Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes

Landlord: **MNDL-S, MNDCL-S, FFL**
Tenant; **MNSD, FFT**

Introduction

The words tenant and landlord in this decision have the same meaning as in the *Residential Tenancy Act, (the "Act")* and the singular of these words includes the plural.

This hearing dealt with applications filed by both the landlord and the tenant pursuant the *Residential Tenancy Act.*

The landlords applied for:

- A monetary order for damages caused by the tenant, their guests to the unit, site or property and authorization to withhold a security deposit pursuant to sections 67 and 38;
- An order to be compensated for a monetary loss or other money owed and authorization to withhold a security deposit pursuant to sections 67 and 38; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

The tenants applied for:

- An order for the return of a security deposit or pet damage deposit pursuant to section 38; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

Both parties attended the hearing and both acknowledged receipt of the other's Notice of Dispute Resolution Proceedings packages and evidence. The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Rule 6.11 of the Residential Tenancy Branch Rules of Procedure ("Rules") and that if any recording was made without my authorization, the offending party would be referred

to the RTB Compliance Enforcement Unit for the purpose of an investigation and potential fine under the Act.

Each party was administered an oath to tell the truth and they both confirmed that they were not recording the hearing.

Issue(s) to be Decided

Is the landlord entitled to a monetary order?
If so, can she retain all or part of the tenants' security deposit, or should it be returned to the tenants?
Can either party recover their filing fee?

Background and Evidence

At the commencement of the hearing, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony pursuant to rule 7.4. In accordance with rules 3.6, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The landlord EA gave the following testimony. They are not the owners of the rental unit. The actual owner of the unit is a company, "A". They are tenants who sublet the unit to the sub-tenants named as tenants in this application. For clarity, the original tenants are referred to as the landlords and the sub-tenants are referred to as the tenants in this decision.

The fixed term sublease began on January 1, 2022 and expired on April 20, 2022. The landlord testified that the sublease was extended twice, for May 2022 and June 2022 respectively. The landlord testified she did a "walkthrough" with the tenants at the commencement of the tenancy although she did not sign a condition inspection report with them or provide a copy to them. When I inquired as to why, the landlord stated she took the tenants on "good faith" and doesn't know why she chose not to.

The rental unit was fully furnished with their own old furniture and appliances. The landlords had occupied the unit for the previous 6 to 7 years before subletting to the

tenants. When the tenants moved in, the vacuum was about 3 years old and in functioning order. The office chair was about 2 years old and was in good condition at the beginning of the tenancy. The sectional sofa was about 6 years old and was not damaged, although it had stains according to the landlord.

When the tenants moved out, the landlord claims the unit was dirty and that she was unable to sublet the suite in that state to new tenants. The landlord seeks to recover a month's lost rent at $3,400.00. The landlord also seeks to be compensated for cleaning the unit and for pet hair left from the tenants' cat. The landlord provided an estimate for the cleaning but during the hearing, she could not recall whether they were hired. The landlord did not provide an invoice for the cleaning but did provide one for cleaning the blinds of cat hair.

The tenants gave the following testimony. They accepted this rental as it was across the street from their own house that they were renovating. They signed the lease, sight unseen and only saw the unit on December 7th to determine how their furniture would fit. The landlord met with the tenant at the unit on December 13th but didn't offer a condition inspection report. The keys were dropped off at the tenants' own house on December 30th and no condition inspection report was offered at that time, either.

The tenants didn't look at the landlord's vacuum or use it since they had their own. Nor did they look at the office chair, blinds or couch with the landlord when they moved in. Fortunately, the tenants took photos of the stains on the sofa and ripped fabric already there. Another photo of the office chair was provided. The tenant testified that the landlord's furniture was nowhere near new and was very well worn and used.

The subtenancy was extended twice, as the landlord testified to, however the actual owner of the unit didn't sign off on the extensions dated May 5, 2022. On June 20, 2022, the tenants were sent a copy of a letter from the property manager that the sub-landlord's request to sublet from July 2022 to April 2023 was not approved and the sub-landlords were warned not to continue advertising the unit for sublet.

While their landlord seeks compensation for not being able to rent the unit to new sub-tenants after their subtenancy ended due to not being clean, the tenants argue that their landlord was prohibited from doing so and their landlord knew it.

The tenants testified that not only did the landlord not do a condition inspection report with them at the commencement of the tenancy, she attempted to have them sign one on July 3rd, three days after the tenancy ended. The tenants testified they provided

their forwarding address to the landlord via email on Friday, July 1, 2022 and supplied a copy of the email into evidence.

Analysis

Section 14 of the Residential Tenancy Regulations ("Regs") state:

> the landlord and tenant must complete a condition inspection described in section 23 or 35 of the Act *[condition inspections]* when the rental unit is empty of the tenant's possessions, unless the parties agree on a different time.

Sections 17 and 18 of the Regs indicate it is the landlord's responsibility to schedule the inspections and provide a copy to the tenant.

Section 21 of the Regs state that

> in dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

Both the landlord and the tenant testified a condition inspection report was not completed at the beginning of the tenancy, contrary to Section 14 of the Regs. Sections 17 and 18 of the Regs indicate that this is the landlord's responsibility. In order for the landlord to succeed in proving the tenants damaged the rental unit, the landlord must first prove to me the condition of the rental unit at the commencement of the tenancy, as prescribed in Section 21. Without a condition inspection report signed by the parties acknowledging the pre-existing conditions of the rental unit, the landlord has put herself in a position where she cannot prove, on a balance of probabilities, the existence of the damages caused by the tenant when the tenancy ended. Though her testimony bears some weight, she has not met the burden of proof to show me the difference in condition between move-in and move-out.

The onus to prove the claim falls upon the applicant, in this case the landlord. While the landlord testified the Dyson vacuum was in good working condition at the beginning of the tenancy, the tenants testified they didn't use it as they had their own vacuum. I find that the landlord has not provided sufficient evidence to satisfy me her version of the facts are most likely to be true and I accept the tenants' version that the vacuum was left in the same condition non-working condition as it was at the beginning of the tenancy. I dismiss this portion of the landlord's claim.

In the absence of the condition inspection report, I have turned to the photo of the office chair taken by the tenant on January 1st and compared it to the one taken by the landlord at the end of the tenancy. I find there is damage done to the arms of the chair that was not there at the start of the tenancy that exceeds regular wear and tear for a tenancy lasting 6 months. Although the landlord seeks the replacement cost for a new chair, she is only entitled to the depreciated cost of a used office chair. As the landlord has not produced an invoice to show the value of the original chair, I cannot determine if the actual value and I award a nominal award of **$100.00.**

The photos of the sectional sofa at the beginning of th tenancy clearly indicate it is well worn, stained and ripped. The landlord is obligated to mitigate the losses sought under section 7(2) of the Act and testified they did not try to get the (already stained and ripped) sofa cleaned or repaired. Further, the useful life of a soft furnishing such as a fabric sectional sofa doesn't exceed 10 year according to policy guideline 40 [useful life of building elements] and I find that the sofa was close to the end of its useful life when the tenancy began. I find the depreciated value of the sofa is $0 and the landlord's claim for full replacement value is dismissed.

Section 37(2)(a) states that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

This notion is further elaborated in Residential Tenancy Branch Policy Guideline PG-1 which states:
the tenant must maintain "reasonable health, cleanliness and sanitary standards" throughout the rental unit or site, and property or park. The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard. The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. **The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises), or for cleaning to bring the premises to a higher standard than that set out in the Residential Tenancy *Act* or Manufactured Home Park Tenancy *Act* (the Legislation). (emphasis added)**

The tenant's legal obligation is "reasonably clean" and this standard is less than "perfectly clean" or "impeccably clean" or "thoroughly clean" or "move-in ready". Oftentimes a landlord wishes to turn the rental unit over to a new tenant when it is at this higher level of cleanliness; however, it is not the outgoing tenant's responsibility to

leave it that clean. If a landlord wants to turn over the unit to a new tenant at a very high level of cleanliness that cost is the responsibility of the landlord.

I have reviewed the photos taken by both parties at the end of the tenancy and I find that the tenants have left the unit reasonably clean except for reasonable wear and tear. Despite this, the tenants state in their email dated July 3, 2022 that they would be willing to pay $200.00 towards cleaning and I find this acceptable. The landlord is awarded **$200.00.**

The landlord also seeks the equivalent of a month's rent because she was unable to re-rent the unit for the month of July, 2022. I have considered the letter provided from the owner of the unit prohibiting the sub-landlords from subletting the unit from July 2022 onward. I find that the sub-landlords had no permission to sublet the unit for the month of July and this lack of permission prevents them from seeking compensation from their tenants for not being able to continue subletting to others for that month. If these sub-landlords had obtained new sub-tenants for the unit for the month of July, they would be in breach of their own tenancy agreement and subject to a notice to end tenancy for Cause themselves. Consequently, this portion of the claim is dismissed.

The landlord did not offer the tenants at least 2 opportunities for a condition inspection at the start of the tenancy, contrary to section 23(3) of the Act. The consequences for not complying with section 23(3) is laid out in section 24(2) which states:

> The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord
>
> (a)does not comply with section 23 (3) *[2 opportunities for inspection]*,
>
> (b)having complied with section 23 (3), does not participate on either occasion, or
>
> (c)does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Since the landlord's right to claim against the security deposit was extinguished at the start of the tenancy under section 24(2), the only option for the landlord under section 38(1) was for the landlords to repay it within 15 days of the date the tenancy ends, or the landlord is provided with the tenants' forwarding address. I accept that the tenants provided their forwarding address to the landlord on July 1, 2022 at 9:54 p.m. by email and I deem it received by the landlord 3 days later, on July 4, 2022.

Since the only available option was to repay the security deposit and they did not do so, I find the landlords did not comply with section 38(1) and in accordance with section

38(6), the landlords must pay the tenants double the amount of the security deposit. [$1,500.00 x 2 = $3,000.00].

As the landlord's claim was not successful and the tenants was, the tenants are entitled to recover the filing fee of $100.00. The landlord's application to recover the filing fee is dismissed.

Item	Amount
tenant's security deposit (doubled)	$3,000.00
Filing fee	$100.00
Office chair – depreciated replacement value	($100.00)
Cleaning	($200.00)
TOTAL	$2,800.00

Conclusion

I issue a monetary order in favour of the tenants in the amount of $2,800.00.

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: April 05, 2023

Residential Tenancy Branch