Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNRL, MNDL, FFL**

Introduction

This hearing dealt with a landlord's application for a Monetary Order for unpaid and/or loss of rent and compensation for damage to the rental unit and carpet cleaning. The hearing was held over two dates and an Interim Decision was issued on June 2, 2020. The Interim Decision should be read in conjunction with this decision.

On the first hearing date of June 2, 2020 both parties appeared; however, on the reconvened hearing date of July 9, 2020 there was no appearance on part of the tenants. I left the teleconference call for nearly an hour and in that time the tenants did not appear. On July 9, 2020 the landlord was given the opportunity to rebut the tenant's positions presented on June 2, 2020 and her witness, referred to by initials MM, provided testimony. Accordingly, this decision is based on what was presented to me on June 2, 2020 and July 9, 2020.

On another procedural note, as explained in the Interim Decision, a party's claims cease to exist two years after the tenancy ends. I was satisfied that the landlord filed a claim on the last possible date that is within two years after the tenancy ended, on April 14, 2020; and, after that date any other claim the landlord may have against the tenants with respect to this tenancy cease to exist, as provided under section 60 of the Act. I limited the landlord's claims to the amounts presented on her Application for Dispute Resolution filed on April 14, 2020. The amounts appearing on the Monetary Order worksheet dated April 18, 2020 includes taxes on the amounts claimed on April 14, 2020 but I did not consider the increased amounts. Nor, did I consider the landlord's attempts to add additional amounts by way of a written submission of May 19, 2020 since the Application for Dispute Resolution was not amended in accordance with the Rules of Procedure and the claims were added after the two year limitation period.

Issue(s) to be Decided

1. Is the landlord entitled to unpaid and/or loss of rent after April 15, 2018 through to May 31, 2018 in the amount of $4275.00, as claimed?
2. Did the landlord establish entitlement to compensation for damage to the rental unit and carpet cleaning in the sum of $1800.00?

Background and Evidence

The parties executed a six month fixed term tenancy agreement for a tenancy set to commence on December 1, 2017 and expire on May 31, 2018. The tenants gave a cheque to the landlord for the security deposit in the amount of $1425.00 although the landlord did not cash the cheque until April 2018. The tenants were required to pay rent of $2850.00 plus cable for the total sum of $2935.61 on the first day of every month.

The landlord was of the position a move-in inspection was performed with the tenant(s) on November 18, 2017, although it is agreed that a move-in inspection report was not prepared by the landlord. The tenant was of the position the tenants viewed the unit on November 18, 2017 but that it was not a condition inspection of the rental unit.

The landlord was of the position the tenants vacated the rental unit on April 15, 2018. The tenant stated the unit was vacated and possession was returned in the evening of April 14, 2018 when they left the keys in the unit as per the landlord's instructions. Both parties provided consistent testimony that a move-out inspection was not performed together and a move-out inspection report was not prepared by the landlord.

Below, I have summarized the landlord's claims against the tenants and the tenants' responses.

Unpaid and/or loss of rent -- $4275.00 for latter ½ of April 2018 plus May 2018

The landlord submitted that in a telephone conversation on or about March 24, 2018 the tenant told the landlord they were looking for alternative accommodation as the rental unit was too noisy. The landlord indicated she would check with the property manager to investigate the tenant's complaint; however, the landlord did not get back to the tenant before he called again approximately a week later, near the end of March or early April 2018. During that telephone conversation the tenant indicated they wanted to move out early. The landlord claims she reminded the tenants they were in a fixed

term tenancy until May 31, 2018 but that if they paid rent for April 2018, she would waive the rent for May 2018. According to the landlord the tenant became angry at that proposal and an agreement was not reached. The landlord argued that since the parties did not reach an agreement during that telephone conversation there was no settlement and the landlord remains entitled to the full amount of rent payable for April 2018 and May 2018, less the security deposit.

The tenants did not pay the monthly rent that was due on April 1, 2018 and on April 4, 2018 the parties exchanged the following emails (names omitted by me for privacy):

The tenants wrote to the landlord:

> I just got confirmation this afternoon that I can move into our previous townhouse April 15th. They will pro-rate us from the 15th - 30th....
>
> I worked out how much we pay you per night, $97.85 x 14 nights = $1,369.90 (tv included). Would you like to deposit our down payment cheque to cover our two weeks of rent or wait. I don't remember how much our down payment cheque is, I was thinking it was $1,600.00? But, I could be wrong? My memory is terrible :)
>
> Let me know what works best for you. I will call you tomorrow.
>
> I hope I have your right email.
>
> Have a good evening,

The landlord responded the same day with the following message:

Thank you for your emails today. I am just home from hospital where my mother was being admitted last time we spoke.
Your security/damage deposit was $1425.00 not including Shaw of $85.61/month for total of $2935.61 per month so your calculations of 14 days at $97.85 per day equals $$1369.90 is correct. The difference I would owe you is $75.10 where there is no damage, which I do not anticipate.
I dislike talking about money and you know what tired is.
Please phone me before 9:30 tomorrow as I will be back at hospital after that.
Happy you got your original place back.
Regards,

During the hearing, the landlord submitted that the above messages do not indicate the landlord released the tenants from the fixed term tenancy agreement and that the above messages cannot be read on their own without considering the telephone conversation that preceded them whereby the landlord reminded the tenants they were in a fixed term tenancy agreement until May 31, 2018. According to the landlord she cashed the security deposit cheque as she had not received rent for April 2018 and the tenants authorized her to cash it in the email of April 4, 2018; however, the landlord stated that

she still expected to receive rent for the balance the fixed term that was still owed for April 15, 2018 through to May 31, 2018.

The landlord testified that she did rent the unit for the 10 years preceding the tenancy and she did not re-rent it after the tenancy ended. The landlord explained that the rental unit is unoccupied by anybody and she has been keeping it for her own use as her retirement home in the future. The landlord stated that she did not intend to rent the unit to the tenants but she agreed to do so because the tenants were desperate for a place to live and they were extended family members of her sister. The landlord argued that preparing the unit to rent to the tenants required effort on her part and that, in part, is why she did not agree to rent the unit for a period less than six months. The landlord also submitted that the majority of wear and tear or depreciation caused by a tenant is done early in the tenancy which is why she wanted to have a six month fixed term tenancy agreement.

The tenant was of the position the parties came to an agreement with respect to ending the tenancy and paying rent for the period of their occupation, up to April 14, 2018, as seen in the emails of April 4, 2018 and the landlord cashed their security deposit cheque on April 14, 2018. The tenant explained that despite the landlord offering the refund of $75.10 in her email of April 4, 2018 they did not pursue that and were satisfied that the landlord would retain their security deposit for rent for the first half of April 2018.

As for the landlord's use of the rental unit, the tenant was of the understanding that on occasion people have used the rental unit on weekends before their tenancy started and it was not completely unoccupied. The tenant was uncertain as to how the rental unit has been used after the tenancy ended.

The tenant denied getting angry during the telephone conversation at the end of March 2018 or early April 2018 but he stated he did not appreciate the landlord's comments that he worked too much. The tenant stated that he told the landlord that they had the opportunity to move back to their previous home after informing the landlord the occupants of the unit above the rental unit were very loud.

With respect to the tenant's assertion that excessive noise was coming from the unit above the rental unit, the landlord questioned this position as she submitted the property manager had not received noise complaints from anybody else. However, I do not consider the noise issue further as the tenants did not give a written notice for the landlord to rectify this breach of quiet enjoyment, if there was one, so as to put them in a legal position to end the tenancy as required under section 45(3) of the Act.

Damage to granite countertop and hearth -- $650.00

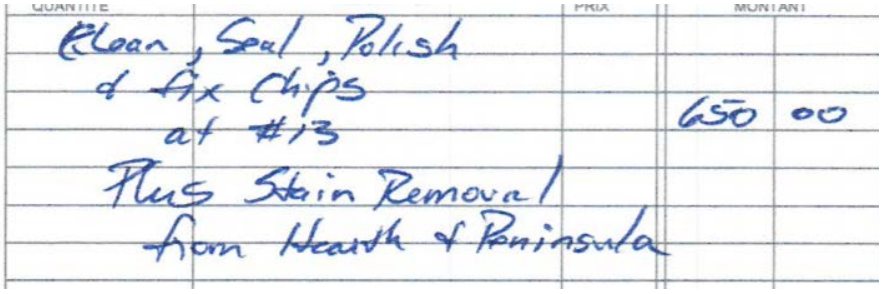
The landlord submitted that the tenants damaged the kitchen countertop and hearth during their tenancy by causing chips and causing stains and marks from acidic placing acidic drinks on the granite. The landlord stated the granite was installed in 2012 and after that time the unit was unoccupied with the exception of on-going renovation work on weekends.

The tenant submitted that he did not see any stains or chips on the granite and they did not use the fireplace as it was non-functional. The tenant also stated there was a flood from the unit above the rental unit near the end of their tenancy and water leaked into the kitchen and may have caused staining to the countertop. The restoration work was still on-going when the tenancy ended. The tenant questioned why the landlord made no mention of this damage shortly after the tenancy ended and the landlord waited two years to make these allegations.

The landlord was of the position that granite is a hard surface and the water leak from the unit above would not have damaged the granite countertop. Also, the water leaked from the ceiling to the floor and not onto the countertop. The landlord also stated that, aside from staining the landlord had to scrape crud off the surfaces and pointed to the tenants being careless in their use of the rental unit.

The landlord provided a photograph of the kitchen and the fireplace; however, the photographs are taken at such a distance stains and chips are not discernable.

In support of her claim, the landlord presented a copy of a receipt dated September 6, 2018. The receipt provides for a charge of $650.00 for:



Carpet cleaning -- $320.00

The landlord submitted the tenants left the carpets with sticky areas and brown stains, including a big circle in the dining room. The landlord testified that the carpeting was installed in 2012 but that it was in nearly new condition since the unit was not used before the tenancy started. The landlord stated she was going to clean the stains herself but her carpet cleaning machine was not working so she did not complete the task. The landlord acknowledged she has not yet had the carpets cleaned because there is more renovation work to do in the rental unit. The landlord submitted that she obtained an oral estimate to clean the carpets for $320.00 plus tax. The landlord provided a photograph of a stain by the dining table and a photograph of two smaller dirty areas in the bedroom.

The tenant denied leaving stained or sticky areas on the carpeting.

Missing blinds in master bedroom -- $830.00

The landlord submitted that the master bedroom was furnished with metal vertical blinds that were installed in the early 2000's and they went missing during the tenancy. The landlord has not yet replaced the blinds but she obtained a quote on October 15 (year does not appear on quote) to replace several blinds in the living room and two bedrooms. The quote includes two blinds in the amount of $415.00 each, plus tax. The landlord indicates these two blinds are for the master bedroom. The landlord provided a photograph of the windows in the bedroom that shows the track for vertical blinds but no slats.

The tenant stated that he helped the landlord measure blinds in the rental unit as the landlord indicated she was going to replace the blinds. The tenant took down one section of blinds that remained on the master bedroom windows but someone else had removed other section. The tenant took the blinds to the dump along with other renovation debris the landlord or MM wanted to dispose of as a favour to the landlord or MM since he had a truck. The tenant stated that occasionally on weekends, MM would come and do renovation work on the rental unit during the tenancy.

The landlord acknowledged that the living room blinds were damaged and she measured those blinds during the tenancy but that at no time did she intend to replace or permit the tenants to remove the blinds in the master bedroom. MM testified that he

removed possessions from the rental unit during the tenancy but that he did not perform renovation work.

Analysis

Upon consideration of everything before me, I provide the following findings and reasons.

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 section 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 whatever was reasonable to minimize the damage or loss.

The burden of proof is based on the balance of probabilities. It is important to note that where one party provides a version of events in one way, and the other party provides a version of events that are equally probable, the claim will fail for the party with the onus to prove their claim.

Unpaid and/or loss of rent

It is undisputed that the parties had a fixed term tenancy set to run to May 31, 2018 and the tenants vacated the rental unit on or about April 15, 2018. It is also undisputed that the landlord used the security deposit as rent for the period of April 1 – 15, 2018 pursuant to email exchanges of April 4, 2018. The issue is whether the landlord remained entitled to unpaid rent and/or loss of rent for the period after April 15, 2018 to May 31, 2018.

I found the landlord's arguments during the hearing to be conflicting. On one hand she argued that since the parties did not reach a mutual agreement during their telephone conversation of late March/early April 2018 there was no settlement between the parties and the landlord remains entitled to the rent for the remainder of the fixed term. However, in response to the tenant's position that the parties did reach an agreement by way of the April 4, 2018 emails the landlord rejected that the agreement reached on

April 4, 2018 means the landlord waived entitlement to rent for the remainder of the fixed term.

In reading the communications of April 4, 2018 I am of the view the parties reached an agreement that the landlord would cash the security deposit cheque, to be used toward rent owed for the period of April 1 - 14, 2018. The landlord went on to indicate a partial refund would be made for the one day of April 15, 2018. It does not make sense to me that the landlord would offer a refund for day of April 15, 2018 if the landlord was of the position she was entitled to rent for April 15, 2018 through May 31, 2018. I am of the view that a reasonable person would interpret the communications of April 4, 2018 to mean a settlement agreement was reached with respect to ending the tenancy, the tenant's liability to pay rent for they days they occupied the rental unit, and the landlord's right to retain the security deposit, or the vast majority of it.

It also appears to me that both parties relied upon the communications of April 4, 2018. The tenants relied upon it as an agreement the tenancy would end effective April 14, 2018 and the landlord would cash and retain the security deposit (except for $75.10) to be used for rent owed to that date. The landlord relied upon the email as authorization to retain the security deposit since she acknowledged she did not receive authorization to retain it by any other communication from the tenants.

Also of consideration, is Residential Tenancy Policy Guideline 4: *Claims for Rent and Damages or Loss of Rent* provides information and policy statements applicable to this claim. The policy guideline provides, in part:

> Where a tenant has fundamentally breached the tenancy agreement or abandoned the premises, the landlord has two options. These are:
>
> > 1. Accept the end of the tenancy with the right to sue for unpaid rent to the date of abandonment;
> >
> > 2. Accept the abandonment or end the tenancy, with notice to the tenant of an intention to claim damages for loss of rent for the remainder of the term of the tenancy.
>
> These principles apply to residential tenancies and to cases where the landlord has elected to end a tenancy as a result of fundamental breaches by the tenant of the Act or tenancy agreement. Whether or not the breach is fundamental

> depends on the circumstances but as a general rule non-payment of rent is considered to be a fundamental breach.
>
> If the landlord elects to end the tenancy and sue the tenant for loss of rent over the balance of the term of the tenancy, the tenant must be put on notice that the landlord intends to make such a claim. Ideally this should be done at the time the notice to end the tenancy agreement is given to the tenant. The filing of a claim for damages for loss of rent and service of the claim upon the tenant while the tenant remains in possession of the premises is sufficient notice. Filing of a claim and service upon the tenant after the tenant has vacated may or may not be found to be sufficient notice, depending on the circumstances. Factors which the arbitrator may consider include, but are not limited to, the length of time since the end of the tenancy, whether or not the tenant's whereabouts was known to the landlord and whether there had been any prejudice to the tenant as a result of the passage of time. The landlord may also put the tenant on notice of the intent to make a claim of that nature by way of a term in the tenancy agreement. However, where a tenant has abandoned the premises and the tenancy has ended with the abandonment, notice must only be given within a reasonable time after the landlord becomes aware of the abandonment and is in a position to serve the tenant with the notice or claim for damages.

From what I read in the emails of April 4, 2018 the landlord did not put the tenants on notice that she intended to pursue the tenants for loss of rent for the period after April 15, 2018. Although the landlord may have done so in the telephone conversation of late March/early April 2018 as claimed by the landlord, the parties did not come to an agreement at that time and I find the latter communication of April 4 2018 reflects their agreement. Therefore, I find the landlord has been compensated for the tenants' period of occupation up to an including April 15, 2018 by way of retaining the security deposit and the landlord is estopped from now pursuing the tenants for loss of rent for the period of April 16, 2018 to May 31, 2018. Accordingly, I dismiss this portion of the landlord's claim against the tenants.

Damage to granite countertop and hearth

The landlord did not prepare move-in and move-out inspection reports, as required under sections 23 and 35 of the Act, to show the condition of the countertop and hearth at the start and end of the tenancy. The tenants denied responsibility for staining or chipping the granite. The landlord provided photographs of the kitchen and the fireplace but I do not see any damage. Also, the receipt for repairing the countertop and hearth

was dated nearly six months after the tenancy ended. I find the landlord's evidence insufficient to rebut the tenant's opposing position and I find I am unsatisfied the tenants are responsible for damaging the granite. Therefore, I find the landlord did not meet her burden of proof and I dismiss this portion of her claim.

Carpet cleaning

The parties provided opposing testimony that the tenants stained and left the carpeting dirty. Under section 37, a tenant is required to leave a rental unit "reasonably clean" at the end of the tenancy. The landlord provided photographs of dirty carpeting and I accept that stained and dirty carpets does not meet the tenants' obligation under section 37 of the Act.

The landlord obtained a quote to have the carpets cleaned but she has not had them cleaned yet as, according to her, more renovation work needs to be done. As such, I find it likely the carpets will require cleaning at some point but the need to do so is the result of a combination of the tenant's actions and the renovation work which is not the tenant's responsibility to clean up after. Therefore, I grant a partial award of $100.00 to reflect an estimate of the tenant's contribution to carpet cleaning.

Missing blinds

It was undisputed that the tenant removed at least one of the blinds in the master bedroom; however, I was provided opposing evidence of the landlord's intentions to replace the blinds in any event. The landlord testified that she only intended to repair or replace the living room blinds; however, I note that the quotation provided by the landlord includes blinds for the living room and blinds for two bedrooms. The landlord did not provide an explanation as to the reason for replacing the blinds in the second bedroom. Also of consideration, is that I heard the landlord is undertaking on-going renovation work, the living room blinds were already damaged, and the blinds were approximately 18 years old at the end of the tenancy. As such, I am of the view that the value of the missing blinds at the time of their loss is probably very little. Therefore, I am not satisfied the tenants are obligated to compensate the landlord $830.00 for bedroom blinds and I dismiss this portion of the landlord's claim.

Filing fee

The landlord had very limited success in this application and I award the landlord partial recovery of the filing fee in the amount of $25.00.

Monetary Order

The landlord has been awarded a total of $125.00 by way of this decision and I provide the landlord with a Monetary Order for this amount to serve and enforce upon the tenants.

Conclusion

The landlord is awarded compensation totalling $125.00 and the landlord is provided a Monetary Order in this amount to serve and enforce upon the tenants.

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: July 15, 2020

Residential Tenancy Branch