Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNDCL-S, FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("*Act*") for:

- a monetary order for damage to the rental unit and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenants' security and pet damage deposits (collectively "deposits"), pursuant to section 38; and
- authorization to recover the filing fee for her application, pursuant to section 72.

The landlord, the landlord's agent, and the two tenants, male tenant ("tenant") and "female 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. The landlord confirmed that her son, who is her agent, had permission to represent her at this hearing. The female tenant did not testify at this hearing.

This hearing lasted approximately 114 minutes. The landlord and her agent spoke for approximately 55 minutes, the tenant spoke for approximately 39 minutes, and the remaining 20 minutes was spent discussing service of documents, confirming the application and the parties' contact information.

The tenant confirmed receipt of the landlord's application for dispute resolution hearing package and the landlord confirmed receipt of the tenants' evidence. In accordance with sections 88, 89 and 90 of the *Act*, I find that the tenants were duly served with the landlord's application and the landlord was duly served with the tenants' evidence.

Issues to be Decided

Is the landlord entitled to a monetary order 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 tenants' deposits?

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

Background and Evidence

While I have turned my mind to the documentary evidence and 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 1, 2015. The tenants moved out of the rental unit by April 18, 2020. The tenants returned the remaining keys, gave notice to end their tenancy and paid rent to the landlord until May 31, 2020. Monthly rent in the amount of $2,155.45 was payable on the first day of each month. A security deposit of $950.00 and a pet damage deposit of $950.00 were paid by the tenants and the landlord continues to retain both deposits. A written tenancy agreement was signed by both parties. Move-in and move-out condition inspection reports were completed for this tenancy. The landlord did not have written permission to keep any amount from the tenants' deposits. The landlord's application to retain the tenants' deposits was filed on June 12, 2020.

The landlord provided a copy of her email, dated June 7, 2020, indicating the tenant's forwarding address and a confirmation email, dated June 8, 2020, from the female tenant of the same forwarding address.

The landlord's agent stated that new tenants moved into the rental unit on June 1, 2020 at a monthly rent of $2,180.00.

The landlord seeks a monetary order of $7,145.34 plus the $100.00 application filing fee. The landlord seeks $13.82 for two burned out lightbulbs, which the tenant agreed to pay during the hearing.

The tenants dispute the remainder of the landlord's application. The tenant claimed that the landlord was not credible, changed her story during the hearing, had monthly inspections of the rental unit throughout the tenancy, and only identified damages after the tenancy ended and, in this application, despite the positive emails between the parties during the tenancy. He maintained that the landlord is unlikely to complete the improvements she is claiming for in this application, since there are new tenants living in the rental unit now.

The landlord seeks $140.00 to clean the rental unit. The landlord provided a handwritten receipt and a copy of a cancelled cheque for the above amount. The landlord stated that she was trying to find someone at a cheap rate to clean and that it was only around $25.00 per hour but no invoice was given to her. The landlord also provided photographs of the condition of the rental unit. The landlord's agent stated that when the tenants moved out by April 22, 2020, the unit was not clean, the tenants returned the parking remote, and gave the landlord access to the rental unit. He claimed that the landlord emailed the tenant photographs of the rental unit on April 25, 2020 and asked the tenant to clean the rental unit again in certain areas because it was still dirty. He maintained that the landlord painted the unit after the tenants moved out.

The tenants dispute the landlord's cleaning cost of $140.00. The tenants provided written submissions and photographs of the condition of the rental unit when they moved out. The tenant explained that the tenants adequately cleaned the rental unit prior to vacating and that any additional cleaning was the landlord's responsibility. The tenant stated that the landlord had early access to the rental unit after the tenants vacated on April 18, 2020, in order to clean, paint, and show the unit to prospective tenants. He said that the landlord created a mess, she completed five weeks of showings, and he was not responsible to clean up the landlord's mess, which involved other occupants walking in and out of the unit. He claimed that he went back to clean on May 23, 2020, as per the landlord's request, the landlord's items were still there, and he submitted photographs of same.

The landlord seeks $1,202.25 to replace the bathroom marble countertop at the rental unit. The landlord provided an email quote for $1,145.00 plus GST. She said that the work has not been done yet because she did not have the funds and she did not know if she could use the tenant's security deposit for it, but she will complete it and provide proof to the tenants after. The landlord's agent explained that the tenants caused a large stain on the countertop by leaving soapy water there, the landlord provided photographs of same, and it was not normal wear and tear. He claimed that the stain did not happen with prior tenants and that the landlord's contractor suggested replacing

the countertop because the bleach would damage it and not remove the stain. The landlord provided emails regarding same.

The landlord seeks $400.00 for the plumber and the drywall repairs after the bathroom marble countertop replacement is done. She said that the work has not been done yet because she did not have the funds and she did not know if she could use the tenant's security deposit for it, but she will complete it and provide proof to the tenants after. The landlord claimed that she got a verbal quote of $150.00 to $200.00 from the plumber to disconnect and reconnect the bathroom sink and $100.00 to $150.00 for the drywall repair for the wall area where the countertop will be removed, which did not include tax. She said that she did not know when she received the quotes, it was sometime between June 18 and 25, 2020, and she had no written proof of the quotes.

The tenants dispute the landlord's claims for replacement of the bathroom countertop of $1,202.25 and the plumbing and drywall repair costs of $400.00. The tenant claimed that the landlord was attempting to make capital improvements to the rental unit. He stated that the countertop was twelve years old, it absorbed water over time from other occupants, the tenants did not cause a stain, they did not leave any standing soapy water, and their tenancy was for five years, so there was reasonable wear and tear.

The landlord seeks $296.77 to replace the microwave in the rental unit, which she said the tenants took with them when they vacated. The landlord provided a copy of an online receipt for the cost that she incurred. She said that the microwave was in the rental unit when the tenants began their tenancy. She maintained that the microwave broke down and was replaced by the tenants, but she was not told when it broke down and she was not given the chance to replace it, since the tenants just threw it away. The landlord provided a copy of an email, dated June 21, 2017, from the tenants, attaching a receipt for $332.91 with a photograph of a new microwave they purchased, asking the landlord for reimbursement.

The tenants dispute the landlord's claim for a new microwave for $296.77. The tenant confirmed that he purchased a new microwave because the landlord's 10-year-old microwave broke during the tenancy. He claimed that it was hard to find a new microwave to fit in the specific cabinet area in the rental unit and the tenants spent additional money because of this to get a comparable microwave. He said that he informed the landlord of the broken microwave in 2017 when it occurred, he sent her the receipt, she said that she would check with her son, and she did not respond to the tenants. He maintained that since the tenants bought the microwave, it was theirs to keep, as the landlord did not reimburse them when given the chance to do so.

The landlord seeks $5,092.50 to replace the laminate flooring at the rental unit. The landlord provided an email estimate and photographs of the flooring. The landlord's agent testified that the tenants caused damages to the flooring, resulting in water bubbling and bumps from sitting water, which raised the laminate, which was not present before the tenants moved in. He said that this occurred in the kitchen, hallway and living room. He explained that there was also a scratch mark in the dining area. The landlord said that the work has not been done yet because she did not have the funds and she did not know if she could use the tenant's security deposit for it, but she will complete it and provide proof to the tenants after.

The tenants dispute the landlord's claim to replace the laminate flooring of $5,092.50. The tenant claimed that the landlord was attempting to make capital improvements to the rental unit. He stated that the flooring was at least seven years old, if not thirteen years old, and the landlord wanted to replace all the flooring, rather than just the damaged areas that she claimed. He said that the tenants were living at the rental unit for five years, so there was reasonable wear and tear from usage. He explained that the landlord initially claimed there was water damage but then changed it to "dog pee" when she filed this application. He maintained that the landlord changed her version of events when the tenants asked for the return of their pet damage deposit, since the landlord wanted to justify retaining the pet damage deposit for pet damage. The tenant referenced photographs taken from different angles of the flooring submitted by the tenants.

Analysis

Credibility

Overall, I found the tenant to be a more credible witness than the landlord. I found him to be forthright and consistent in his testimony, providing it in a calm and candid manner. I found that the tenant agreed even if facts were not favourable to his version of events or if he was responsible for a loss such as the two burned out lightbulbs. The tenant was respectful of the landlord and the landlord's agent throughout the hearing. He did not interrupt them when they were speaking, and he did not fight or argue with them when they provided testimony.

Conversely, the landlord provided her testimony in an upset and agitated manner. I find that her evidence was inconsistent, as her testimony changed to fit her version of events. When asked the same questions for clarification, the landlord changed her responses frequently. The landlord interrupted the tenant when he was speaking,

making comments in the background to her agent. The landlord became upset when I asked questions about her claim, stating angry responses to her agent. The landlord frequently interrupted her own agent while he was presenting the landlord's submissions. The landlord's agent had to calm the landlord down multiple times during the hearing because she was upset.

Landlord's Application

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 on a balance of probabilities. In this case, to prove a loss, the landlord must satisfy the following four elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the tenants 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.

I award the landlord $13.82 for two burned out lightbulbs, as the tenant agreed to pay this amount during the hearing.

On a balance of probabilities and for the reasons stated below, I dismiss the remainder of the landlord's monetary application for $7,131.52, without leave to reapply.

I dismiss the landlord's claim for cleaning of $140.00, without leave to reapply. I find that the tenants adequately cleaned the rental unit in accordance with Residential Tenancy Policy Guideline 1. The tenant cleaned the rental unit before vacating on April 18, 2020 and the returned again on May 23, 2020, at the request of the landlord, to complete additional cleaning. The tenants provided photographs of the clean condition of the rental unit when they vacated on April 18, 2020. The landlord had access to the rental unit after that date and showed the unit to multiple prospective tenants and painted it, in an effort to re-rent the unit. I find that the tenants are not responsible to clean the rental unit after the landlord used it for her own purposes with other people coming into the unit. I find that the landlord's photographs do not show that the tenants failed to clean appropriately or that the condition was left in a dirty state. I also note that the landlord failed to provide an invoice for the cleaning done, outlining the number of

hours to clean, the hourly rate per worker, the number of workers employed, and the specific areas cleaned.

I dismiss the landlord's claim for the bathroom marble countertop replacement of $1,202.25 and the plumbing and drywall repairs of $400.00 related to the countertop, without leave to reapply. The landlord has not completed the above work at the rental unit and did not provide any receipts or invoices for the work. There are new occupants living at the rental unit since June 1, 2020, despite this apparent damage. I find that the landlord failed to provide sufficient evidence that she will actually have this work done and how it will be done with the new occupants living at the rental unit. The marble countertop has endured usage by other occupants, both before and after the tenants' tenancy. I find that the landlord failed to provide sufficient evidence that the tenants were the sole cause of the stain on the countertop. I accept the tenant's testimony that the tenants did not leave standing soapy water on the countertop during their tenancy. I find that this stain may have developed over time, from usage by occupants both before and after the tenants.

The landlord provided an email stating that the assessment of the bathroom was done on June 17, 2020 and the quote was issued on June 18, 2020, after the new occupants moved in on June 1, 2020. I find that the landlord did not provide sufficient documentary evidence of the $400.00 verbal estimate received between June 18 and 25, 2020, after the new tenants had already moved into the rental unit on June 1, 2020.

I dismiss the landlord's claim for a microwave replacement for $296.77, without leave to reapply. I find that the tenants bought a new microwave for a higher amount of $332.91, paid for that cost, provided the receipt to the landlord, and took the microwave with them because they purchased it. The landlord did not reimburse the tenants for that cost. This expense is from June 21, 2017, as per the emails provided by the landlord, almost three years prior to the end of this tenancy and the landlord's application. The landlord did not pursue her claim until June 12, 2020, after the tenancy ended. I find that the tenants gave notice to the landlord that the microwave broke down, they asked her to reimburse the cost, she said she would talk to her son, and she did not respond to the tenants, after being given the chance to do so. I find that the landlord is responsible to replace the microwave if it is broken, since it was an appliance provided with the rental unit, as part of the tenants' tenancy. Therefore, I find that this is the landlord's cost to bear.

I dismiss the landlord's claim for laminate flooring replacement of $5,092.50, without leave to reapply. I find that the photographs supplied by both parties show minor bubbling in the flooring, which is difficult to see. I find that this does not constitute damage beyond reasonable wear and tear and that the tenants are not responsible for this cost. I also find that these minor areas do not require a full replacement of the flooring, as the landlord and her emails indicate that it is being replaced because that type of flooring was discontinued.

The landlord has not completed the above work at the rental unit and did not provide any receipts or invoices for the work. There are new occupants living at the rental unit since June 1, 2020, despite this apparent damage. I find that the landlord failed to provide sufficient evidence that she will actually have this work done and how it will be done with the new occupants living at the rental unit. The flooring has endured usage by other occupants, both before and after the tenants' tenancy. I find that the landlord failed to provide sufficient evidence that the tenants were the sole cause of the bubbling in the flooring. I find that this bubbling may have developed over time, from usage by occupants both before and after the tenants.

As the landlord was mainly unsuccessful in her application, except for what the tenants agreed to pay, I find that the landlord is not entitled to recover the $100.00 filing fee from the tenants.

Tenants' Deposits

In accordance with Residential Tenancy Policy Guideline 17, although the tenants did not apply for the return of their deposits, I am required to deal with their return on a landlord's application to retain the deposits.

Section 38 of the *Act* requires the landlord to either return the tenants' deposits or file for dispute resolution for authorization to retain the deposits, within 15 days after the later of the end of a tenancy and the tenants' 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 deposits. However, this provision does not apply if the landlord has obtained the tenants' written authorization to retain all or a portion of the deposits to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenants to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

I find that this tenancy ended on May 31, 2020, as notice was given by the tenants to end it on this date, the rent was paid until this date, the remainder of the keys were returned, and the move-out condition inspection and report occurred on this date. The written forwarding address of both tenants was confirmed on June 8, 2020, by email, which I find was sufficiently received by the landlord, as per section 71(2)(c) of the *Act*. The landlord did not return both deposits to the tenants.

I find that the landlords filed an application for dispute resolution to claim against the deposits on June 12, 2020, which is within 15 days of the end of tenancy on May 31, 2020 and the written forwarding address date of June 8, 2020. Therefore, I find that the tenants are not entitled to double the value of their security deposit of $950.00.

I order the landlord to retain $13.82 for the two burned out lightbulbs from the tenants' security deposit of $950.00, as the tenants agreed to pay this amount. I order the landlord to return the remaining $936.18 from the security deposit to the tenants.

I find that the tenants are entitled to recover double the value of their pet damage deposit of $950.00, totalling $1,900.00. A pet damage deposit can only be used for damage caused by a pet to the residential property. Section 38(7) of the *Act* states that unless the tenants agree otherwise, the landlords are only entitled to use a pet damage deposit for pet damage.

The landlord's agent indicated during the hearing that the laminate flooring damage was from water, which caused bubbling. He did not explain the landlord's allegation in her application evidence that it was from "dog pee," which was the title given by the landlord to the online photographs she uploaded to the RTB website. I find that the landlord did have any valid claims for pet damage and the landlord alleged that the floor damage may have been from dog urine, in an attempt to retain and claim against the tenants' pet damage deposit.

Therefore, the landlord did not have written permission to retain the tenants' pet damage deposit, she did not file a valid application to retain the pet damage deposit for pet damage specifically, and she did not return this $950.00 pet damage deposit to the tenants.

Over the period of this tenancy, no interest is payable on the tenants' deposits. Accordingly, I find that the tenants are entitled to $1,900.00 for their pet damage deposit and $936.18 from their security deposit. I issue a monetary order to the tenants and against the landlords for $2,836.18.

Conclusion

I order the landlords to retain $13.82 from the tenants' security deposit of $950.00.

The remainder of the landlord's application is dismissed without leave to reapply.

I issue a monetary order in the tenants' favour in the amount of $2,836.18 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: August 13, 2020

Residential Tenancy Branch