Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing dealt with an Application for Dispute Resolution that was filed by the Landlords under the *Residential Tenancy Act* (the "*Act*"), seeking:

- Money owed or compensation for damage or loss;
- Compensation for damage to the rental unit;
- Unpaid rent or utilities;
- Recovery of the filing fee; and
- Authority to withhold the security and/or pet damage deposit towards any amounts owed.

The hearing was originally convened by telephone conference call on September 14, 2018, at 1:30 PM and was attended by the Tenants and two agents for the Landlords (the "Agents"), all of whom provided affirmed testimony. The hearing was subsequently adjourned due to issues relating to the service of evidence and time constraints. An interim decision was made on September 18, 2018, and the reconvened hearing was set for December 3, 2018, at 9:30 AM. A copy of the interim decision and the Notice of Hearing was sent to each party by the Residential Tenancy Branch (the "Branch"). For the sake of brevity I will not repeat hear the matters discussed or the findings of fact made in the interim decision. As a result, the interim decision should be read in conjunction with this decision.

The hearing was reconvened by telephone conference call on December 3, 2018, at 9:30 A.M. and was attended by the Tenants and the two Agents, all of whom provided affirmed testimony. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Rules of Procedure. However, I refer only to the relevant facts and issues in this decision.

Preliminary Matters

Preliminary Matter #1

Rule 2.5 of the Rules of Procedures states that to the extent possible, the applicant should submit copies of all other documentary and digital evidence to be relied on in the proceeding at the same time as the application is submitted, with the exception of new and relevant evidence pursuant to section 3.17 of the Rules of Procedure. Although rule 3.14 states that documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent not less than 14 days before the hearing, rule 3.13 states that where possible, copies of all of the applicant's available evidence should be served on the other party in a single complete package. Further to this, rule 3.13 states that an applicant submitting any subsequent evidence must be prepared to explain to the arbitrator why the evidence was not submitted with the Application for Dispute Resolution in accordance with Rule 2.5.

In the hearing the Tenant's acknowledged that they received the majority of the Landlords' documentary evidence and an Amendment by e-mail on August 25, 2018, and argued that the Landlord's intentionally withheld the majority of their documentary evidence and the Amendment until August 25, 2018, serving it on them very close to the original hearing date of September 14, 2018, knowing that due to their work in the farm industry and the time of year, they would have insufficient time to consider and respond to this evidence in time for the hearing and in compliance with the timelines laid out in the Rules of Procedure. As a result, the Tenant's requested that their late evidence be accepted and considered as they did not have time to read, understand, and respond to the Landlord's documentary evidence prior to the first hearing.

The Agents for the Landlord testified that their evidence and the Amendment was served on the Tenants in the manner granted to them by the Branch in an order of substituted service dated February 23, 2018, and that it was received by the Tenants according to their own testimony on August 25, 2018. The Agents stated that as August 25, 2018, is more than 14 days before the date of the hearing, they complied with the Rules of Procedure and the Tenants therefore had sufficient time to review and respond to their evidence. When asked why this evidence was not served at the time of the original application or at an earlier date, the Agents testified that it took them that long to gather all of the necessary documentary evidence.

Rule 3.11 of the Rules of Procedure states that evidence must be served and submitted as soon as reasonably possible and that if the arbitrator determines that a party

unreasonably delayed the service of evidence, the arbitrator may refuse to consider the evidence.

Although I appreciate the testimony of the Agents that it took them some time to gather all of their documentary evidence, I note that the Landlords filed their Application on February 12, 2018, and received their order of substituted service from the Branch on February 23, 2018. Having reviewed the significant documentary evidence served on the Tenants by the Landlords or their Agents on August 25, 2018, including any time stamp and creation dates, I note that some of this evidence, such as a copy of the tenancy agreement, a One Month Notice to End Tenancy (the "One Month Notice"), an Order of Possession for the rental unit, evidence in relation to a fire and notices of entry, existed at the time of the original Application and an overwhelming majority of the evidence which did not, such as photographs of the rental unit after the Tenants moved out, invoices and estimates for repairs and materials, a hydro bill, a statement from the occupant of the upstairs rental unit, among many other things, either existed several months before they were served on the Tenants or reasonably could have been obtained earlier had the Landlords or their agents acted reasonably and diligently. Based on the above, I find that the Landlords or their Agents either intentionally delayed the service of this evidence or that their failure to act reasonably and diligently in obtaining this evidence resulted in this delay and as a result, I find this delay in service to be unreasonable.

Further to this, I find that this delay in service resulted in significant prejudice and administrative unfairness to the Tenants as it hindered their ability to read, understand, and respond to this very significant amount of documentary evidence in compliance with the Rules of Procedure prior to the first scheduled hearing. In light of the above and in consideration of the aforementioned sections of the Rules of Procedure, I advised the parties that I could either exclude the evidence and Amendment served by the Landlords or their Agents on the Tenants on August 25, 2018, pursuant to rule 3.11 of the Rules of Procedure, or I could accept all documentary evidence before me including the documentary evidence submitted by the Tenants after the first hearing but prior to the reconvened hearing.

The Agents confirmed that they received the Tenant's documentary evidence, which was sent by registered mail, on November 19, 2018, and requested that the amendment and all of the documentary evidence before me be considered in the hearing, including that of the Landlords and the Tenants. As a result, I accepted for consideration the Landlord's Amendment and all of the documentary evidence before me from both

parties and the hearing proceeded based on the Landlord's Amended and increased monetary claim of $7,770.23.

Although the Tenants also provided testimony that several documents not received by them until after the first hearing should be considered as new and relevant evidence at the reconvened hearing, as all of the documentary evidence before me from the Tenants was ultimately accepted for consideration in this matter, I find it unnecessary to address this matter further.

Preliminary Matter #2

After both parties had provided their evidence and testimony for consideration on all matters, the parties were given a brief opportunity to provide concluding statements. During this time The Tenant J.J. became disrespectful shouting at the Agents and I, using inappropriate language, refusing to listen to directions and interrupting both the Agents and I. The Tenant was warned that if he could not control himself, speak respectfully, and follow directions, he would be muted for the duration of the conference call. Despite my directions and the patience and courtesy extended to him by myself and the Agents, the Tenant's disruptive behavior continued. As a result, the Tenants, who were both calling from the same telephone number, were muted for the duration of the hearing. Prior to being muted the Tenant J.J. stated that he was going to hang-up, however, I received no notification from the teleconference system that he exited the call prior to the end of the hearing.

Preliminary Matter #3

Although the parties engaged in settlement discussions during the hearing, ultimately a settlement agreement could not be reached between them. As a result, I proceeded with the hearing and rendered a decision in relation to this matter under the authority delegated to me by the Director of the Residential Tenancy Branch (the "Branch") under Section 9.1(1) of the *Act*.

Preliminary Matter #4

During the hearing I was involuntarily disconnected from the conference call at 10:27 A.M. due to service connectivity issues with my primary phone. As a result I reconnected at 10:28 A.M. using my cellular phone and the hearing continued without further connectivity interruptions.

Issue(s) to be Decided

Are the Landlords entitled to money owed or compensation for damage to the rental unit or other loss under the Act, regulation, or tenancy agreement?

Are the Landlords entitled to unpaid rent or utilities?

Are the Landlords entitled to recovery of the filing fee and to withhold the security and/or pet damage deposits towards any amounts owed pursuant to section 72 of the *Act*?

Background and Evidence

The Tenancy agreement in the documentary evidence before me states that the month-to-month tenancy began on March 1, 2017, that rent in the amount of $1,000.00 is due on the first day of each month and that the Tenants are responsible for paying 1/3 of the utilities. The Tenancy agreement also states that a $500.00 security deposit was paid which the parties agreed is still held by the Landlords.

The parties agreed that the Tenants vacated the rental unit on February 14, 2018, as the result of an Order of Possession issued by the Branch in relation to a One Month Notice to End Tenancy for Cause (the “One Month Notice”).

The Agents stated that the Landlords are seeking $1,000.00 in unpaid February rent and $63.00 in unpaid utilities (1/3 of the $190.00 electricity bill) as the Tenants did not pay their 1/3 portion of a $190.71 utility bill, did not move out until February 14, 2018, and left the rental unit without notice and in such a state that it could not be re-rented until March 15, 2018. Despite the foregoing the Agents stated that the Landlords are only seeking loss of rent for February 2018, not the 15 days in March where the until could not be rented. In support of this testimony the Landlords provided a copy of the utility bill, a copy of the tenancy agreement stating that the Tenants are to pay 1/3 of the utilities on top of rent and a letter from another tenant is a different rental unit for which a portion of the utilities are owed stating that the Tenants never paid their 1/3 of the bill.

Although the Tenants did not dispute that February rent was unpaid, they denied the allegation that they did not pay the $63.00 owed for the utility bill, however, they provided no proof of this payment. They also stated that in any event, the bill does not contain the rental address and could therefore be from anywhere.

The Agents stated that the Tenants had a pet cat without consent, which the Tenants denied, and that the tenancy agreement allows them to keep the Tenants' security deposit as a result. They also stated that the cat urinated on the carpets causing damage to the rental unit. In support of this testimony the Landlord provided an audio recording they state proves that the Tenants had a cat. The Tenants denied having a cat but acknowledged house-sitting an outdoor cat for several days which they stated never came into the house. They also stated that a neighbourhood cat could have jumped into their house from an open window. Further to this the Tenants alleged that the Landlords staged the pet damage themselves using their own pets and that the Act prohibits the Landlords from using a security deposit for pet damage.

The Agents stated that the Landlords are seeking $1,378.02 for damage to the rental unit and other losses including garbage removal, replacement of locks, doors, baseboards, laminate flooring and underpadding, as well as the purchase of grass seed, silicone, and finishing nails as the Tenants and their pet caused damage to the rental unit. The Agents stated that the Tenants intentionally damaged the rental unit due to the acrimonious situation surrounding the end of the tenancy by drawing graffiti on an electrical box, hiding perishable food (including raw fish, eggs, and peas) inside the furnace room door, the walls, the ceiling, the fireplace and a bathroom vent, intentionally burying garbage in the garden, leaving garbage strewn throughout the rental unit, ripping out laminate flooring and pouring hot sauce on the underpadding. The Agents stated that the Tenants also kicked in the front door when it could not be opened after they had changed the locks without the Landlords consent, constructed a greenhouse and garden without approval, and allowed their cat to urinate on the flooring.

Although the Tenants acknowledged changing the locks without permission, they stated that this was done as a result of the feuds they were having with the Landlords. They also acknowledged that the front door was kicked in by them but stated that this was done in the presence of the police as the lock was broken. The Tenants alleged that the Landlords had attempted to access the rental unit with the wrong key which broke off in the Lock; however, the Agents denied these allegations stating that the Tenants in fact broke their own key in the lock and that they were advised by both the Landlords and the police to hire a locksmith to gain entry to the property. In support of this testimony the Landlords provided a video recording with audio wherein the Landlords and Agents as well as the police can be heard advising the Tenants not to damage the door and to hire a locksmith instead.

The Tenants denied that they had a cat or that they intentionally vandalized the rental unit. Instead the Tenants stated that the rental unit was not in good condition at the start

of the tenancy and that the Landlords themselves must have caused this damage and vandalism in an attempt to recoup costs which the Tenants believe they may have to incur as they reported the Landlords to the municipality for having an illegal suite. In support of this testimony the Tenants provided various building permit and inspection documents.

Further to the above the Agents stated that there was an agreement for the Tenant J.J. to complete some drywall work but that this work was done so poorly that it needed to be repaired at the end of the tenancy at a cost of $40.59. The Landlords submitted several photographs and receipts for materials in support of this claim. The Tenants acknowledged that there was an agreement for J.J. to complete this work but stated that it was completed to the satisfaction of the Landlords at the time, who have now simply changed their minds. As a result, they stated that they should not be responsible for these costs. In support of their testimony the Tenants pointed to documentary evidence showing agreement that the work had been completed.

The Tenants also alleged that the Landlords returned the $44.78 in grass seed purchased and pointed to a copy of the Landlords receipt for grass seed as well as a photograph of a retailer screen showing grass seed with the same barcode number as that on the Landlords receipt as having been returned. The Tenants stated that as they were not the purchasers of the grass seed, they could not get the copy of the original or returned receipt.

The Agents stated that the grass seed was not in fact returned and was used to fix the damaged lawn where the garden had been constructed and garbage had been curried by the Tenants. The Agents stated that the documentary evidence submitted by the Tenants does not show that the Landlords returned this grass seed and argued that it simply shows a bag of a particular brand of grass seed, all of which have the same barcode number, was returned at some previous point in time on some unknown date by some unknown person and that this grass seed could have been purchased and returned by anyone, including the Tenants themselves, as no return receipt has been provided.

Finally, the Landlords sought $5,289.00 in costs to repair a deck that the Agents stated the Tenants damaged, alongside the upstairs tenants. When asked, the Agents confirmed that the deck is not part of the rental unit rented to the Tenants under their tenancy agreement and that it is in fact part of a rental unit rented to other tenants under a separate tenancy agreement. The Agents alleged that the Tenants approached the upstairs tenants and convinced them to remove the vinyl deck covering stating that the

Landlord would have it replaced. The Agents stated that no such agreement was in place and that the removal of this vinyl caused significant damage to the patio. In support of their testimony the Landlords provided a statement from one the upstairs tenants stating that her sons, who reside in the rental unit, assisted the Tenants to remove the vinyl from the deck but only because the Tenants mislead them into doing so.

The Tenants denied any involvement with the removal of the vinyl and alleged that the upstairs tenant had fraudulently authored the letter in exchange for not being charged for the deck damage. When tasked, the Agents acknowledged that the Landlords are seeking no compensation from the upstairs tenants for damage to the deck but denied that the letter was in any way fraudulent. Instead they argued that the Landlords were simply choosing not to pursue compensation from the upstairs tenants as they were good tenants. In any event, the Tenants argued that the majority of the $5,289.00 claimed for deck repairs relates to structural modifications required as the deck was not built to code, not damage that could in any way be caused by the removal of vinyl covering and that the Landlords are simply trying to pin the costs of rebuilding an improperly built deck on them. In support of this testimony the Tenants pointed to a detailed breakdown of the work to be done from the contractor.

Analysis

Section 37 of the *Act* 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. Further to this, section 7 (1) states if a landlord or tenant does not comply with the *Act*, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

The Landlords sought $1,378.02 for damage to the rental unit and other losses including garbage removal, replacement of locks, doors, baseboards, laminate flooring and underpadding, as well as the purchase of grass seed, silicone, and finishing nails. However, the Tenants alleged that the Landlords intentionally damaged the rental unit and are simply attempting to frame the Tenants for this damage in order to recoup costs that may be incurred by them in relation to the reporting of an illegal suite to the municipality by the Tenants. The Tenants also argued that the furnace door was already damaged, that the Landlords returned the grass seed claimed, and that they are attempting to replace doors with higher quality materials than were already present; however, I am not satisfied, based on the documentary evidence and testimony before me for consideration, that this is the case. The Tenants have provided no evidence

upon which this conclusion could reasonably be drawn and the documentary evidence they did submit, including but not limited to several photographs, a picture of a store screen showing that an item with a particular barcode number had been returned and building permit documents fall significantly short of establishing their claims. Further to this, I find the Tenants' argument illogical and flawed as even if the Landlords were successful in their claims, they would receive compensation from the Tenants only in the amounts required to repair the significant damage caused to the rental unit and would therefore not garner any additional financial benefit from this damage.

Although no condition inspection reports are before me for consideration showing the condition of the rental unit at the start of the tenancy, the Landlords provided a preponderance of evidence, in the form of video and audio recordings and photographs, in support of their argument that the Tenants intentionally damaged the property which I find both compelling and persuasive. Having reviewed this documentary evidence I am satisfied, on a balance of probabilities, that the Tenants failed to leave the rental unit reasonably clean and undamaged at the end of the tenancy, except for reasonable wear and tear as required by section 37 (2) of the *Act*. Further to this, I find that the Tenants intentionally damaged the rental unit at the end of the tenancy by drawing graffiti on an electrical box, hiding perishable food inside a door, the ceiling, the wall, as well as the chimney and the bathroom vent, intentionally burying garbage in the garden, leaving garbage strewn throughout the rental unit, ripping out laminate flooring and pouring hot sauce on the underpadding.

The Landlords submitted a video with audio wherein the Tenants acknowledged changing the locks without consent and having a pet. During this video the police were clear that there was no proof regarding who was responsible for jamming to door lock and both Landlords/Agents and the police can be heard advising the Tenants that they can hire a locksmith to gain entry to the property but must not damage the door. In the hearing the Tenants acknowledged breaking the door to gain access to the rental unit. As a result, I find that the Tenants are responsible for the replacement of the door and lock. As a result of the above and pursuant to section 7 of the *Act*, I therefore find that the Landlords are entitled to the $1,378.02 sought for garbage removal and the above noted damage to the rental unit.

Despite the foregoing I dismiss the Landlords claim for $40.59 in costs to remedy unsatisfactory drywall repairs done by the Tenants without leave to reapply as the Tenants pointed to documentary evidence before me wherein the Landlords agreed that they could complete these repairs and subsequently signed off on their completion.

I also find that the Landlords are entitled to the $63.00 in outstanding utilities and the $1,000.00 in outstanding February rent sought as there is no documentary evidence that the Tenants paid February rent or the $63.00 owed by them towards a $190.71 utility bill, the Tenants remained in the rental unit until February 14, 2018, the tenancy agreement clearly states that $1,000.00 in rent is due on the first day of each month and that the Tenants are responsible for 1/3 of the utilities.

Finally, I also dismiss the Landlord's claim for $5,289.00 of patio damage without leave to reapply against these Tenants as this claim actually relates to damage caused in a different rental unit that is rented to different tenants under a separate tenancy agreement. As tenants are responsible for damage not only caused by them but by persons they permit onto the rental property, the Landlords remain at liberty to seek compensation for this damage from the tenants of that rental unit or to seek remedy with the appropriate jurisdictional authority should it be civil or criminal matter.

As the Landlords were at least partially successful in their claims, I grant them recovery of the $100.00 filing fee pursuant to section 72 (1) of the *Act*.

Although section 3 of the addendum to the tenancy agreement states that if the Tenants keep a pet without permission, cleaning costs will be removed from the security deposit, section 20 of the *Act* states that a landlord must not require, or include as a term of a tenancy agreement, that the landlord automatically keeps all or part of the security deposit or the pet damage deposit at the end of the tenancy agreement. As a result, I find that that section 3 of the addendum contravenes section 20 (e) of the *Act* and is therefore unenforceable meaning that the Landlords cannot simply keep the $500.00 security deposit paid by the Tenants. However, section 72 (2) of the *Act* states that if the director orders a party to a dispute resolution proceeding to pay any amount to the other, the amount may be deducted, in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant. As a result, I grant the Landlords the authority to withhold the Tenants' $500.00 security deposit towards the above noted amounts owed pursuant to section 72 (2) (b) of the *Act*.

Based on the above and pursuant to section 67 of the *Act*, the Landlords are therefore entitled to a Monetary Order in the amount of $2,041.02; $1,378.02 for damage to the rental unit and other loss, plus $1,063.00 in unpaid rent and utilities, plus the $100.00 filing fee, less the $500.00 security deposit retained.

I believe that this decision has been rendered in compliance with the timelines set forth in section 77(1)(d) of the *Act* and section 25 of the *Interpretation Act*. In any event, I

note that section 77(2) of the *Act* states that the director does not lose authority in a dispute resolution proceeding, not is the validity of a decision affected, if a decision is given after the 30 day period in subsection (1)(d).

Conclusion

Pursuant to section 67 of the *Act*, I grant the Landlords a Monetary Order in the amount of $2,041.02. The Landlords are provided with this Order in the above terms and the Tenants must be served with this Order as soon as possible. The Landlords are entitled to serve this order by e-mail or text message in accordance with the order for substituted service dated February 23, 2018. Should the Tenants 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: January 2, 2019

Residential Tenancy Branch