Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNDCL-S, MNDL-S

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlords on June 17, 2018 (the "Application"). The Landlords sought compensation for damage caused to the rental unit and for monetary loss or other money owed. The Landlords sought to keep the security deposit. The Landlords also sought reimbursement for the filing fee.

This matter came before me for a hearing on September 21, 2018 and an interim decision was issued September 24, 2018. This decision should be read with the interim decision.

The Landlord and Tenants appeared at the hearing. I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

The Landlord took no issue with admissibility of the audios submitted by the Tenants.

The Landlords had submitted an updated Monetary Order Worksheet.

The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered all admissible documentary evidence and oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Are the Landlords entitled to compensation for damage to the rental unit?
2. Are the Landlords entitled to compensation for monetary loss or other money owed?
3. Are the Landlords entitled to keep the security deposit?
4. Are the Landlords entitled to reimbursement for the filing fee?

Background and Evidence

The Landlords sought the following compensation:

Item	Description	Amount
1	Insurance claim	$1,000.00
2	Counter top replacement cost	$2,150.00
3	Filing fee	$100.00
4	Preliminary cleaning	$200.00
5	Garage door opener	$48.00
6	Light fixture replacement	$42.00
7	Extra cleaning	$180.00
8	Materials to repair and repaint walls	$360.00
9	Labour to repair walls	$960.00
	TOTAL	**$5040.00**

A written tenancy agreement was submitted as evidence. The tenancy started July 30, 2016 and was a month-to-month tenancy. The Tenants paid a security deposit of $550.00.

Both parties agreed the tenancy ended May 31, 2018.

Both parties agreed the Tenants provided their forwarding address to the Landlords in writing on the Condition Inspection Report on June 03, 2018.

Both parties said the Tenants agreed to the Landlords keeping the security deposit. The evidence shows this occurred June 10, 2018 and in a letter dated June 12, 2018.

Both parties agreed on the following. A move-in inspection was done July 30, 2016. The unit was empty. Both parties participated. A Condition Inspection Report was completed and signed by both parties. The Landlords gave the Tenants a copy of the Condition Inspection Report in person on the date of the inspection.

Both parties agreed on the following. A move-out inspection was done June 3, 2018. The unit was empty. Both parties participated. A Condition Inspection Report was completed and signed by both parties. The Landlords gave the Tenants a copy of the Condition Inspection Report in person on the date of the inspection.

At the bottom of the Condition Inspection Report completed for move-in and move-out, there is a note stating, “Damages covered”. The note is initialled.

The Tenants took the position that the “damages covered” notation related to all damages. The Tenants referred to the audio submitted by the Landlords in relation to their position that the parties agreed all damages were covered.

The Landlords took the position that the “damages covered” notation does not mean all damages and that if it meant all damages it would have stated this.

The Landlords submitted written statements about the notation.

Landlord A.F. states as follows. He does not accept the notation written by his wife. The report is not a contract and “in Canada, one cannot sign their rights away, nor can anyone sign those rights away for them”. The report does not state which damages are covered. The security deposit does not come close to covering the damages. His wife initialled the notation under duress without his knowledge or consent.

Landlord L.F. states as follows. She has a form of autism, severe anxiety disorder and PTSD. She felt bullied into writing and initialling “damages covered”. Tenant A.W. was combative during the inspection. She was not thinking straight and wanted the inspection to be over. Tenant A.W. was very close to her while going over the report and she felt “like a bird in a cage”. Tenant A.W. insisted that she write “damages covered” and sign it. She finally wrote it and did not sign it but “put a scribble beside instead”. She went to copy the report for the Tenants and realised they would discover the scribble. She removed the scribble to initial. She ended up giving the report to the Tenants without the initial. Tenant A.W. then attended their residence and at this time she initialled the report with “UD” meaning “Under Duress” all over it. She then contacted the Tenants the next day and offered a report without “UD” all over it. She did not initial the notation with a clear mind. She does not know what “damages covered” means.

The Tenants denied there was any intimidation or duress.

I have listened to the audio of the interactions between the Landlords and Tenant A.W. leading up to the signing of the Condition Inspection Report.

In relation to item 1, Landlord A.F. testified that there was a flood in the rental unit caused by a clog in the pipe. He said the Landlords had to pay a $1,000.00 deductible for the insurance claim made in relation to the flood. He relied on a notation on an invoice submitted that states the shower was plugged to show the Tenants caused the flood.

The Tenants denied the flood was their fault. They had submitted an email from the company that addressed the issue in support of their position.

Analysis

Section 7 of the *Residential Tenancy Act* (the "*Act*") states:

> (1) If a…tenant does not comply with this Act…or their tenancy agreement, the non-complying…tenant must compensate the [landlord] for damage or loss that results.
>
> (2) A landlord…who claims compensation for damage or loss that results from the [tenant's] non-compliance…must do whatever is reasonable to minimize the damage or loss.

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

> 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.

Under sections 24 and 36 of the *Act*, landlords and tenants can extinguish their rights in relation to the security deposit if they do not comply with the *Act* and *Residential Tenancy Regulation* (the "*Regulations*"). Further, section 38 of the *Act* sets out specific requirements for dealing with a security deposit at the end of a tenancy.

Here, the Tenants agreed to the Landlords keeping the security deposit both at the time the tenancy ended and at the hearing. Therefore, the Landlords are entitled to keep the security deposit.

Pursuant to rule 6.6 of the Rules of Procedure, it is the Landlords as applicants who have the onus to prove they are entitled to the compensation sought.

I accept the position of the Tenants that the "damages covered" notation on the Condition Inspection Report precludes the Landlords from now claiming for damage to the rental unit.

I do not find the notation "damages covered" to be vague. It is written at the bottom of a Condition Inspection Report on which damages are noted and Tenant A.W. agreed to the Landlords keeping the $550.00 security deposit. It seems clear to me that the purpose of the notation was to indicate that damages were covered by the security deposit. This is particularly so when the notation is considered along with the audio of the conversation leading up to the notation being made and initialled.

I do not accept that the Landlords would have written "all damages covered" if that is what they meant. If the parties did not mean to agree that the damages were covered by the security deposit, why write the notation at all? It is not a requirement of the form; the parties chose to add it to the form. It does not accord with common sense or human experience that the parties would choose to write "damages covered" on the Condition Inspection Report to indicate that some but not all the damages were covered.

I also note the way in which Landlord L.F. says she reacted after making the notation and initialling it. I do not accept that Landlord L.F. would have had the reaction outlined if the notation was meant to be an agreement that some but not all damages were covered. If this was the intention of the parties, I cannot see why Landlord L.F. would have had any issue with the notation as it would not have stopped the Landlords from seeking further compensation. I find the reaction outlined by Landlord L.F. supports that the notation was meant to show that the parties agreed all damages were covered.

I do not accept the submission of Landlord A.F. that parties cannot sign their rights away and cannot sign other's rights away. Parties can come to an agreement about a matter and thus forego a right they otherwise would have had. Further, where there are two landlords in relation to one tenancy agreement, each landlord is bound by the agreements of the other just as co-tenants are bound by the agreements of the other. Landlord L.F. was free to come to an agreement with Tenant A.W. and that agreement is binding on both Landlord A.F. and Tenant G.W.

I do not accept that Landlord L.F. made the notation and initialled it under duress. I have listened to the audio of the conversation leading up to this. I have considered the tone of the parties and what the parties said to each other. The tone and words of Landlord L.F. are not consistent with someone who is under duress, intimidated or under some other pressure. Tenant A.W. was being no more combative than Landlord L.F. and A.F. I understand that the notation was made at a later point; however, I do not accept that the atmosphere changed such that Landlord L.F. was intimidated or under duress at the time. The Tenants denied that there was such an atmosphere. It is the Landlords who have the onus to prove their claim. The Landlords have not submitted sufficient evidence of duress.

I accept that the notation "damages covered" meant all damages were covered by the security deposit which Tenant A.W. agreed to the Landlords keeping. I find the Landlords are bound by this agreement and cannot now claim for the damages. I note that it would be unfair to the Tenants if the Landlords were permitted to agree that all damages were covered by the security deposit and then change their mind. The Tenants may not have agreed to the Landlords keeping the security deposit if the Landlords did not agree that this would end the matter. Further, the Tenants may have obtained further evidence at the time if they were not under the impression that the Landlords had agreed that all damages were covered.

I acknowledge that the security deposit does not cover what the Landlords say are the damages to the rental unit. However, all of the damage claimed was discussed during the inspection or noted on the Condition Inspection Report. The Landlords were aware of the damages claimed prior to noting "damages covered". I find the Landlords agreed that the security deposit covered the damages and are not now entitled to claim additional compensation.

In the circumstances, I decline to award the Landlords compensation for items 2 and 4 through 9. I will still consider item 1 as it is not damage to the rental unit.

I am not satisfied based on the evidence submitted by the Landlords that the Tenants caused the flood. The only evidence referred to by Landlord A.F. was an invoice from the company that addressed the issue. Landlord A.F. referred to the notation of a plugged shower; however, this appears to be what the call to the company was about versus a diagnosis of the issue. The other notations on the invoice do not assist in determining what the cause of the flood was or that it was the fault of the Tenants. I am not satisfied the Landlords have met their onus to prove the Tenants breached the *Act*, *Regulations* or tenancy agreement. I decline to award the compensation sought.

Given the Landlords were not successful in this application, I decline to award them reimbursement for the filing fee.

In summary, the Landlords can keep the security deposit as agreed to by the Tenants.

Conclusion

The Landlords can keep the security deposit as agreed to by the Tenants. The remainder of the Application is dismissed without leave to re-apply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: February 22, 2019

Residential Tenancy Branch