Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing dealt with the landlord's application, filed on July 14, 2021, pursuant to the *Residential Tenancy Act ("Act")* for:

- a monetary order for unpaid rent, for damage to the rental unit, and for compensation under the *Act, Residential Tenancy Regulation* or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 34 minutes.

This hearing began at 1:30 p.m. and ended at 2:04 p.m. The tenant called in late at 1:32 p.m. I did not discuss any evidence with the landlord in the tenant's absence.

Both parties provided their names and spelling. The landlord provided his mailing address, and the tenant provided her email address for me to send this decision to both parties after the hearing.

The landlord stated that he owns the rental unit. He confirmed the rental unit address.

At the outset of this hearing, I informed both parties that they were not permitted to record this hearing, as per Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure ("Rules")*. The landlord and the tenant both affirmed, under oath, that they would not record this hearing.

At the outset of this hearing, I explained the hearing and settlement processes, and the potential outcomes and consequences, to both parties. Both parties had an opportunity to ask questions, which I answered. Both parties confirmed that they were ready to proceed with this hearing, they did not want to settle this application, and they wanted me to make a decision. Neither party made any adjournment or accommodation requests.

The tenant confirmed that she has a no-contact order with the landlord. She said that she called the appropriate authorities in mid-February 2022, and she was told that the order was varied to allow contact between her and the landlord for the purposes of this RTB hearing, only. The landlord did not dispute the above information. The tenant provided copies of the no-contact order and the variance to allow for contact during this RTB hearing, only. Therefore, I proceeded with this hearing based on the consent of both parties and the above documentary evidence.

The tenant confirmed receipt of the landlord's application for dispute resolution and notice of hearing. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was duly served with the landlord's application and notice of hearing.

The landlord confirmed that he did not submit any documentary or digital evidence for this hearing.

The tenant stated that she served her evidence to the landlord on February 23, 2022, by way of registered mail. She said that she did not know until she called in mid-February 2022, that she could have contact with the landlord to serve him with evidence for this hearing. The landlord claimed that he did not receive the tenant's evidence.

I informed both parties that I could not consider the tenant's evidence at the hearing or in my decision. I notified them that the tenant's evidence was deemed to be received late by the landlord on February 28, 2022, less than 7 days prior to this hearing, not including the service or hearing dates, contrary to Rule 3.15 of the RTB *Rules*.

The tenant confirmed that she did not call the appropriate authorities until mid-February 2022. Despite this, the tenant waited until February 23, 2022, to serve her evidence to the landlord. Further, the variance of the no-contact order, which was provided by the tenant as evidence for this hearing, is dated August 17, 2021. This is almost 7 months prior to this hearing on March 7, 2022. I find that the tenant had ample time and notice to serve the landlord with her evidence in a timely manner and failed to do so.

Pursuant to section 64(3)(c) of the *Act*, I amend the landlord's application to increase his monetary claim to include $2,000.00 for rent. The landlord indicated this amount in his application but did not check off the correct box for unpaid rent on the application form. I find no prejudice to either party in making this amendment.

Issues to be Decided

Is the landlord entitled to a monetary order for unpaid rent, for damage to the rental unit, and for compensation for damage or loss under the *Act, Regulation* or tenancy agreement?

Is the landlord entitled to retain the tenant's security deposit?

Is the landlord entitled to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on August 23, 2019 and ended on June 2, 2021. A written tenancy agreement was signed by both parties. Monthly rent in the amount of $1,000.00 was payable on the first day of each month. A security deposit of $500.00 was paid by the tenant and the landlord continues to retain this deposit in full. No move-in or move-out condition inspection reports were completed for this tenancy. The landlord did not have written permission to keep any amount from the tenant's security deposit.

The tenant stated that she did not provide the landlord with a written forwarding address because she was not allowed to do so, as per the parties' no-contact order.

The landlord seeks a monetary order of $12,000.00, to retain the tenant's security deposit of $500.00, and to recover the $100.00 application filing fee. The tenant disputes the landlord's application.

The landlord testified regarding the following facts. The tenant damaged his property and furniture. He did not submit any evidence for this hearing because this is his first time doing a hearing and he does not have email. He paid for expenses and has evidence at home. The tenant damaged everything, including the wall. He had to paint the whole unit, he had to clean the washrooms, and the tenant damaged the tub, and the floors. The tenant damaged the appliances, the faucet was new, and the landlord had to repair it again. The new counter was rotten inside, and everything smelled really bad, in the bathroom. The bathroom window was moldy because the tenant did not use the fan in the bathroom. The closet door does not close. The estimate submitted by the landlord was "very soft." The claim should have been $13,000.00 to $14,000.00 but the landlord did not ask for that much from the tenant. This tenancy was only 19 to 20 months long, not 2.5 years as claimed by the tenant. The tenant damaged the door frame, which the landlord cannot replace until the "money comes." The cost for this will be $1800.00. The landlord took over this unit in November of 2016 and used the same tenancy agreement as the past landlord.

The tenant testified regarding the following facts. Nothing was damaged in the unit, except one burner for cooking. This was already damaged and not working, prior to her moving into the unit. This is part of "reasonable wear and tear." All appliances are working. Everything was in good condition and proper when she vacated the rental unit. She gave the keys to the police to give to the landlord when she left. The tenancy was 2 to 2.5 years long and she never damaged anything. The landlord repaired the tap once. She disputes the landlord's entire application and does not agree to pay for anything. The landlord did not provide any furniture to her, so there were no damages to any furniture, as claimed by the landlord.

Analysis

Legislation and Rules

The landlord, as the applicant, is required to present his application, including his evidence and claims.

The following RTB *Rules* state, in part:

> *7.4 Evidence must be presented*
> *Evidence must be presented by the party who submitted it, or by the party's agent…*
> …

7.17 Presentation of evidence
Each party will be given an opportunity to present evidence related to the claim. The arbitrator has the authority to determine the relevance, necessity and appropriateness of evidence…

7.18 Order of presentation
The applicant will present their case and evidence first unless the arbitrator decides otherwise, or when the respondent bears the onus of proof…

I find that the landlord did not properly present his evidence, as required by Rule 7.4 of the RTB *Rules*, despite having the opportunity to do so during the hearing, as per Rules 7.17 and 7.18 of the RTB *Rules.* During the hearing, the landlord failed to properly go through his specific claims and the amounts for each claim.

This hearing lasted 34 minutes, so the landlord had ample opportunity to present his application. I provided the landlord with multiple opportunities to present his evidence and claims and respond to the tenant's submissions. I repeatedly asked the landlord if he had any other information to present during this hearing.

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove a loss, the landlord must satisfy the following four elements on a balance of probabilities:

1) Proof that the damage or loss exists;
2) Proof that the damage or loss occurred due to the actions or neglect of the tenant in violation of the *Act*, *Regulation* or tenancy agreement;
3) Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4) Proof that the landlord followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Findings

On a balance of probabilities and for the reasons stated below, I make the following findings based on the testimony of both parties.

I dismiss the landlord's application of $12,000.00 without leave to reapply. This includes $2,000.00 for a loss of rent and $10,000.00 for damages to the walls, appliances, floors, and bathrooms.

I find that the landlord failed the above four-part test. I find that the landlord failed to provide sufficient evidence that he suffered any damages or losses or that he paid for same.

The above descriptions and amounts were noted in the landlord's application for dispute resolution form but were not reviewed by the landlord during this hearing. The landlord did not explain these amounts during this hearing, nor did he provide or review any documentary evidence to substantiate these claims.

The landlord did not submit any documentary evidence for this hearing. The landlord did not provide any invoices, receipts, estimates, quotations, photographs, condition reports, or any other documents for this hearing. The landlord did not indicate if or when he paid for any repairs, the amounts of any repairs, how he paid for any repairs, who completed any repairs, when any repairs were completed, the rate per hour or per worker, the number of workers, the tasks completed, or other such information.

I also find that the landlord cannot prove the condition of the rental unit when the tenant moved in or out, since the landlord did not conduct move-in or move-out condition inspection reports with the tenant, as required by sections 24 and 36 of the *Act*. Therefore, I cannot determine what damages, if any, were pre-existing when the tenant moved in, and what damages, if any, were caused by the tenant when she moved out.

The landlord did not refer to or explain his loss of rent claim at all during this hearing. The landlord did not testify about or provide copies of any advertisements, inquiries or applications from potential tenants, any showings done, any new tenancy agreements signed or other such information, to show that he suffered any unpaid rent or loss of rent. He did not indicate if or when he rented the unit to new tenants, how much they pay for rent, how long their tenancy is, or other such information.

As the landlord was unsuccessful in this application, I find that he is not entitled to recover the $100.00 filing fee from the tenant.

Tenant's Security Deposit

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act,* equivalent to double the value of the deposit. However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenant to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

The landlord continues to hold the tenant's security deposit of $500.00. Over the period of this tenancy, no interest is payable on the deposit. The landlord did not have written permission to keep any amount from the tenant's security deposit. The tenant did not provide a written forwarding address to the landlord, due to the no-contact order.

The landlord's right to retain the tenant's security deposit for damages was extinguished for failure to complete move-in and move-out condition inspection reports, as required by sections 24 and 36 of the *Act*. However, the landlord also applied for other costs, aside from damages, including rent losses, as noted in his application. Therefore, I find that the tenant is not entitled to the return of double the value of her security deposit.

In accordance with section 38 of the *Act*, I find that the tenant is entitled to the return of her full security deposit of $500.00 from the landlord. The tenant is provided with a monetary order for same. Although the tenant did not apply for her security deposit return, I am required to consider it on the landlord's application to retain it, as per Residential Tenancy Policy Guideline 17.

Conclusion

The landlord's entire application is dismissed without leave to reapply.

I issue a monetary order in the tenant's favour in the amount of $500.00 against the landlord. The landlord must be served with this Order as soon as possible. Should the landlord 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 *Residential Tenancy Act*.

Dated: March 10, 2022

Residential Tenancy Branch