Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

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

Introduction

This hearing dealt with the adjourned Application for Dispute Resolution by the Landlord filed under the *Residential Tenancy Act* (the "*Act*") for a monetary order for unpaid rent or utilities, for a monetary order for damages, permission to retain the security deposit and an order to recover the cost of filing the application. The matter was set for a conference call.

Both the Landlords (the "Landlord") and both the Tenants (the "Tenant") attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and the Tenant were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The Landlord and the Tenant testified that they received each other's documentary evidence that I have before me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Is the Landlord entitled to monetary order for unpaid rent and utilities?
- Is the Landlord entitled to monetary order for damage?
- Is the Landlord entitled to retain the security deposit for this tenancy?
- Is the Landlord entitled to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The parties agreed that the tenancy began on March 1, 2014, that rent had been $1,000.00 per month plus a $175.00 monthly utility payment, and that a $500.00 security deposit had been collected by the Landlord for this tenancy. The Landlord testified that they continue to hold the $500.00 security deposit pending the results of these proceedings. The Landlord and Tenants agreed that the tenancy agreement was not signed for this tenancy. The Landlord submitted a copy of the unsigned tenancy agreement into documentary evidence.

The parties also agreed that there had been a previous hearing with the Residential Tenancy Branch (RTB) for this tenancy which cancelled two notices to end tenancy that had been issued by the Landlord. The parties agreed that during that hearing the Tenant had agreed that they would issue notice to end their tenancy as soon as they secured a new place to rent, as the Landlord had received a notification from the municipal authority that the rental unit was not up to code. The Landlord agreed that they needed this tenancy to end so they could make repairs and renovations to the rental unit to bring it up to municipal code. The file number for the previous hearing is recorded on the style of cause page for this decision.

The Landlord testified that the house was built in 1980 and that the basement unit was refurbished in 2012.

The parties agreed that the Tenant issued notice to the Landlord, by text message sent on June 13, 2022, that they had found a place and would be moving out as of June 30, 2022. The parties agreed that the Tenant moved out of the rental unit, returning the rental possession of the rental unit to the Landlord on June 30, 2022.

Both parties agreed that the move-out inspection was completed for this tenancy; however, the Tenants did not agree with what the Landlord was saying during that inspection. The parties agreed that the Landlord did not have the move-out inspection document with them during this inspection. The Tenants submitted 40 pictures of the rental unit, date stamped June 30, 2022, and a video of the rental unit that the Tenants stated had been made in January 2022, into documentary evidence. The Landlord submitted the move-out inspection document, which they agreed was filled out without

the Tenants present, and 46 pages of scanned pictures that the Landlord stated were taken after the tenancy ended with handwritten comments into documentary evidence.

The Tenants submitted that the Landlord's photos do not represent the rental unit at the end of the tenancy.

The Landlord testified that they are claiming for $1,000.00 in lost rental income for July 2022, due to the Tenant's short notice to end the tenancy.

The Tenant submitted that there can be no lost rental income as the Landlord could not rent the rental unit out for July 2022, as the Landlord had been ordered by the city to bring the unit up to municipal code. The Tenant submitted that the Landlord did not seek to find a new renter for July 2022, as they used that month to renovate and repair the rental unit.

The Landlord agreed that they did not attempt to find a new renter for the rental unit for July 2022, as they had to make repairs to the rental unit as ordered by the local municipal authority.

The Landlord testified that they are seeking to recover a $26.03 fortis electric bill over usage of the Tenants between June 11, to June 30, 202. The Landlord submitted that the tenancy agreement requires the Tenants to pay an additional charge when their utility usage is more than the normal amount. The Landlord reference the unsigned tenancy agreement already in evidence and submitted bills into documentary evidence.

The Tenants submitted that they pay a monthly utility charge of $175.00 and that they are not responsible for this extra usage charge, as there is no evidence, they used more than the normal monthly amount.

The Landlord testified that they are seeking to recover their costs to replace the front door of the rental unit at the end of the tenancy, in the amount of $1,527.75. The Landlord submitted that the door was damaged by the Tenant during the tenancy and that it could not be repaired so they had to buy a new door. The Landlord reference the pictures already submitted evidence and submitted a copy of a quote for repairs into documentary evidence

The Tenants submitted that the door was very old and needed to be replaced due to age. The Tenants testified that their dog did damage the door back in May 2014, that they repaired that damage when it happened and that the repair has held up for eight

years. The Tenants submit that they should not be responsible to buy the Landlord a new door.

The Landlord testified that the door was installed in either 1981 or 1982, making it about 42 years old at the end of the tenancy.

The Landlord is claiming for the recovery of costs in the amount of $1,924.57, consisting of $1,316.63 for the purchase and installation of new carpet throughout the rental unit, $ 426.94 for an acid wash to the bathroom shower area, $181.00 in plumber costs to install a new toilet, as well as $215.72 for the purchase of a new toilet. The Landlord submitted that the carpets and the toilet in the rental unit were so dirty at the end of the tenancy that was cheaper to have new carpet and a new toilet installed than it would be to have them cleaned. The Landlord also submitted that the shower had not been cleaned properly for years and an “acid wash” cleaning was required at the end of this tenancy to get the shower properly cleaned. The Landlord reference their pictures already submitted evidence and submitted copies of two quotes into documentary evidence.

The Tenants testified that they cleaned the bathroom at the end of the tenancy and that they should not be responsible for extra cleaning as the place was reasonably clean. The Tenants submitted that the rental unit has hard water, that the cleaning required in the shower was for the removal of hard water states, and that they should not be responsible for this extra cleaning. The Tenants submitted that the toilet was clean and that the stains in the toilet are also from hard water billed up and that this was a result of the Landlord's refusal to put in a water softener, and that the toilet worked fine, there was no need to have it replaced. The Tenants reference their pictures already submitted into documentary evidence.

The Tenants also submitted that the Landlord is an employee of the company listed on this quote for $1,924.57 and that the Landlord wrote up this quote themselves and that the costs claimed for on this quote are not true.

The Landlord agreed that the work for the company listed on the quote for $1,924.57, but that as an employee they would be able to get the needed repairs completed as a savings to the Tenants.

The Landlord submitted that 10 hours of additional cleaning was required at the end of the tenancy. The Landlord reference their pictures already submitted evidence and submitted a copy of a cleaning bill into documentary evidence.

The Tenants submitted that they returned the rental unit clean to the Landlord, and they agreed that it was not at a "white glove" inspection standard but that the *Act* does not require them to meet that standard, and they should not have to pay for the additional cleaning requested by the Landlord.

The Tenant wrote in their written submissions that the Landlord's expectations are unreasonable, as they are expecting a brand-new rental unit returned to them after an eight-year and four-month tenancy. The Tenants submit that they are not responsible for the Landlord's unrealistic expectations, they returned the rental unit to the Landlord with all damage repaired, with only normal wear and tear and reasonably clean.

Analysis

Based on the testimony, the documentary evidence before me, and on a balance of probabilities, I find as follows:

In this case, the Landlord is claiming for several items totalling $4,600.00 in compensation for damages and losses due to this tenancy. Awards for compensation due to damage are provided for under sections 7 and 67 of the *Act.* A party that makes an application for monetary compensation against another party has the burden to prove their claim. The Residential Tenancy Policy Guideline #16 Compensation for Damage or Loss provides guidance on how an applicant must prove their claim. The policy guide states the following:

> "The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To determine whether compensation is due, the arbitrator may determine whether:
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> - A party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
> - Loss or damage has resulted from this non-compliance;
> - The party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
> - The party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

In order to be awarded compensation an applicant must first prove that there has been a breach of the *Act* by the Respondent, in this case, that would be the Landlord who needs to prove that the Tenants breached the *Act* during this tenancy.

The Landlord has requested compensation to recover their lost rental income in the amount of $1,000.00 for July 2022.

I accept the agreed-upon testimony of these parties Tenants issued notice to the Landlord on June 13, 2022, that they would be moving out as of June 30, 2022. Section 45 of the *Act* states the following regarding how a tenant can end their tenancy:

> ***Tenant's notice***
> *45 (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that*
> *(a) is not earlier than one month after the date the landlord receives the notice, and*
> *(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.*

Based on the date the Tenants issued their notice to end their tenancy, I find that the tenancy could not have ended in accordance with the *Act* until July 31, 2022. I find that the Tenants failed to comply with the *Act* when they issued short notice to the Landlord to end the tenancy as of June 30, 2022.

I find that the Tenants' breach of section 45 of the *Act* could have resulted in a loss of rental income to the Landlord; however, I also accept the agreed-upon testimony of these parties that the Landlord needed this tenancy to end so they could complete renovations and repairs to the rental unit in order to comply with a government order. Additionally, I also accept the Landlord's testimony that after they received the Tenants' notice to end their tenancy that they made no attempts to secure a new renter for the rental unit for July 2022.

Accordingly, I find that the Landlord fails on two points for this portion of their claim, the first, is that there was no lost income for July 2022 as the Landlord could not have legally rented the unit out to anyone until the government-ordered repairs were completed. Second, I find that the Landlord did not act reasonably to minimize their losses due to the Tenant's breach, when they made no attempt to try and re-rent the

rental unit for July 2022. For these reasons, I dismiss the Landlord's claim for the recovery of the loss of rental income for the month of July 2022.

The Landlord has also claimed for $26.03 to recover their costs for over usage of utilities, by the Tenants, between June 11 to 30, 2022. I accept the testimony of these parties that they had contracted to a monthly utility charge of $175.00 for this tenancy, and that the Tenants had paid this charge for June 2022. During the hearing, the parties to this dispute provided conflicting verbal testimony regarding the over usage of utilities by the Tenant, in June 2022. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim, in this case, that is the Landlord.

I have reviewed the Landlord's evidence submission and I find that there is insufficient evidence before me to show that there was an over usage of utilities by the Tenant, in June 2022. In the absence of sufficient evidence, I find that I must dismiss this portion of the Landlord's claim.

The Landlord has requested compensation to recover their costs, in the amount of $1,527.75, for replacing the front door of the rental unit due to damage caused by the Tenants. I accept the testimony of the Tenants their dog did damage the front door of the rental unit during their tenancy, and that they did repair that damage in 2014 when it occurred. I also accept the agreed upon testimony of these parties that the damage to the door had been replaced with a patch and not a full repair.

In order to determine if the Tenants breached the *Act* when they did not fully repair the front door of the rental unit at the end of the tenancy. The Residential Tenancy policy guideline #1 states:

> "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)2, 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)."

The policy guide states that the Tenant must pay to repair all damage caused, either deliberately or as a result of neglect. I have received the documentary evidence submitted by these parties, and I find that there is an excessive amount of damage still

visible to the front door of the rental unit. Section 32(3) of the *Act* set out the obligation for a tenant to repair damage to the rental unit.

> **Landlord and tenant obligations to repair and maintain**
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> **32** (3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

I find that the Tenants breached section 32(3) of the *Act* when they returned the rental unit to the Landlord with a damaged front door.

I also accept the Landlord's testimony that they paid $1,527.75 to have the front door replaced. In determining the suitable award, I must refer to the Residential Tenancy Branch guideline # 40 Useful Life of Building Elements. The guideline sets the useful life of doors at ten years.

I accept the testimony of the Landlord that the front door of the rental unit was over 40 years old at the end of this tenancy. Therefore, I find that the front door of the rental unit was well past its life expectancy at the end of this tenancy. Accordingly, I find that the Landlord is not entitled to recover their costs for a new door to the rental unit.

Finally, the Landlord has claimed for $2,589.79; consisting of $1,924.57 for new carpet, an acid wash in the bathroom and plumbing and installation costs, $215.22 for a new toilet, and $450.00 in additional cleaning costs at the end of this tenancy.

The Landlord submitted that the carpets, and toilet were so dirty at the end of the tenancy that it was just cheaper to replace them than to try and clean them, and that the shower required a special acid wash to get the dirt off. The Tenants submitted that the carpets were in good condition, and at most needed a steam cleaning, that the toilet had been cleaned but that there was hard water stains in the toilet and shower that they could not remove.

As stated above, in cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim, in this case, that is the Landlord.

An Arbitrator normally looks to the move-in/move-out inspection report (the "inspection report") as the official document that represents the condition of the rental unit at the

beginning and the end of a tenancy; as it is required that this document is completed in the presence of both parties and is seen as a reliable account of the condition of the rental unit. However, as these parties agreed that this document was not completed by the Landlord in the presence of the Tenants, I am unable to rely upon it in these proceedings.

I have reviewed the picture evidence submitted by both parties, and I find that pictures submitted by the Landlord when compared to the Tenants pictures depict a two very different condition of the rental unit at the end of the tenancy. After reviewing both sets of pictures, I find that the evidentiary value of the Tenants pictures outweighs that of the Landlord's pictures as the Tenants pictures contain the digital date stamp of June 30, 2022, the date that this tenancy ended and the Landlord's picture evidence has no date reference, so I am unable to determine when these pictures were taken.

After reviewing the Tenants' picture evidence, I find that the Tenants returned the rental unit in a reasonably clean state at the end of the tenancy. Section 37(2) of the *Act* states the following regarding cleaning at the end of the tenancy:

> ***Leaving the rental unit at the end of a tenancy***
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> ***37*** *(2) When a tenant vacates a rental unit, the tenant must*
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> *(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and*
>
> *(b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.*

Section 37 (2a) of the *Act* requires a tenant to return a rental unit to a landlord at the end of tenancy "*reasonably clean*", as it has already been determined that the Tenants returned the rental unit was reasonably clean at the end of tenancy, I must find that there has not been a breach of section 37 of the *Act* by the Tenants.

Additionally, as stated above, a party that suffers a loss must show that they acted reasonably to minimize that loss, I find that the Landlord did not act reasonably when they made no attempt to clean the carpets and toilet before replacing them.

For the reasons stated above, I dismiss the Landlord's claim to $2,589.79; consisting of $1,924.57 for new carpet, an acid wash in the bathroom and installation costs, $215.22 for a new toilet, and $450.00 in additional cleaning costs at the end of this tenancy in their entirety.

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord has not been successful in their application, I find that the Landlord is not entitled to recover the $100.00 filing fee paid for this application.

I order the Landlord to return the security deposit that they are holding, in the amount of $500.00, for this tenancy to the Tenants within 15 days of the date of this decision.

If the Landlord fails to return the security deposit to the Tenants as ordered, the Tenants may file for a hearing with this office to recover their security deposit for this tenancy. **The Tenants are also granted leave to apply for the doubling provision pursuant to section 38(6b) of the *Act* if an application to recover their remaining security deposit is required.**

Conclusion

I order the Landlord to return the security deposit to the Tenants within 15 days of the date of this decision.

If the Landlord does not comply as ordered above, I grant permission to the Tenants to file for the recovery, of double the value of their original deposit, pursuant to section 38 of the *Act.*

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: May 17, 2023

Residential Tenancy Branch