Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, MNDL-S, FFL

Introduction

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

- Compensation for damage to the rental unit;
- Compensation for other money owed;
- Recovery of the filing fee; and
- Authorization to withhold the security deposit against any monies owed.

The hearing was originally convened by telephone conference call on October 16, 2018, at 1:30 P.M. and was attended by the Tenants, the agent for the Landlord (the "Agent"), and the witness D.M. ("Witness #1"), all of whom provided affirmed testimony. The hearing was subsequently adjourned due to the complexity of the matters and the time constraints of the hearing. An interim decision was made on October 16, 2018, and the reconvened hearing was set for December 4, 2018, at 9:30 A.M. A copy of the interim decision and the Notice of Hearing was sent to each party by the Residential Tenancy Branch (the "Branch") in the manner requested by them during the original hearing.

The hearing was reconvened by telephone conference call on December 4, 2018, at 9:30 A.M. The hearing was attended by the Tenants, the Agent, Witness #1, and the witness for the Landlord L.D. ("Witness #2"), 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 these matters in accordance with the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure"). However, I refer only to the relevant facts and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be sent to them by e-mail at the e-mail addresses confirmed in the hearing and provided on the Application.

Preliminary Matters

All witnesses were excluded from the proceedings when they were not providing testimony for my consideration.

Issue(s) to be Decided

Is the Landlord entitled to compensation for damage to the rental unit or other money owed?

Is the Landlord entitled to recovery of the filing fee?

Is the Landlord entitled to withhold the security deposit against any monies owed to them by the Tenants?

Background and Evidence

The tenancy agreement in the documentary evidence before me dated April 28, 2017, states that the tenancy is month-to month and that rent in the amount of $1,700.00 is due on the first day of each month. Although the agreement states that the Tenants are taking over the lease from previous occupants, it also states that a $650.00 security deposit is due and the Agent acknowledged in the hearing that a number of the terms of the tenancy agreement signed on April 28, 2017, are different than those in the tenancy agreement signed by the previous occupants, including the duration of the tenancy agreement itself. Although the tenancy agreement contains conflicting information regarding whether utilities are included in rent, during the hearing all parties agreed that the $1,700.00 charged for rent includes up to $400.00 for utilities and that the Tenants were only responsible to pay utility amounts over $400.00 per month.

The parties were in agreement that the rental unit, which is a single-family- home, was built in the early 1980’s and that the majority of the house, including kitchen counters, flooring, ceiling tiles, and bathroom fixtures had not been updated since at least the purchase of the property10 years prior, if not longer. However, the Agent stated that the property had been painted just prior to the start of the previous tenancy, which began in fall of 2016, and the Tenants did not dispute this testimony. The parties also agreed that the tenancy ended on February 28, 2018, and that the Tenants have yet to provide the Landlord with their forwarding addresses in writing.

Although the parties provided conflicting testimony regarding when the Tenants actually moved into the rental unit and whether a move-in condition inspection was completed, they agreed that no inspection report was completed. The Agent testified that no report was completed because when she attended the rental unit to show it to the Tenants, they were already living there, having been given access by the previous occupants without her permission. The Agent stated that they did a brief walk-through but no report was completed as she had not expected the Tenants to have been living there. She stated that a mutual time could not be found for a proper condition inspection and completion of the condition inspection report and as a result, she provided the Tenants with a copy of the condition inspection report from the start of the previous occupants' tenancy and requested that they note any additional damage on the report but it was never returned to her.

The Tenants agreed that they were already residing in the rental unit at the time the Landlord attended to sign the tenancy agreement but stated that they had permission from both the Agent and the previous occupants to do so. The Tenants denied that a walk-through occurred or that the Agent made any attempts to schedule a proper condition inspection with them. They also stated that they were never provided with a copy of any condition inspection report for completion and return to the Agent.

Although the parties agreed that no move-out condition inspection report was signed by the Tenants at the end of the tenancy, they agreed that a move-out inspection was conducted. The Agent and Witness #1 stated that the Tenants refused to sign the condition inspection report at the end of the inspection and provided video evidence in support of their testimony. The Tenants agreed that they did not sign the condition inspection report because they did not agree with the damages listed or the amounts sought for these damages and that the condition inspection report had move-in inspection information for the previous occupants on it.

In their Application the Landlord claimed $24,713.23 in compensation for damage or other monetary loss, however, in the hearing the Agent testified that this amount was based on quotes and now that some of the work has been completed, the total amount of the claim has dropped to $23,413.23; $22,553.22 for damage and other losses, plus $860.01 for outstanding utilities.

During the hearing the parties were all in agreement that the Tenants owed $860.01 for outstanding utilities, $161.41for the purchase of miscellaneous items and materials such as a faucet, sink and tub stoppers, plug receptacle covers, trim and wallpaper remover,

as well as $75.00 in yard cleaning costs. However, the remainder of the Landlords claims were disputed by the parties.

Although the parties and their witnesses provided lengthy testimony and substantial documentary evidence for consideration regarding damage to the residential unit, the relevant testimony and evidence can be summarized as follows. The Agent and their witnesses stated that the Tenants caused significant damage during their tenancy to floors and fixtures in two bathrooms, a stove, several cupboards in the kitchen and a portion of the kitchen counter, a handrail and pickets, several taps, a bedroom window, several walls, flooring in the dining room and living room, an interior door, as well as ceiling tiles and support bars.

The Agent and Witness#1 testified that it appears that the Tenants had some sort of stove fire damaging a stove that was purchased and installed in December of 2016, as well as several hardwood cupboards that were original to the home. The Agent and witnesses testified that there were several holes in the walls as well as many tiny holes in one wall where a dartboard had been hung, that a bedroom window was cracked, that a portion of the counter and the laminate flooring in the dining room and living room had cigarette burns, that there was damage to a handrail and pickets, and that there were damaged and missing ceiling tiles, many of the remaining tiles appearing to have been poked many times with small sharp objects. Witness #2, who is the contractor hired to complete some of the repairs, testified that much of this damage appeared to be intentional, such as the cigarette damage to the kitchen counter and flooring, and damage to the handrail, walls, and ceiling tiles. Further to this, he stated that this damage went far beyond reasonable wear and tear.

The Agent and Witness #2 also testified that the Tenants had caused significant water and other damage to both bathrooms through misuse and lack of a shower curtain and regular cleaning. Specifically the Agent and Witness #2 stated that a toilet and linoleum flooring needed to be replaced in the downstairs bathroom as the toilet was old and poorly maintained and the linoleum flooring had mold damage which could not be removed through cleaning. They also stated that the bathtub upstairs needed to be replaced due to scratching as well as hard water staining from a constantly running tap that was not reported by the Tenants, that the flooring, baseboards and tub surround needed to be replaced due to water damage from failing to use a shower curtain, that tiling needed to be replaced due to mold, and that several taps were damaged requiring replacement. Witness #2 acknowledged that the bathroom and fixtures were old but stated that the water and other damage appeared to be recent.

The Landlord submitted significant photographic and other documentary evidence in support of the claims, such as invoices, quotes and receipts, and sought the following amounts for the above noted damage:

- $227.23 for the replacement of the damaged and missing ceiling tiles and support bars;
- $640.49 for the replacement of a burnt and damaged stove;
- $300.00 for burnt cupboards;
- $12,075.00 for repairs to the bathrooms, some drywall, and the window completed by the contractor;
- $7,875.00 for quoted repair costs for flooring, the kitchen countertop, and the range hood; and
- $1,437.50 for costs incurred by the Agents spouse to complete other remaining repairs not completed or quoted by the contractor.

The Tenants pointed out that neither the Landlord nor the Agent completed a condition inspection or report at the end of the previous occupants' tenancy or the start of their tenancy and argued that the damage noted above was already present when their tenancy started. The Tenants also denied that the stove did not work at the end of the tenancy. Further to this, they stated that the rental unit, which is a single-family-home, was built in 1981 and has not been properly maintained, renovated, or repaired since that date. As a result, the Tenants argued that the Landlord failed to properly repair or maintain the property over a long period of time and that the Landlord is simply attempting to charge them for replacing worn-out and poorly maintained items with brand-new ones. Further to this, the Tenants denied that they did not use a shower curtain and provided photographs of the rental unit which they stated were taken during their tenancy, including a photograph where a shower curtain is present. As a result, they argued that they should not be responsible for the above noted costs sought by the Landlord.

The Agent testified that the rental unit was not left reasonably clean at the end of the tenancy and required 7 hours of cleaning by two professional cleaners as well as 22.5 hours of additional cleaning by her. In support of this testimony the Agent provided photographic evidence of the condition of the rental unit at the end of the tenancy, a copy of the unsigned move-out condition inspection report, and a receipt for the professional cleaners. As a result, the Landlord sought $1,150.50 in cleaning costs; $588.00 for the cost of professional cleaning and $562.50 for additional cleaning completed by the Agent.

The Tenants denied that the rental unit was not left reasonably clean at the end of the tenancy stating that they had cleaned the rental unit and therefore it did not require additional cleaning.

The Landlord also sought $33.60 in miscellaneous costs associated with filing the Application such as paper, ink, and time spent by the Agent filing and serving documentation. The Tenants disputed that they should be responsible for these costs as these are simply duties of the Landlord or their Agent and are related to the Application the Landlord chose to file.

Analysis

Section 7 of the *Act* states that 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. It also states that landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with the *Act*, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

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.

I find that the Tenants were required, pursuant to section 37 (2) (a) of the *Act*, to leave the rental unit reasonably clean at the end of the tenancy. Although the Tenants testified that the rental unit was left clean at the end of their tenancy, I am satisfied by the Landlord's photographic and other documentary evidence as well as the testimony of the Agent and the Witnesses that this was not the case. As a result, I award the Landlord the $1,150.50 in cleaning costs sought as I find that the Landlord acted reasonably to mitigate their loss by having the Agent complete addition cleaning at a reduced hourly rate of $22.50 when the 7 hours of cleaning completed by the two professional cleaners at $70.00 per hour, was not sufficient.

Although tenants are obligated to leave a rental unit undamaged, except for reasonable wear and tear, at the end of a tenancy pursuant to section 7 of the *Act*, I find that the condition of the rental unit at the start of the tenancy, including any pre-existing damage, is of the utmost importance in assessing claims for damage. While the Agent stated that she believed she was simply having the Tenants take over the previous occupants' tenancy agreement, I do not find this to be the case. The previous

occupant's tenancy agreement was not amended to remove the occupants and add the Tenants; instead, a new tenancy agreement was created and signed by the parties on April 28, 2017, which included different Tenants and different terms and conditions than the previous occupants' tenancy agreement as well as the collection of a new security deposit. As a result, I do not find that the condition inspection report completed at the start of the previous occupants' tenancy can be transferred to the Tenants as they are two separate tenancies.

Section 23 of the *Act* states that the landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit, or on another mutually agreed day, that the landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection, that the landlord must complete a condition inspection report in accordance with the regulations, that both the landlord and tenant must sign the condition inspection report, and that the landlord must give the tenant a copy of that report in accordance with the regulations.

All parties were in agreement that a condition inspection report was not completed with the Landlord, Agent or the Tenants at the start of this tenancy. Although the Agent relied on her belief that this was not a new tenancy as justification that a move-in condition inspection and report was not required, as stated above, I have already found that this was not a continuation or an amendment to a previous tenancy agreement but in fact a new tenancy in its own right. As a result, I find that a condition inspection and a new condition inspection report were required to be completed pursuant to section 23 of the *Act*.

Section 24 of the of the *Act* states that the right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if the landlord has complied with sections 23 (3) of the *Act [2 opportunities for inspection]*, and the tenant has not participated on either occasion. It also states that the right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord does not comply with section 23 (3) *[2 opportunities for inspection]*, having complied with section 23 (3), does not participate on either occasion, or does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

While the Agent provided reasons for why a move-in condition inspection and a new move-in condition inspection report were not completed at the start of the tenancy, as stated above, I have already found that a condition inspection and report were required. As the parties agreed that no condition inspection or report were completed pursuant to

section 23 of the *Act* or the regulation, ultimately I find that the Landlord or their agent failed to comply with section 23 of the *Act*. As a result, I find that the Landlord extinguished their right to file a claim against the Tenants' security deposit but only for damage to the rental unit or residential property.

Despite the foregoing, in the Application filed by the Landlord on March 22, 2018, the Landlord sought compensation in excess of the security deposit amount for more than just damage to the rental unit or residential property as well as and authority to withhold the security deposit against these non-damage related claims. As a result, I find that the Landlord was entitled to withhold the security deposit pending the outcome of the Application. In any event, the Tenants' acknowledged that they never provided the Landlord with their forwarding address in writing, and as a result, I find that the Landlord was under no obligation pursuant to section 38 of the *Act*, to return the Tenants' security deposit.

Although the Agent and Witness #1 testified that the rental unit was in good condition at the start of the tenancy, no condition inspection or report was completed at the end of the previous tenancy with different occupants or at the start of this tenancy with the Tenants. While the Landlord submitted a letter from one of the previous occupants stating that the property was in good condition at the end of their tenancy and called several witnesses, including a contractor who completed repairs to the property after the end of the tenancy, I am not satisfied, on a balance of probabilities, that most of the damage claimed by the Landlord to have occurred during the tenancy, was in fact caused by the Tenants or their guests during their tenancy. In reviewing the substantial amount of photographic evidence before me from the Landlord, as well as the testimony of the Agent, it is clear to me that the property has not been updated in a significant number of years, and in fact, appears to me to have been poorly maintained over a long period of time. During the hearing the Agent even testified that the majority of the house, including kitchen counters and cabinets, flooring, ceiling tiles, and bathroom fixtures had not been updated since at least the purchase of the property by the Landlord 10 years prior and the parties were in agreement that the house was built in 1981; 36 years prior to the start of the tenancy.

Although the contractor testified in the hearing that the bathroom and fixtures were old but that the water damage was recent, he did not provide an estimate of how recent this damage was or any information on how he had come to this conclusion. Given the lack of specificity regarding how recent this damage was and how this conclusion was reached, the lack of condition inspections and reports at the end of the previous tenancy with different occupants and the start of this tenancy with the Tenants, and the fact that

this tenancy lasted less than one year, I am not satisfied that this “recent” water damage could not have been caused by the previous occupants who resided there less than one year prior.

Further to this, the photographic evidence and testimony before me strongly suggests that the property overall has not been well maintained or updated in at least 10 years, likely many more. While the absence of condition inspection reports from the end of the previous tenancy with different occupants or the start of this tenancy with the Tenants is not fatal to the Landlord’s claim for damages in and of itself, the lack of these condition inspection reports places the Landlord in a very difficult position in terms of proving, on a balance of probabilities, that the damage claimed by them in the Application was in fact caused by the Tenants and not already present at the start of the tenancy.

With the exception of $161.41in damage to miscellaneous items such as a faucet, sink and tub stoppers, plug receptacle covers, and trim, the Tenants testified unequivocally that the rental unit was left undamaged except for reasonable wear and tear and damage already present at the start of their tenancy. While the Landlord provided a statement from a previous occupant stating that the rental unit was in good condition at the end of their tenancy, I find the reliability of this statement questionable as the previous occupant may well have cause to be untruthful, should any of the damage have been caused by them, the other occupants or their guests during their own tenancy, and they did not appear in the hearing to provide sworn or affirmed testimony open to questioning by all parties.

Rule 6.6 of the Rules of procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities and that the onus to prove their case is on the person making the claim. In light of the above I therefore find that I am not satisfied on a balance of probabilities, by the Landlord or the Agent, who bear the burden of proof in this matter, that the damage alleged to have been caused to the floors and fixtures in two bathrooms, several cupboards in the kitchen, a portion of the kitchen counter, a handrail and pickets, several taps, a bedroom window, several walls, an interior door, ceiling tiles and support bars, as well as flooring in the dining room and living room was in fact caused by the Tenants or their guests during their tenancy. As a result, I therefore dismiss the Landlord’s $21,914.73 claim for costs of repairing this damage without leave to reapply.

Despite the foregoing, I am satisfied based on the photographic evidence, invoices, e-mail correspondence and the testimony of Witness #1, that the stove, which was in working condition at the start of the tenancy, was not in proper working condition at the

end of the tenancy and required replacement due to misuse by the Tenants. As a result, I grant the Landlord's $640.49 claim for the cost of its replacement.

As the parties agreed that the Tenants are responsible for $860.01 in outstanding utilities, $161.41for the purchase of miscellaneous items and materials, as well as $75.00 in yard cleaning costs, I also grant the Landlord $1,096.42 for these costs.

As the Landlord was predominantly unsuccessful in their claims, I decline to grant them recovery of the $100.00 filing fee or the $33.60 sought in other filing associated costs.

Based on the above, and pursuant to sections 72 (2) and 67 of the *Act*, I therefore find that the Landlord is entitled to retain the Tenants' $650.00 security deposit towards the above noted amounts owed and the Landlord is therefore entitled to a Monetary Order in the amount of $3,097.42; $3,747.42, less the $650.00 security deposit retained.

Conclusion

Pursuant to section 67 of the *Act*, I grant the Landlord a Monetary Order in the amount of $3,097.42. The Landlord is provided with this Order in the above terms and the Landlord must be served with **this Order** as soon as possible. Should the Landlord 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 4, 2019

Residential Tenancy Branch