlord stated there would be no need to meet. To the tenant this was an obvious sign the landlord was going to keep the security deposit.

In early April, the landlord wished to have prospective new tenants visit to the rental unit; however, the tenant would not allow any entry for these purposes. The landlord copied a direct message from the tenant dated April 9 refusing the landlord's "almost daily landlord access or intrusions". The landlord's evidence shows their version of events regarding the end of the tenancy where they tried to have the tenant sign a mutual agreement to end tenancy. This was to finalize a move-out date. Messages from April 6 and April 7 show the tenant offering two times for visits to the landlord: Sunday April 11, from 10-12; and Saturday April 10, from 12-2.

The tenant stated they were out from the rental unit on April 26th, and the rental unit "received multiple cleanings." On the 29th they gave a notice to the landlord to meet for an inspection; however, the landlord responded by saying they did not have to. On April 30th, they finished cleaning and left the keys in the rental unit. Via email and text message, they provided their forwarding address to the landlord.

The landlord confirmed they did receive a text message on April 29th, proposing a meeting on April 30th. The landlord just could not accommodate this on short notice. In emails, the landlord offered May 2nd afternoon, May 3rd or May 4th, after 5pm. On May 2, 2021, the landlord provided a Notice of Final Opportunity to Schedule Condition Inspection, proposing May 6, 2021 for the inspection meeting date. The landlord presented this was the fourth opportunity they afforded to the tenant for scheduling that

meeting. Their claim is to keep the security deposit for the reason that the tenant did not participate in or accommodate a final condition inspection meeting. This piece of the claim is $825.

The landlord submits they are also entitled to May 2021 rent. The reason for this is twofold: the tenant would not allow visits, thereby preventing the landlord from obtaining new tenants for May; and the tenant did not cancel a prior dispute hearing. On their Application, the landlord noted the tenant hired a moving truck on April 15 and April 22. This piece of the landlord's claim is the equivalent of one month's rent: $1,650.

The landlord completed their inspection of the rental unit on May 6. The record of this is the Condition Inspection Report, signed unilaterally. The refrigerator, being stainless steel, was not cleaned properly by the tenant, despite them having the manual which specified a cleaning procedure. This left the refrigerator door pitted with what the landlord termed "rust damage". Additionally, the shelving and other pieces of the refrigerator were left on the countertop and in the sink. In the hearing, the tenant speculated the condition of the fridge was because of the previous tenant, and the image provided by the landlord here was that of the refrigerator prior to their tenancy.

The landlord also submitted 61 photos of the state of the rental unit. This shows dirty floors, window screen damage, and what the landlord termed as the "worst": the cleaning of the glass shower door.

The landlord hired a cleaning company for these pieces of cleanup. The invoice dated May 7, 2021 shows $300 worth of cleaning and lists all of the separate items. The landlord filed their Application prior to this cleaning, and so by addition to their evidence, they presented the amount of $342.56, referring to the invoice. In the hearing, the landlord specified the amount for screen replacement was $42.56.

Approximately 14 days before the hearing, the landlord provided evidence to the Residential Tenancy Branch to clarify more points in their claim. Part of this was a re-drafted Monetary Order Worksheet (unsigned and undated) and the addition describing cleaning. These are estimates on what they see as damage to the appliances by the tenant, as described above.

In these pieces, the landlord stated the following:

- The landlord's monetary order worksheet, transcribed separately by the landlord, reads: "If damage deposit awarded we will forego the appliance amount (though we shouldn't) and the cleaning bill. The amount would then be $2,725"
- The addition to the landlord's evidence, clarifying their cleaning amount, states: "So if the Arbitrator does not allow us to keep the Damage Deposit, we make claim to this amount, and for the replacements on the doors of the Stainless Appliances (or the whole appliance, whichever is cheaper), we ask for $2,000 towards this. The fridge/freezer and dishwasher will cost a fair bit more than this, but we feel that is a fair-enough amount to help towards it."

The landlord added the $2,000 piece to their total amount claimed. As provided on their Monetary Order Worksheet, the total amount of their claim is $4,917.56, including the Application filing fee.

Analysis

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 four separate amounts: the security deposit; one month of rent; cleaning costs, and appliance costs. To determine the landlord's eligibility for compensation, I carefully examine the evidence they have presented for each item, to establish whether they have met the burden of proof.

Governing the security deposit, s. 36(1) states that the right of a tenant to the return of a security deposit is extinguished if: the landlord offered at least 2 opportunities for the inspection; and the tenant had not participated in either occasion.

In their Application, the landlord set out their request for the full amount of the security deposit, $825. They stated: "If Security Deposit awarded, will drop this #1 claim (regarding repairs or replacement of appliances, and cleaning)."

I find the landlord's evidence shows they offered 4 opportunities in total to the tenant. This is as described in the preceding section of this decision. I so award the landlord the full amount of the security deposit, $825. As the landlord specified in their submission, I dismiss their alternate claim for $2,000 towards appliances.

The landlord's monetary worksheet also specified they would forego the claim for cleaning costs should they be awarded the security deposit amount. I made that security deposit award; therefore, I dismiss the landlord's $300 claim toward cleaning costs.

I am not satisfied from the two pictures provided that the screen required replacement. I find no damage exists and there is no $42.56 award for this purpose.

The landlord has claimed the full amount of rent for the month of May. Primarily this is due to the tenant not providing a firm move-out date. I find as fact there was a notice to end the tenancy from the landlord with the effective date of April 30. This situation is governed by s.47(5):

> If a tenant who received a notice under this section does not make an application for dispute resolution . . . the tenant
>
> (a) is conclusively presumed to have accepted that the tenancy end on the effective date of the notice, and
> (b) must vacate the rental unit by that date.

I find the landlord was aware of the tenant's move-out date of April 30, 2021. On this discrete point, the tenant did not challenge the notice by making an application for dispute resolution. Also, I accept the tenant's testimony that they told this date to the landlord directly – that is confirmed in the landlord's evidence where they messaged to the tenant: "We are taking you for your word that you are moving out at the end of April." The landlord knew of the tenant's end date, based on the combination of the effective date on the notice, and the tenant's verbal confirmation. The landlord was also aware of moving trucks coming to the rental unit on April 15 and April 22.

The landlord also finds fault with the tenant where they were not able to secure new tenants for May due to the tenant not allowing prospective tenants entry with the landlord for a showing. I find a "reasonable purpose" for the landlord entry was in place, as per s. 29. There is no evidence of a written notice for such entry from the landlord to the tenant; this is required as per s. 29(1)(b). Where the landlord issues a valid notice, also in accordance with the service provisions of the *Act*, it is not required that the

tenant be present at the time of entry. Further, there is no evidence the landlord undertook other means of showing the unit to prospective tenants, such as a virtual showing, in line with the purpose of mitigation by the landlord in this tense landlord-tenant situation.

While the landlord maintains their efforts at showing the unit were blocked each time, I find the tenant had in fact afforded the landlord two opportunities for times available. These were, alternately, April 10 and April 11, for two-hour timeslots each. Evidently this time was not suitable for the landlord; however, I don't see the landlord showing an openness to making this time work. Also, there is no evidence of their effort at providing a separate agent to handle that task, or alternately providing a virtual showing. In sum on this point, I find the tenant was aware of the need for prospective tenants to visit and made some effort to having a visit take place. With the urgency expressed by the landlord here, I have difficulty understanding why they did not make this work.

For these reasons, I find there was no breach by the tenant here, neither in lack of information on the end-of-tenancy date, nor for denial of prospective tenant showings. Therefore, I grant no award to the landlord for the month of May rent amount. This claim for unpaid rent is dismissed, without leave to reapply.

Because the landlord was not successful in the bulk of their Application, I dismiss their claim for reimbursement of the $100 Application filing fee.

Conclusion

Pursuant to s. 36, I order the landlord shall keep the security deposit amount of $825. This satisfies all of their claims for damages as against the tenant, and I dismiss the other components without leave to reapply. I also dismiss the landlord's claim for rent amounts owing, without leave to reapply.

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: November 12, 2021

Residential Tenancy Branch