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* (the *Act*) for:

- a Monetary Order for damage or compensation, pursuant to section 67;
- a Monetary Order for damage, pursuant to section 67;
- authorization to retain the tenants' security deposit, pursuant to section 38; and
- authorization to recover the filing fee from the tenants, pursuant to section 72.

Both parties 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 landlords testified that they served the tenants with the notice of dispute resolution package by registered mail but could not recall on what date. The tenants testified that they received the landlord's notice of dispute resolution package via registered mail but could not recall on what date. I find that the tenants were served with the notice of dispute resolution package in accordance with section 89 of the *Act.*

Issue(s) to be Decided

1. Are the landlords entitled to a Monetary Order for damage or compensation, pursuant to section 67 of the *Act*?
2. Are the landlords entitled to a Monetary Order for damage, pursuant to section 67 of the *Act*?
3. Are the landlords entitled to retain the tenants' security deposit, pursuant to section 38 of the *Act*?

4. Are the landlords entitled to recover the filing fee from the tenants, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' and landlords' claims and my findings are set out below.

Both parties agree to the following facts. This tenancy began on September 1, 2014 and ended on July 31, 2018. Monthly rent in the amount of $1,755.00 was payable on the first day of each month. A security deposit of $825.00 was paid by the tenants to the landlords.

Both parties agree to the following facts. A move in condition inspection and inspection report were completed by both parties on August 31, 2014. Both parties signed the move in inspection report. A move out condition inspection was completed by both parties on July 31, 2018. The tenants did not agree with the move out condition inspection report completed by the landlord at the move out inspection and so refused to sign it. The tenants personally served the landlords with their forwarding address in writing during the move out inspection on July 31, 2018.

The landlord filed for dispute resolution on August 13, 2018.

Both parties agree to the following facts. In November -December 2017 the tenants noticed a leak in the roof near the chimney and reported the leak to the landlords. The landlords hired a roofing company to inspect and repair the roof. The roof was repaired.

The landlord testified that the roofing company who completed the repair informed the landlords that the roof would need to be replaced but that it was too late in the season and that the repair should be made in the Spring of 2018.

Both parties agree to the following facts. In April of 2018 the tenants noticed that the leak re-appeared and informed the landlords. The landlords hired a roofing company to come in and inspect the roof. The tenants granted permission for the roofing company to attend at the property for the repair.

Both parties agreed that on May 25, 2018 the landlord texted the tenants to inform them that shingles would be dropped off at the subject rental property on May 26, 2018. On May 26, 2018 a crane attended at the property and dropped off a large amount of shingles and a giant metal dumpster was brought to the driveway.

The tenants testified that they did not have any proper written notice that the aforementioned items would be brought to the subject rental property or that a major renovation project was going to be required. The tenants testified that they asked the landlord for more information and proper notice of the work to be done at the subject rental property and that the landlords dismissed their concerns and told them to talk to the contractor if they wanted more information. The landlords testified that they did ask the tenants to talk to the contractors about the scope of work to be completed and the access the contractors would require to complete it, as they were busy.

The tenants testified that they spoke with the contractors who informed them that they would be installing a new roof that would take approximately 10 days and that the roofing company would need continual access to the subject rental property. The tenants testified that they asked the roofing company to leave as they had not been given proper notice from the landlord about the roofing company's access to the property, nor notice of the scope of work to be done.

The tenants testified that in an effort to mitigate any damage to the property, they hired a roofing company to install a tarp over the roof of the subject rental property on June 6, 2018. The tenants entered into evidence an invoice for the cost of installing the tarp. The tenants testified that the tarp remained in place until after they moved out of the subject rental property. The landlords' agent testified that she saw that the tarp was loose on more than one occasion. The tenants disputed the landlords' agent's testimony.

The landlords testified that the contractors charged them $750.00 for the delay in work when the tenants refused their access to the subject rental property. The landlords entered into evidence an invoice showing same and are seeking the tenants to be held responsible for that amount.

The landlords testified that they replaced the roof after the tenants moved out and found that there was a lot of water damage inside the subject rental property. The landlords testified that a restoration company quoted the repair work at $6,761.75 and the landlords are seeking that amount from the tenants. The landlords testified that they have not had all of that repair work done yet but that they hired a different company to

do drywall restoration and that they charged $1,010.66 for the work. An invoice showing same was entered into evidence.

The landlords testified that they are seeking the entire some of the estimate from the other company because they have not yet completed all of the renovations required. The landlords testified that they believe the tenants are responsible for the entire sum of the renovation because they refused to allow the roof repairs to occur and that the water damage could have occurred between May and July of 2018 when the tenants did not allow their contractors access.

The landlords testified that they are also seeking $1,755.00 in rental income as the tenants refused to grant them entry into the subject rental property in July 2018 to show the property to prospective renters. The landlords testified that this resulted in no-one living at the subject rental property in August of 2018.

Both parties acknowledge that on July 19, 2018 a hearing was held with the Residential Tenancy Branch where the tenants sought the following:

1. An Order restricting the Landlord's entry - Section 70;
2. An Order for the Landlord's compliance - Section 62;
3. An Order cancelling a notice to end tenancy - Section 47; and
4. An Order to recover the filing fee for this application - Section 72.

Both parties agree that a Settlement Agreement and a Decision dated July 20, 2018 resulted from that hearing. Both parties acknowledge that the majority of the facts heard in today's hearing were heard in the July 19, 2018 hearing. The July 20, 2018 Settlement Agreement and Decision were entered into evidence. In the settlement agreement the parties agreed to end the tenancy effective July 31, 2018. In the Decision, the arbitrator made the following findings:

- Section 70 of the Act provides that a landlord's right to enter a rental unit as set out above may be suspended by order. Given the Landlord's evidence that the Tenant was instructed to determine entry dates and times from the Landlord's contractors because the Landlord was busy I find that the Landlord has acted negligently towards the Tenants' right to peaceful enjoyment. Considering the undisputed evidence that the roof has been covered by a professional company and that there are no leaks inside the unit, I find that there are currently no compelling reasons or other emergencies that would require the Landlord to attend the unit for inspection purposes prior to the end of the tenancy. Given the Landlord's evidence that entries to the unit were made without the appropriate written notice, considering the Tenant's persuasive evidence that they are feeling

harassed by the Landlord and given that the tenancy will end very shortly, I find that the Tenant is entitled to an order restricting the Landlord's entry. I therefore order the Landlord to not enter the unit for any reason unless the Tenant expressly gives permission to the Landlord for such entry or the Tenant informs the Landlord of an emergency that would require the Landlord's entry into the unit.

Analysis

Upon review of all of the evidence submitted by both parties and the testimony heard in todays hearing, I find that none of the facts have changed since the July 19, 2018 hearing. I adopt as my own all findings of fact made in the July 20, 2018 Decision. Where new information has been adduced from the parties, I will make my own findings of fact below.

Policy Guideline 16 states that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due.

In order to determine whether compensation is due, the arbitrator may determine whether:

- 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.

Section 29 of the *Act* states that:

29 (1)A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

(a)the tenant gives permission at the time of the entry or not more than 30 days before the entry;

(b)at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

(i)the purpose for entering, which must be reasonable;

(ii)the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

(c)the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;

(d)the landlord has an order of the director authorizing the entry;

(e)the tenant has abandoned the rental unit;

(f)an emergency exists and the entry is necessary to protect life or property.

(2)A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

As found in the July 20, 2018 Decision, the landlord did not provide proper notice of entry to the subject rental property in May of 2018. The tenants were therefore entitled to deny the landlord and or his contractors entry to the subject rental property. I find that the tenants did not breach the *Act*, in restricting access to the subject rental property. I therefore find that the landlords are not entitled to recover the $750.00 delay fee from the tenants as the tenants were within their rights to deny access.

I also find that since the tenants did not breach the *Act*, that the landlords are not entitled to recover the restoration costs in the amount of $6,761.75. In addition, I find that the landlords failed to prove that the tenants' actions caused the damage to the subject rental property. I find that the tenants acted prudently to mitigate any potential damages to the landlords by having a tarp installed on the roof. Given the fact that both parties acknowledge that the roof was leaking since at least November 2017, the landlords have failed to establish a causal link from the tenants' actions to the damages suffered.

The July 20, 2018 Decision Ordered the landlords access to the subject rental property to be restricted until the end of the tenancy which was mutually agreed upon by the parties to be July 31, 2018. The landlords did not testify that they provided the tenants with any 24 hour notices of entry for the purposes of showing the subject rental property before the July 20, 2018 decision, to which the tenants refused the landlords' access. I find that the landlords have not proved that the tenants breached the *Act,* and that this breached caused a loss of rental income. In addition, the extent of the repairs required to the subject rental property, may have also affected the ability of the landlords to rent out the subject rental property for August 2018. Pursuant to the above, I find that the landlords are not entitled to recover loss of rental income for August 2018

I find that since the landlords have been unsuccessful in their application, that they are not entitled to recover the $100.00 filing fee from the tenants, pursuant to section 72 of the *Act*.

<u>Security Deposit</u>

Section 38 of the *Act* states that within 15 days after the later of:

(a)the date the tenancy ends, and

(b)the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c)repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d)make an application for dispute resolution claiming against the security deposit or pet damage deposit.

I find that the landlord made an application for dispute resolution claiming against the security deposit pursuant to section 38 of the *Act.* However, since I have found that the landlords are not entitled to a monetary award against the tenants, I find that the landlords are required to return the tenants' security deposit in the amount of $825.00 to the tenants.

Conclusion

I dismiss the landlords' application without leave to reapply.

I issue a Monetary Order to the tenants in the amount of $825.00.

The tenants are provided with this Order in the above terms and the landlords must be served with this Order as soon as possible. Should the landlords 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: December 12, 2018

Residential Tenancy Branch