Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFL MNDCL-S MNDL-S**

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "*Act*") for:

- a monetary order for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of a security deposit pursuant to section 38; and
- authorization to recover the filing fee pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 1:45 p.m. to enable the tenant to call into this hearing scheduled for 1:30 p.m.

The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

In accordance with Rule 7.3 of the *Residential Tenancy Branch Rules of Procedure* ("Rules"), this hearing was conducted in the absence of the tenant.

The landlord testified that she served the tenant with the Application for Dispute Resolution hearing package by registered mail to the forwarding address provided to the landlord on November 22, 2018. The Canada Post tracking number is recorded on the cover page of this decision. I find the tenant is deemed served with the Application for Dispute Resolution hearing package on November 27, 2018, five days after the registered mailing, pursuant to section 89 and 90 of the *Act*.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the landlord, not all details of the landlord's submissions and / or arguments are reproduced here. The principal aspects of the landlord's claim and my findings around each are set out below.

Issue(s) to be Decided

Is the landlord entitled to the following relief:

- a monetary order for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement;
- authorization to retain all or a portion of a security deposit; and
- authorization to recover the filing fee.

Background and Evidence

The landlord provided the following undisputed testimony. The rental unit is in an apartment building built in the early 1980s. When the landlord purchased the unit in 2012, she replaced the carpets. The current tenancy agreement, submitted as evidence, was signed in June 2017 for a one-year fixed term from July 1, 2017 to June 20, 2018. The rent was set at $1,200.00 per month and a security deposit of $600.00 and a pet deposit of $250.00 was collected. The landlord continues to hold these deposits. The landlord did a walk-through of the rental unit with the tenant when the tenancy began and took photographs, however no condition inspection report was completed and no copies of the 2015 photographs were provided as evidence.

By mutual agreement, the tenancy ended on June 30, 2018. The landlord's mother did a move-out walk-through of the rental unit with the tenant at the conclusion of the tenancy however a move-out condition inspection report was not completed. The tenant provided her forwarding address to the landlord by text message on July 4, 2018. The landlord testified that communication between the parties has either been by email or text message throughout the tenancy and that text was an acceptable way for her to receive the forwarding address.

The landlord received a text message from the tenant on May 31, 2017 in which the tenant admits to "slopping coffee" on the carpet. In another text message regarding damage to the unit, dated July 19, 2018 the tenant states, "Yes I will take responsibility for carpet only". Screen shots of both of the text messages were provided as evidence.

While living in the unit, the tenant left the storm door open, enabling water from the sprinklers to enter the unit which damaged the carpets and the plywood subfloor of the unit.

When the tenant moved out, the carpets were in “terrible” condition. Multiple photographs of the carpets were provided as evidence, as was a quote from a carpet company to replace the carpets with carpets of the same kind and quality. The quote includes both paint supplies as well as carpet supplies. Only the carpet supplies will be noted here.

Item	**Amount**
Enviro disposal fee	$100.00
Remove/dispose carpet & pad	$114.25
Like/kind/quality replacement carpet	$2,239.58
Wall to wall pad	$195.22
Install carpet (labour)	$520.98
2 sheets of plywood as sub-floor destroyed	$72.00
Total sought for carpet replacement	**$3,242.03**

The landlord testified the tenant also left the bathtub faucet dripping, causing irreversible hardwater staining damage to the finish of the bathtub. The tenant never advised the landlord that there was a leaking faucet in the bathtub which could have been repaired. The landlord has to either replace or re-glaze the bathtub and after getting quotes for both, it was most economical to re-glaze the tub. An invoice for $420.00 including GST was entered as evidence of the cost of re-glazing.

The landlord testified that after the tenant moved out on June 30, 2018, she couldn’t re-rent the unit due to the damaged state of the carpets, the stained bathtub and the overall condition of the rental unit. She had to have professionals assess the damage, give quotes, remove damaged flooring and replace it with new subfloors and carpet and repaint the unit. It took time to list the rental unit and show it while it was still being returned to a rentable condition, leading to a loss of revenue for the landlord. She found a new tenant who viewed the unit while it was still being worked on in mid-August who agreed to move in for September 1, 2018.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove 1.) the existence of the damage/loss, 2.) that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, 3.) the claimant must then provide evidence to verify the actual

monetary amount of the loss or damage. The claimant must also show 4.) what steps were taken, if any, to mitigate the damage or loss.

In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

Carpets

The landlord has provided text messages from the tenant showing the tenant understood and agreed that the damage to the carpets were caused by her. I accept the landlord's testimony and written evidence from the carpet company that indicate it would cost $3,242.03 to restore the carpet to the condition it was at the beginning of the tenancy. The landlord is awarded $3,243.03.

Tub Re-glazing

Residential Tenancy Branch Policy Guideline, PG-40 provides guidance in determining awards for damages based on the useful life of building elements. Useful life is the expected lifetime, or the acceptable period of use, of an item under normal circumstances.

Under the heading of Damages, PG-40 reads

> If the arbitrator finds that a landlord makes repairs to a rental unit due to damage caused by the tenant, the arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant's responsibility for the cost or replacement.

Part 3B of the guideline PG-40 says that the useful life of tubs, toilets and sinks is 20 years. As the building's age is approximately 30 years old, it is well beyond it's useful life, dictated by PG-40. Given the age of the tub, I decline to award the landlord compensation for re-glazing the tub.

Loss of Rent for July and August 2018

PG-3 deals with situations where a landlord seeks to hold a tenant liable for loss of rent after the end of a tenancy agreement. Where a tenancy has been ended by proper notice, if the premises are un-rentable due to damage caused by the tenant, the landlord is entitled to claim damages for loss of rent. The landlord is required to mitigate the loss by completing the repairs in a timely manner.

I accept the landlord's undisputed testimony that the tenant left the doors open while sprinklers were running, causing the damage to the carpets. Because of this, the carpets needed to be removed, the subfloor needed to be replaced and new carpet needed to be installed. The landlord was, however required to mitigate her losses by trying to re-rent the unit as soon as possible. From the text message she received a year prior to the move-out, the landlord was aware that the carpets would likely require

replacement. The landlord could have lined up tradespeople to be ready to replace the carpets by July 1, 2018. I find that the landlord did not mitigate her losses because she did not commence repairs immediately. Despite this, the unit was not in a rentable condition on July 1, 2018 and it is reasonable to conclude that it would require one month to have it ready for renting. I award the landlord the equivalent of one month's rent in the amount of $1,200.00.

Miscellaneous Claims

The landlord's spreadsheet indicates there are "items not claimed". These include broken bathroom fixture, paint entire unit to remove smoke smell, broken screen door handle and loss of August Rent. No evidence or testimony was given to substantiate these claims and I dismiss them without leave to reapply.

Security Deposit

Section 38(1) of the *Act* states 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 any security deposit or pet damage deposit or make an application for dispute resolution claiming against the security deposit or pet damage deposit. Section 38(6) of the *Act* says that if a landlord does not comply with subsection (1), the landlord may not make a claim against the security deposit or any pet damage deposit, and must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable. The landlord testified that she received the tenant's forwarding address by text message on July 4, 2018. She filed the application for dispute resolution on November 18, 2018.

Residential Tenancy Branch Policy Guideline PG-17 says, in part C-3:

> Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit if the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act;

In this case, section 38(6) requires that the tenant's security deposit of $600.00 be doubled to $1,200.00 and the pet damage deposit be doubled from $250.00 to $500.00.

The offsetting provisions of section 72 of the *Act* allows the landlord to draw on the security deposit if an arbitrator orders the tenant to pay any amount to the landlord. Pursuant to section 72 of the Act, the landlord is to deduct $1,700.00 in partial satisfaction of the monetary order.

As the landlord's application was successful, the landlord is entitled to recover the $100.00 filing fee for the cost of this application.

The landlord is entitled to a monetary order according to the following terms:

Item	**Amount**
Carpet Replacement	$3,243.03
Lost rental revenue July 2018	$1,200.00
Filing Fee	$100.00
Less deposits not returned	$(1700.00)
Total Monetary Order	**$2,843.03**

Conclusion

I issue a monetary order in the landlord's favour in the amount of $2,843.03. The tenants must be served with this Order as soon as possible. Should the tenant 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: February 11, 2019

Residential Tenancy Branch