Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenant: MNDCT, MNSD, FFT

Landlord: MNDL-S, FFL

Introduction

This hearing dealt with cross applications for Dispute Resolution under the *Residential Tenancy Act* ("Act") by the Parties.

In his application, the Tenant claims:

- Compensation for monetary loss or other money owed in the amount $9,600.00 or twelve times the monthly rent, because the Landlord did not use the rental unit for the stated purpose on the Two Month Notice to End Tenancy dated July 3, 2018 ("Two Month Notice");

- All or part of security deposit returned in the amount of $375.00; and

- Recovery of the $100.00 application filing fee.

In his application, the Landlord claims:

- Compensation for damage caused by the tenant, their pets or guests to the unit, site or property in the amount of $5,173.35 for damage to laminate flooring; and

- Recovery of the $100.00 application filing fee.

The Landlord and his wife, B.E., the Tenant, and a lawyer for the Tenant, J.C. (the "Lawyer") appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process.
During the hearing the Parties were given the opportunity to provide their evidence orally and respond to the testimony of the other Party. I reviewed all oral and written

evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure; however, only the evidence relevant to the issues and findings in this matter are described in this decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

Preliminary and Procedural Matters

The Parties provided their email addresses at the outset of the hearing and confirmed their understanding that the decision would be emailed to both Parties and any orders sent to the appropriate Party.

Issue(s) to be Decided

- Is the Tenant entitled to a monetary order, and if so, in what amount?
- Is the Landlord entitled to a monetary order, and if so, in what amount?
- Is either Party entitled to the recovery of the $100.00 filing fee?

Background and Evidence

The Parties agreed that the periodic tenancy began on July 1, 2010, with a monthly rent of $750.00, due on the first day of each month. The Parties agreed that the Tenant paid a security deposit of $375.00, and no pet damage deposit. The Parties agreed that the rent at the end of the tenancy was $800.00. The Parties agreed that there was no written tenancy agreement, but they agreed that there was a tenancy since July 2010.

The Parties agreed that the tenancy ended, because on July 3, 2018, the Landlord posted a Two Month Notice to End Tenancy for Landlord's Use ("Two Month Notice") on the rental unit door. The effective vacancy date on the Two Month Notice was September 3, 2018. The effective vacancy date set out on the Two Month Notice was September 3, 2018; however, this is an incorrect date and under section 53 of the Act, the effective date automatically corrects to September 30, 2018.

The Tenant said he vacated the rental unit on September 1, 2018, that he gave the keys

back to the Landlord on September 3, 2018, and that he did not give the Landlord his forwarding address. The Parties agreed that they did not do a condition inspection of the rental unit at move-in, and that they only did "a quick walk through" at the end of the tenancy, and that there was no condition inspection report prepared.

Tenant's Claim

The Tenant said that on November 14, 2018, he came across information advertising the rental unit as an Airbnb. He said that this conflicts with the requirements of section 49 of the Act and the purpose of the Two Month Notice – that a close family member was supposed to occupy the rental suite.

The Lawyer said:

> My client found these Airbnb posts were being used, rather than the unit being used by the daughter. The Landlord admits that she's staying upstairs and renting out the basement for Airbnb. The listings say this is '[B.E.'s] place' who is the wife, and [J.] is the daughter. We submitted a [social media] post dated October 15. This is in reference re her previous unit and shows that she was there and not in the rental unit at that date.

The Lawyer said in the hearing that using the rental unit as an Airbnb is a breach of the Act, so the Tenant is entitled to receive a monetary order equivalent to 12 times the $800.00 rent, pursuant to section 51(2) of the Act.

The Tenant also claimed for the return of his security deposit. The Tenant said that he paid everything to the Landlord in cash, including the security deposit.

Landlord's Response

The Landlord said that their daughter is using the rental unit for her own purposes, which might include moving in at some point, should circumstances dictate as such. The Landlord said their daughter was at risk of losing her condominium, because of a Strata rule prohibiting dogs in the units. The Landlord`s daughter had a dog and was concerned about this rule. The Landlord said:

> She didn't know all summer if she was going to have to leave. She was getting more and more concerned, and in July we decided that was time; this was all about helping our daughter. We didn't know until October that they were going to allow her to stay. The order is still standing and they could order her to leave.

> We're letting the lease stand, because they could come along next week and say she has to get rid of her dog. This is her child. She is not going to give it up.

The Landlord said in the hearing that they made a tenancy agreement with their daughter and that she was allowed to sublet the basement suite to help her pay her bills. The Landlord submitted a copy of a tenancy agreement between himself and his daughter. The Landlord also said that this allows the daughter to move in to the rental unit, if she has to move out of her condominium, because of her dog.

The Landlord said he submitted a document demonstrating that his wife and daughter are "co-hosts" on the Airbnb site. He said this evidences that family members are using the rental unit for their own purposes. The Parties agreed that as of the time of the hearing, the Landlord's daughter had not moved into the rental suite.

On the Tenant's other claim, the Landlord said they never collected a security deposit from the Tenant. The Landlord said the Tenant had been a friend of their daughter's and that they expected he would take good care of the rental unit.

Landlord's Claim

The Landlord said that he wants compensation for the damage caused to the floor of the rental unit during the Tenant's tenancy. The Landlord submitted photographs that show two areas of damage to the hardwood floor.

In the hearing, the Landlord said:

> The floor was damaged by his chair, which he damaged when he hurt his leg. Every time he reclined the chair, he took a little more out of the floor. There's a six-inch gouge where this chair was. It was hidden under the chesterfield. [The Tenant] admitted to it at the time; I don't expect it back. We didn't take [a security deposit] from you in the first place. You were a friend of our daughter's. When you got [the rental unit], it was two years old. Someone had stayed in it for six months. You kept coaxing me to rent it. We thought you would take care of it, as if it was your house. If damage was done we thought that you would tell us right away. We don't have spare pieces of [the flooring]. There are about 8 pieces that have to be replaced.

The Landlord submitted an estimate from a local flooring company. The estimate

states: “After inspecting the damaged laminate flooring in your basement, I have to inform you that there is no way to repair it.” The estimate goes on to list the materials and labour that would be involved in the repair and the total comes to $5,173.35. The Landlord’s evidence in the hearing was that in July 2010 the flooring was two years old when the Tenant moved in.

Tenant’s Response

The Tenant said that when he went to drop off his keys on September 3, 2018, that he and the Landlord did not look at the floor. The Tenant said:

> He brought up that I had my air conditioner in the basement suite. I had a bad back at the time, so I didn’t want to grab it, but I put the AC back in the truck. I asked him about my damage deposit, and he said ‘What damage deposit?’ I said, ‘What, is it about the floors?’ I found some scratches on the floor pulling the couch out. I didn’t know if I had done it. I could only see it was from flopping down in the couch. There is no mechanism in my couch. I had protective housing on the stems of the couch. [The Landlord] told me not to worry about it, because he has boards and not to worry.

The Landlord replied that the damage to the floor is “not a scratch.” He said it was from a repeated action over a long period of time. He said the floor is “…gouged about a quarter inch and two inches wide.” He added that he does not have any spare boards with which to fix the floor. He said the supplier told him that the whole floor has to be replaced, because the boards cannot be matched.

The Tenant also said that the Landlord chose the most expensive supplier in the vicinity from which to get a quote for the flooring repairs. His Lawyer said this is inconsistent with the Landlord’s requirement to minimize or mitigate his loss.

Analysis

Tenant’s Claim

The Landlord ended the tenancy on the grounds that a close family member – their daughter - would be occupying the rental unit. However, the undisputed evidence before me is that the daughter continued to reside at her condominium and other people occupied the rental unit in the form of Airbnb tenants, as of the hearing date in May 2019. As such, I find that the Landlord breached section 49(3) of the Act.

Pursuant to section 51(2) of the Act, the Tenant is entitled to compensation in the form of the equivalent to 12 times the monthly rent payable under the tenancy agreement, because, pursuant to section 51(2)(b):

> (b) the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

I do not find that the Landlord took steps to have his daughter move into the rental unit, which was the stated purpose to end the tenancy, within a reasonable amount of time. Furthermore, the rental unit was not used for the stated purpose for at least six months. In fact, the evidence was that the Landlord did not use the rental unit for the stated purpose at all. They simply used the rental unit for the purpose of renting it on AirBnb. As explained in Policy Guideline 50:

> Section 51(2) of the RTA is clear that a landlord must pay compensation to a tenant (except in extenuating circumstances) if they end a tenancy under section 49 and do not take steps to accomplish that stated purpose or use the rental unit for that purpose for at least 6 months.
>
> This means if a landlord gives a notice to end tenancy under section 49, and the reason for giving the notice is to occupy the rental unit or have a close family member occupy the rental unit, the landlord or their close family member must occupy the rental unit at the end of the tenancy. A landlord cannot renovate or repair the rental unit instead. The purpose that must be accomplished is the purpose on the notice to end tenancy.

I find no extenuating circumstances here. Accordingly, I award the Tenant a monetary order of **$9,600.00**, pursuant to section 51(2) of the Act.

In terms of the security deposit, the Tenant did not have a receipt or any other evidence of having paid a security deposit to the Landlord. He said he paid everything in cash to the Landlord, so it is unclear how he would remember having paid this amount nine years prior. Based on the evidence before me overall, I find on a balance of probabilities that the Tenant has not satisfied me that he paid a security deposit, so I dismiss this claim without leave to reapply.

Landlord's Claim

A landlord must complete a condition inspection report ("CIR") at both the start and end of a tenancy, in order for a landlord to establish that the damage occurred as a result of the tenancy, pursuant to sections 23, and 35 of the Act. Landlords who fail to complete a move in or move out CIR extinguish their right to claim against the security deposit for damage to the rental unit, in accordance with sections 24 and 36 of the Act. A Landlord can still apply for compensation for damage incurred in the course of a tenancy; however, without a CIR, it is more difficult to establish that the damage did not predate the tenancy.

A party who applies for compensation against another party has the burden of proving their claim. Policy Guideline 16: "Compensation for Damage or Loss" ("PG #16"), sets out a four part test that an applicant must prove in establishing a monetary claim. I advised the Parties of this test in the hearing. In your case, the Landlord must prove:

1. That the Tenant violated the Act, regulations, and/or tenancy agreement;
2. That the violation caused the Landlord to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the Landlord did what was reasonable to minimize the damage or loss.

[the "Test"]

The Tenant did not deny that there were marks left on the floor after his tenancy; rather, he said: "I could only see it was from flopping down in the couch".

Section 32 of the Act sets out landlords' and tenants' obligations to repair and maintain the rental unit. Section 32(3) requires:

> **32** (3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.
>
> (4) A tenant is not required to make repairs for reasonable wear and tear.
>
> [emphasis added]

Based on the evidence before me, overall, I find that the Landlord has met the burden of proof on a balance of probabilities that the Tenant breached the Act, and that the Landlord incurred damage or loss, as a result of this breach.

The third and fourth steps go together in this matter, as the Landlord must establish the value of the loss, and that he took reasonable steps to minimize the damage or loss.

PG #16 states:

> An arbitrator may award monetary compensation only as permitted by the Act or the common law. In situations where there has been damage or loss with respect to property, money, or services, the value of the damage or loss is established by the evidence provided.
>
> **. . .**
>
> A party seeking compensation should present compelling evidence of the value of the damage or loss in question.

Policy Guideline #40 "Useful Life of Building Elements" ("PG #40"), is a general guide for determining the useful life of building elements for determining damage under the Act. Useful life is the expected lifetime, or the acceptable period of use, of an item under normal circumstances. The useful life of hardwood flooring in PG #40 is 20 years. I accept the Landlord's evidence that the flooring was new in 2008, so that it had used up ten years or 50% of its useful life at the end of the tenancy in 2018. I find that the Tenant is responsible for 50% of the cost of the floor repair.

The Landlord claimed $5,173.35 as the cost of the repair from an estimate; however, he did not indicate that he sought out other estimates from other suppliers, which goes against his requirement to mitigate his loss. Further, the Landlord did not say that he had insurance to cover the cost, for which the Tenant could be responsible for the deductible. As such, I find that steps were not taken to minimize the loss, in accordance with PG #16 and section 7 of the Act.

> **7** (2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

I find that the Landlord has not fulfilled steps 3 and 4 of the Test or complied with section 7 of the Act in proving the value of the loss or that he mitigated the loss. As a result, I dismiss the Landlord's application without leave to reapply.

The Tenant's application pursuant to section 51(2) of the Act is successful in the amount of $9,600.00. The Tenant's claim for the return of his security deposit is

dismissed without leave to reapply. Given that he was predominantly successful in his application, I award the Tenant recovery of his $100.00 application filing fee.

Conclusion

The Landlord's claim for damage or loss under the Act is dismissed without leave to reapply.

The Tenant's claim for money owed is successful in the amount $9,600.00, because the Landlord did not use the rental unit for the stated purpose on the Two Month Notice. The Tenant is also awarded recovery of the $100.00 filing fee.

I grant the Tenant a monetary order under section 67 of the Act from the Landlord in the amount of **$9,700.00**. This order must be served on the Landlord by the Tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: June 21, 2019

Residential Tenancy Branch