Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding University Property Management Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, RPP, OLC, MNR, MND, MNDC, FF

Introduction

This hearing was reconvened in response to an application by the Tenants and an application by the Landlord as set out in the Interim Decision, dated May 1, 2015. The Tenants and Landlord continued under oath to be heard, to present evidence and to make submissions.

Preliminary Matters

The Landlord states that the application for dispute resolution and evidence packages were not served on Landlord SK and asks that the claims against Landlord SK be dismissed. The Landlord confirms that Landlord SK lives with Landlord MK as his wife. The Landlord states that Landlord MK was only acting for the corporate Landlord in the capacity of caretaker and should also be removed as a named party to the dispute. The Landlord states that the claim against the corporate Landlord should be dismissed as nothing was ever served to them.

The Tenant states that Landlord SK was the person who handled the initial viewing of the unit and the renting of the unit. The Tenant states that Landlord SK also signed the first tenancy agreement. The Tenant states that the application and notice of hearing was sent to the resident where both Landlord MK and SK live and that a separate evidence package was sent by registered mail to Landlord SK. The Tenant provided the tracking number and states that the tracing number indicates that Landlord SK did not collect the mail.

The Act defines “landlord” as including the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,

- permits occupation of the rental unit under a tenancy agreement, or
- exercises powers and performs duties under this Act, the tenancy agreement or a service agreement.

It is clear that Landlord MK, appearing at this hearing, is acting as agent for the corporate Landlord. I also accept the Tenants' credible evidence that Landlord MK has acted in a capacity greater than that of a caretaker on behalf of the corporate Landlord in relation to the tenancy. As such, I find that Landlord MK is rightfully named as a party to the dispute. Further, I accept the Tenants' evidence that Landlord SK acted at least at the outset of the tenancy as an agent in carrying out duties on behalf of the Landlord and is therefore also rightly named as a party to the dispute.

Section 71 of the Act provides that a document not served in accordance with section 88 or 89 may be found to be sufficiently given or served for purposes of this Act. Given that Landlord SK lives with Landlord MK I find that the application, notice of hearing documents and evidence packages were sufficiently served on Landlord SK. I therefore decline to dismiss the Tenant's application against Landlord SK.

The Interim Decision dated June 22, 2015 dealt with the issue of the corporate Landlord and I noted that this Decision set out the agreement of the Parties to add the corporate Landlord as a Respondent to the Tenants' application. Given that this agreement was set out in the interim Decision, I find that the matter was resolved and is final and binding on the Parties. I decline to now remove the corporate Landlord.

The Landlord states that the Tenants submitted evidence that was clearly marked "without prejudice" and should not have been submitted as evidence to be relied upon. The Landlord asks that this evidence be removed from consideration.

Section 75 of the Act provides that any evidence that is necessary and appropriate and relevant to the proceedings may be admitted whether or not it would be admissible under the laws of evidence. Regardless of the labelling of the evidence as "without prejudice" given this section of the Act I find that I may consider this evidence if it is relevant, necessary and appropriate. Where I rely on or consider this particular piece of evidence in making any determinations or findings I will note this in the analysis below.

During the proceedings a witness for the Landlord joined the conference call. The Witness stated that it was asked to attend to provide evidence was in relation to its invoice for work done at the unit. It is noted that the evidence in relation to the Landlord's invoice and the Tenant's challenge of that invoice was heard during the 3rd adjourned hearing on August 25, 2015. It is also noted that the 3rd Interim Decision Dated August 25, 2015 barred the Parties from submitting any further documentary evidence to support their claims. The Tenant objected to the Witness evidence being heard without any prior notice of its attendance at this hearing.

Rule 3.19 provides that no additional evidence may be submitted after the dispute resolution hearing starts, except as directed by the Arbitrator. Given that the matter of the invoice was dealt with in the earlier proceedings after which no further documentary evidence was allowed, considering that this Witness evidence may be seen as similar to documentary evidence, considering that the Landlord made no mention of witness evidence at any of the earlier proceedings, and considering the objective of timeliness and efficiency in the face of the excessive length to date of the hearing, I declined consideration of the Witness evidence.

Issue(s) to be Decided

Are the Tenants entitled to the monetary amounts claimed?
Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The following are agreed facts: The tenancy started on September 1, 2013 and ended on August 28, 2014. Rent of $7,500.00 was payable monthly on the first day of each month. At the outset of the tenancy the Landlord collected $3,750.00 as a security deposit. The Parties mutually conducted a move-in inspection and completed a condition report. The Landlord received the Tenant's forwarding address by email on September 10, 2014 and again, in person, on September 17, 2014.

The Landlord states that two offers for a move-out inspection were given to the Tenants. The Landlord states that the first offer was made for the day of move-out on August 28, 2014 however at the scheduled time the Tenants were not ready so the Landlord made a 2nd offer for later in the day at 4:00 pm. The Landlord states that they attended the unit at this time but the

Tenants were still not ready. The Landlord states that no other offer was made to the Tenants and the Landlord completed the move-in inspection on August 29, 2014 in the early morning hours. The Landlord states that new tenants were lined up for September 1, 2014 and there was little time as the Landlord was busy carrying out inspections on other rental units throughout the evening of August 28, 2014. The Parties agree that the Landlord provided the Tenants with a copy of the move-out inspection on September 24, 2014.

The Tenants agree that at the first inspection time the Tenants were not ready. The Tenants state that the Landlord returned at 4:00 p.m. and the Tenants were nearly completed with their move-out and were prepared to carry out the inspection however the Landlord refused to carry it out then and served the Tenants with a final notice of inspection for 4:15 p.m. The Tenants states that they were nearly completed at the 4 pm time and that by 4:45 the move-out was completed. The Tenant states that they both messaged and called the Landlord to return and that the Tenants waited most of the evening for the Landlord. The Tenant states that a verbal agreement was made with the Landlord to complete the inspection late August 28 or early August 29, 2014. The Tenants state that they waited all night for the Landlord but there was no show.

The Parties agree that in setting off the amounts claimed by each other for all utilities the Tenants owe the Landlord $649.17 for unpaid utilities and the Landlord owes nothing to the Tenant for unpaid utilities. The Landlord also agrees that $350.00 is owed to the Tenants for an overpayment of rent.

The Tenant states that a few of the Tenants met with the Landlord on July 31, 2014 in relation to the Landlord's concerns of flood damage and agreed to pay an additional $100.00 from each Tenant to increase the security deposit. The Tenant states that only 4 of the Tenants paid this amount. The Tenant claims return of the total amount of $414.50 that was transferred to the Landlord for extra damage deposit.

The Tenant provided two images of the tenants Facebook discussion of the payments. The Landlord states that he never received any additional amount in August 2014 and that only the rental amount was received. The Landlord states that if one of the Tenants sent more then

another Tenant would deduct that amount from their share. The Landlord states that if the Tenants had paid an extra amount they should have provided this accounting.

The Landlord states that the Tenants failed to leave the unit clean and claims $984.12. The Landlord states that only a small portion of the unit was cleaned and that the unit is approximately 3,000 square feet with 10 bedrooms and 8 bathrooms. The Landlord provided photos of the unit that was taken at the time of the inspection. The Tenants state that the unit was entirely cleaned. The Tenant provided photos of the unit taken at the time of their move-out on August 28, 2014. The Tenant states that the entire unit including all the appliances was cleaned by the Tenants at move-out.

The Landlord states that the Tenants left several walls damaged with scrapes, marks and holes. The Landlord states that the holes were patched and sanded. The Landlord states that the unit was last painted in August 2012 and that where possible the marks on the walls were spot painted but in other places the whole wall required painting. The Landlord claims $314.57 for the patching and $1,941.12 for the painting costs. The Tenant agrees that there was some wall damage but that the amounts being claimed by the Landlord is excessive.

The Landlord states that the Tenants left behind bags of garbage, broken furniture and other items. The Landlord pointed to photos 77, 78, 79, 88 and 92. The Landlord claims to costs of the removal in the amount of $163.14. The Tenant states that no garbage was left behind and points to their photos.

The Landlord states that the carpets in all of the 10 bedrooms, 2 hallways and 1 living room were not cleaned by the Tenant at move-out. The Landlord claims $683.20. The Tenant states that they did have the carpets cleaned professionally and that this was done on August 15, 2015. The Tenants submit their invoice showing the cost of $332.31. The Tenant states that the invoice notes the heavier soiled areas that were cleaned. The Landlord states that given the number of room with carpets the Tenants' invoice is not realistic. Further the Landlord argues that if the carpets were cleaned they should have been cleaned after the Tenants removed all their belongings from the unit and not before.

The Landlord states that in the summer 2014 a flood occurred in the unit caused by the dishwasher drain being plugged by the Tenant with plastic and other items. The Landlord states that they were not told about anything until 2 days after the flood. The Landlord states that the dishwasher was repaired by the Landlord himself. The Landlord states that as a result of the flood areas of the carpets and underlay near 3 rooms off the kitchen were damaged and required repair and replacement. The Landlord claims $261.14 for partial carpet repair on one room and $3,747.79 for remaining replacement of the affected carpet in all three. The Landlord states that there were also areas of burn marks that were replaced. The Landlord points to the Tenant's carpet invoice that notes that areas were heavily soiled and that stains may remain. The Landlord also points to the Tenant's evidence in relation to the claimed overpayment of the security deposit in August 2014 that shows the Tenants assumed responsibility for the carpet damage. The Tenant states that they took photos of the carpets the day of their move-out and that these photos show no damage and no basis for the repair or replacement of the carpets. The Tenant states that some minor damage may have been caused by the Tenants but not to the extent claimed by the Landlord. The Tenant states that there was no reason to replace the carpets and the Landlord's claim is absurd.

The Landlord states that the Tenants cracked a fridge shelf, broke the fridge ice maker and left the fridge with a missing drawer. The Landlord states that the fridge was new in 2010, partially stainless steel and likely cost around $1,000.00. The Landlord claims $184.52 for the cost of the parts. The Landlord states that the Tenants also dented the outside of the fridge and claims $95.00 for loss in the aesthetic value of the fridge. The Landlord states that the condition report at move-in shows a missing shelf. The Tenant states that nothing occurred during the tenancy that he was aware but that these damages could have happened.

The Landlord states that the Tenant left a burn mark on the counter by the stove. The Landlord states that the arborite was replaced over the damaged area and claims the cost of $185.00. The Tenant states that no burns were left on the counter, that the Landlord has no photos of a burn and that the Tenant photos of the counters, although at a distance, do not show any burns.

The Landlord states that the Tenants left the dryer filled with lint and that the lint had gone into the exhaust. The Landlord states that the drum was opened and vacuumed and claims the cost of $93.00. The Tenant states that they had a visit by a fire inspector during the tenancy and

were informed about the dangers of not removing lint and that they had a bag beside the dryer to catch the lint. The Tenant states that they did not cause any lint to be in the dryer exhaust.

The Landlord states that the Tenants left the unit with 1 cracked toilet seat and 2 cracked toilet seat connectors. The Landlord estimates that they would have cost $35.00 brand new. The Landlord claims $58.00. The Tenant sates that the toilet seats were cheap and susceptible to wear and tear and that most of them did not fit the toilets properly.

The Landlord states that the Tenants damaged 2 smoke and CO detectors by disconnecting them and that when they are plugged back in the clip breaks due to its flimsy nature. The wires on one of the detectors were also damaged. The Landlord claims $90.00. The Tenant states that within the first month of the tenancy the detectors would malfunction frequently and that there were problems with the CO detector going off. The Tenant states that the fire department was called and that while the Landlord was present the fire department informed them that the alarms were malfunctioning and one alarm was disconnected by the department. The Tenant states that they did not push the Landlord to replace them.

The Landlord states that the Tenants left a glass mirror with a chip and that the mirror was replaced for $10.00. The Landlord claims this amount. The Tenant states that there is no mention of this damage in the Landlord's own report.

The Landlord states that the Tenants left a burn on the main bathroom countertop. The Landlord states that the Formica in the area was cut out and replaced. The Landlord claims $90.00 for the costs of materials and labour. The Tenant states that no burn mark was left and that the Landlord did not provide any photos of any burns in the bathroom. The Tenant points to one of their photos that the Tenant believes belong to the same bathroom and states that it shows no burn.

The Landlord states that the Tenants left a tile cracked in the basement bathroom #3. The Landlord claims $40.00 for the costs to replace the tile. The Tenant states that they did not cause any tiles to crack, that the Landlord provided no photo of a cracked tile and if a tile had been cracked the Tenants would have dealt with it.

The Landlord states that the Tenants broke a closet track likely by closing it with too much force and that the Tenants removed and stored the doors without telling the Landlord. The Landlord states that a new track was installed and claims the cost of $35.00. The Tenant states that a lot of things did not function during the tenancy and that any damage to the track was not caused by the Tenants. The Tenant notes that this damage was not noted in the Landlord's own move-out condition report.

The Tenant states that the invoice provided by the Landlord for the damages being claimed to the unit does not indicate any business that is operating at the stated address or that answers the calls to the stated phone number. The Tenant states that they also attended the business address and neither the building manager located at the address or the persons in the building have any knowledge of the company named on the invoice. The Landlord states that they just used someone from craigslist in order to reduce costs and had no idea about the company itself. The Landlord states that the company was paid by bank draft and the Landlord provided a copy of this bank draft as evidence. The Landlord states that the company would only accept guaranteed payment like a certified cheque and a bank draft was provided instead.

The Landlord states that section 10 of the tenancy agreement provides that when a guest remains for a period in excess of two days that this person will be deemed a permanent occupant and an additional amount of $200.00 per month then becomes payable. The Landlord states that one of the Tenants' girlfriends lived at the unit from September 2013 to April 2014 inclusive and claims $1,600.00. The Tenant states that his girlfriend did not live at the unit as she had her own residence and that they are still are not living together.

The Landlord states that on September 22, 2014 a person "AHM" who is not named on the tenancy agreement but became a tenant signed an agreement allowing the Landlord to retain the full security deposit for damages to the unit and resolving all claims that may have been had by the Tenants. The Landlord provided a copy of that agreement. The Landlord states that his agreement defeats the Tenants claim for return of the security deposit.

The Tenant states that AHM had no authority to sign any agreement on behalf of the other Tenants. The Tenant states that AHM was a sublet who paid rent to the Tenants. The Tenant states that AHM thought the agreement was only in relation to AHM and that AHM did not know

or speak much English at the time. The Tenant states that AHM never asked or informed the other Tenants that he was signing on their behalf. The Tenant states that they never would have signed any such agreement as they were determined to stand up to what they believe was bullying by the Landlord.

Analysis

Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party, that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed, and that costs for the damage or loss have been incurred or established.

Based on the agreed facts that the Landlord owes the Tenants **$350.00** for an overpayment of rent I find that the Tenants have substantiated its claim to this amount.

Based on the agreed facts that the Tenants owe the Landlord **$649.17** for unpaid utilities I find that the Landlord has substantiated its claim to this amount.

Based on the Tenant's supporting evidence of payments to the Landlord along with the August 2014 rent I find that the Tenants did overpay the security deposit and as a Landlord may not accept more than a half month's rent for a security deposit I find that the Tenants are entitled to the return of **$414.50**.

I do not consider the business address of a company to be definitive of whether the Landlord has substantiated the costs claimed. Given the Landlord's evidence of money order payment to a third party for costs to repair as indicated in the invoice by the third party, I accept that the Landlord paid for repairs it is claiming against the Tenant.

I have reviewed the photos of both Parties and note that the Tenants' photos show a reasonably clean unit with a few minor items left behind. The Landlord's photos are generally all close-ups of minor to insignificant clean ups. The Landlord photos of the kitchen sink and dishes appear

more to be photos taken during a repair of a backup and does not at all resemble anything like the Tenant photos which I accept were taken at the time of move-out. As a result I find that the Landlord has only substantiated a nominal sum of **$100.00** for the minor cleaning tasks left incomplete.

Given the Landlord's photos of wall damage and considering the Tenants' photos show few to no walls, I find that the Landlord has substantiated on a balance of probabilities that the Tenants left the walls damaged to the extent claimed. Considering that the Tenant provided no evidence to support that the amount claimed was excessive for the areas, I find that the Landlord has substantiated the costs claimed for painting and repairing the walls in the amount of **$314.57** and **$1,941.12**.

Given the photos of the fridge, I find that the Landlord has substantiated that the Tenants caused the loss claimed of **$184.52** for the parts. I also accept that the Landlord has substantiated a reasonable loss of **$95.00** for the loss in aesthetic value of the fridge.

I accept the Tenant's persuasive evidence of collecting lint from the dryer and considering that the photos provided by the Landlord do not show large buildup of lint or anything beyond a need for regular servicing of the dryer I find that the Landlord has not substantiated that anything done by the Tenant caused the Landlord to remove the drum and clean the dryer. I therefore dismiss this claim.

Given the evidence of the original cost of the toilet seats, I consider that any damage that occurred during the tenancy was a result of normal wear and tear and I dismiss the claim for costs to replace the toilet seats.

Given the Tenant's undisputed evidence in relation to the fire department and malfunctioning alarms and detectors I find that the Landlord has not shown that the Tenants caused the alarms and detectors to be damaged and I dismiss the claim for their replacement costs.

I find the Landlord's evidence of a chip to a $10.00 mirror to be evidence only of normal wear and tear and I dismiss this claim.

Considering that the Landlord did not provide a photo of the damage claimed to the bathroom countertop and considering the Tenant's photo evidence I find that the Landlord has not substantiated that the Tenants caused damage to the bathroom countertop and I dismiss the claim for its repair.

Given the lack of a photo showing a cracked tile, considering that the disputed move-out condition report is of little assistance, I find that the Landlord has not provided sufficient evidence to substantiate the damage claimed and I dismiss the claim for $40.00.

Given the lack of any indication on the move-out report, I find that the Landlord has not substantiated that the Tenants caused the damage claimed to the closet door track and I dismiss the claim for $35.00.

The Landlord's photos do not show anything left behind other than a few small items and a couple of empty boxes. These items appear to easily fit in a waste disposal or recycling bin. I find therefore that the Landlord has not substantiated the costs claimed for garbage removal and I dismiss this claim.

Although I can accept the Tenants did clean some of the carpets, the Tenant photos also show carpets with significant stains or dirt. Given the size of the rental unit and the amount of carpeted areas that are shown to be stained just in the Tenant photos, I find that the Landlord's claim for costs is credible and that the Landlord is entitled to **$683.20** for carpet cleaning.

Considering the evidence of both the Tenants and the Landlord I accept that the Tenants caused a flood through improper use of the dishwasher. Given the Landlord's invoice evidence in relation to the repairs to the carpet I accept that the Landlord had to replace carpet as claimed and I find that the Landlord is therefore entitled to **$261.14** and **$3,747.79** as claimed.

Given that the Landlord provided no photo evidence of burns to the counter I find that the Landlord has failed to substantiate that the Tenants caused the damages claimed and I dismiss this claim.

Section 5 of the Act provides that landlords and tenants may not avoid or contract out of this Act or the regulations and that any attempt to avoid or contract out of this Act or the regulations is of no effect. Section 12 of the Act provides that standard terms are terms of every tenancy agreement. Section 13 of the Regulations provides that the standard terms are those set out in the schedule. Paragraph 9 of the standard terms deals with occupants and guests and provides as follows:

- The landlord must not stop the tenant from having guests under reasonable circumstances in the rental unit; and
- The landlord must not impose restrictions on guests and must not require or accept any extra charge for daytime visits or overnight accommodation of guests.

The tenancy agreement sets a limit of two days on guests and after this the Tenants are charged. I find this term to be both unconscionable and contrary to the requirement of "reasonableness" in the restriction of guests. As a result and regardless of whether the girlfriend was a guest or an occupant, I find that this term of the tenancy agreement is contrary to the Act and regulations and is of no effect. As the term is of no effect, the Landlord has no basis to claim the $200.00 per month and I dismiss this claim.

Section 35(1) of the Act provides that a landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit

(a) on or after the day the tenant ceases to occupy the rental unit, or

(b) on another mutually agreed day.

Section 35(2) that the landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection. Section 36(2) of the Act provides that the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord does not make at least two offers for a move-out inspection.

I accept the undisputed evidence that the Tenants were prepared to carry out a move out inspection when the Landlord appeared at the second scheduled time, either 4:00 or 4:15 p.m. I note that the Landlord's oral evidence on this timing conflicts with the Landlord's documentary

evidence set out on page one as “speaking notes” leading me to consider that either time was the “second” offer.

I also accept that the Landlord was not prepared to carry out the inspection at this time perhaps because the Tenants were not fully moved out. However this is not a basis for not carrying out an inspection and I consider that by refusing to conduct the inspection as offered the Landlord negated the offer for either 4:00 or 4:15 p.m. This would reasonably require the Landlord to make another offer, which according the Landlord’s evidence was not provided. As such, I find that the Landlord failed to make at least two offers for a move-out inspection and that the Landlord’s right to claim against the security deposit was extinguished at move-out.

Section 38(4) of the Act provides that a landlord may retain an amount from a security deposit or a pet damage deposit if, at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant. Given that AHM was not named as a Tenant on the tenancy agreement and considering there is no evidence to support that AHM had the authority to sign on behalf of the other Tenants, I find that the Landlord has not substantiated that the Tenant’s provided their agreement for the Landlord to retain the security deposit. Similarly, I find that AHM cannot act on behalf of the other Tenants to stop their pursuit of claims against the Landlord.

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant’s forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a Landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. As the Landlord’s right to claim against the security deposit for damage to the unit was extinguished at move-out the Landlord’s only option with respect to the security deposit was to return it in full within the time required and proceed independently to makes its claims against the Tenants. As the Landlord did not return the security deposit to the Tenants I find that the Landlord must now repay the Tenants double the security deposit in the amount of **$7,500.00** ($3,750.00 x 2).

As each Party’s applications had some success I decline to award recovery of the filing fees.

Deducting the Landlord's total entitlement of **$7,976.51** from the Tenants' entitlement of **$8,264.50** leaves **$287.99** owed to the Tenants.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **$287.99**. If necessary, this order may be filed in the Small Claims 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: November 20, 2015

Residential Tenancy Branch