Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the Landlord: MNDL-S, FFL
For the Tenant: MNDCT, MNSD, FFT

Introduction

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

The Landlord filed a claim for:

- $6,000.00 compensation for damage caused by the tenant, their pets or guests to the unit, site or property – holding the pet or security deposit; and
- recovery of the $100.00 Application filing fee.

The Tenant filed a claim for:

- $1,000.00 compensation for monetary loss or other money owed in the form of a month free rent from the Landlord ;
- the return of the security deposit and pet damage deposit in the amount of $1,000.00; and
- recovery of the $100.00 Application filing fee.

The Tenant, her husband, L.M., the Landlord and an agent for the Landlord, W.P. (the "Agent"), 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 Tenant and the Landlord 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 ("RTB") Rules of Procedure ("Rules"). However, only the evidence relevant to the issues and findings in this matter are described in this decision. At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their
written or documentary evidence to which they pointed or directed me in the hearing.

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

Background and Evidence

The Parties agreed that the rental unit is a two-story house, about 40 years old, with five bedrooms and two and a half bathrooms, and that the Tenant rented the entire house. The Parties agreed that the month-to-month tenancy began on February 1, 2018, with a monthly rent of $1,000.00 due on the first day of each month. The Parties agreed that the Tenant paid a security deposit of $500.00 and a pet damage deposit of $500.00.

The Landlord said that there was a written tenancy agreement that the Tenant signed on February 24, 2018, but the Tenant denied that she signed one or that the Landlord provided her with a copy of a written tenancy agreement; however, landlords' and tenants' rights and obligations in oral tenancy agreements are governed by the Act, in the same way as are tenancies with written agreements.

The Parties agreed that the Landlord did not conduct an inspection of the condition of the rental unit before or at the start of the tenancy; however, the Landlord submitted a copy of a condition inspection report ("CIR") regarding an inspection conducted at the end of the tenancy between the Parties.

In the hearing, the Parties agreed that the Tenant vacated the rental unit on January 31, 2019, and provided the Landlord with her forwarding address via text message on February 6, 2019. The Landlord said the Tenant's husband called the Landlord in January 2019 to say that the Tenants would be moving at the end of the month.

LANDLORD'S CLAIMS

The Landlord said that the basement of the rental suite was newly renovated prior to the Tenants moving in, because of a water pipe having broken and the resulting need to do repairs. In his written submissions, the Landlord said: “They were the first to be renters in the new renovated basement. The whole house was painted upstairs two years ago, but the house was empty for six months prior to them moving in.”

The Landlord said in the hearing:

> The basement was totally renovated with gyprock, tile, paint, laminate, flooring, toilet, base board heater, base boards by a contractor. I signed off on their work in Feb 2018 and it had never been used. The room doors were original and refinished.
>
> Now every wall in the basement is stained and has many gouges beyond washing. There are stains on the ceiling in the basement, a broken blind. There is tar (black spot) on the floor up the stairs and a few in the upstairs living room. The bathroom sink downstairs is badly stained, the shower door is damaged and doesn’t roll at all (not new but was working fine). Shelving is stained and scratched. The wall beside the vanity is extremely stained (black stuff). All of the tile grout is badly stained. The door has been damaged near the bottom on the inside.

The Landlord went on in his written submissions to detail the damage he said was caused by the Tenants in the form of holes in a door, dirty carpets, stained baseboards, marked walls, dirty hand rails and black spots on the floor that he suggested might be tar. Much of the rest of the Landlord’s written evidence in this regard addresses the level of uncleanliness that was left behind. He also noted that “approximately half the light bulbs in the house are burnt out – 24 bulbs are burnt out or missing.”

The Landlord submitted an estimate from a local contractor stating that it would cost $5,565.00 to clean, prime and paint the interior of the entire house, including ceilings.
The Tenant said that the basement “was clearly renovated, but not all the doors were repaired. The whole house was covered in gyprock dust. Any damage was when he picked up his tools.” The Tenant said that the Landlord had left the basement living
room filled with his tools and that when he packed up the tools “they dropped them and in the end my husband had to help remove the heavier items.”

The Tenant emphasized that the Landlord did not do a move-in condition inspection of the rental unit at the beginning of the tenancy. The Tenant said “we did leave the home in good, clean condition, we hired a cleaning lady.”

The Tenant submitted a character reference letter dated April 17, 2019, from a community outreach worker. This letter states:

> TO WHOM IT MAY CONCERN

> I have known [the Tenants] since June 2017. I have found them to be responsible, reliable, mature and of good character. On the occasions I have entered their previous home in [the city]; it was clean, tidy, uncluttered and had no odors of smoke or garbage.
>
> Sincerely,
> [signed]
> [J.K., Title, telephone number]

The Landlord submitted an audio recording of a move-out walk-through. The Landlord's spouse did the walk through with the Tenant's husband (whom I will refer to as the "Landlord" and "Tenant" in this section). The Parties went through the house and the Landlord emphasized that the first thing she could smell when she walks in is pot (or cannabis). The Tenant denied that anyone was a pot smoker or that he could smell it. The Landlord also stressed that the walls and baseboards had not been wiped anywhere in the house and that the carpets were dirty. The Tenant agreed and expressed his frustration, because he said he had paid a woman to clean the house and he agreed and said that "this is unacceptable". At one point the Tenant said: "This is really dumb and disturbing that she [cleaning lady] would leave a mess like this." He also said: "I don't get it… she didn't do very much."

The Tenant also said that when they moved in, the basement was full of the Landlord's equipment and a layer of dust and dirt throughout the house that the Tenants had to clean. He said he helped the Landlord move the equipment out and while doing this, the Landlord bumped a wall with a piece of equipment, making the gouge in the wall that the Landlord pointed to in the walk-through.

The Parties went outside during the walk-through and the Landlord pointed out examples of dog manure that the Tenant had not picked up in the yard. The Landlord said that she should not have to clean up after the Tenants' dog.

The Landlord indicated that there were a number of lightbulbs that were burned out or missing. She said that the Tenants were supposed to change the bulbs and leave them working. The Tenant disagreed, saying that the Landlord is supposed to supply them.

TENANT'S CLAIM

In her Application, the Tenant said she seeks the recovery of a month's rent, "due to the Landlords asking us to leave for personal use of the house, when the house was listed for rent again as of March 31st, 2019." The Tenant also applied for the return of the security and pet damage deposits in the amount of $1,000.00.

The Landlords' evidence in the hearing was that the Tenant decided to move from the rental unit and advised the Landlord of this in a telephone call to the Landlord, although the Landlord did

not know on what day they received this call. They also said the Tenant further notified them of this in a text message. No one provided a copy of the text message, but the Tenant did not disagree with this in the hearing.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Pursuant to sections 23, and 35 of the Act, a landlord must complete a CIR at both the beginning and the end of a tenancy, in order to establish that any damage claimed actually occurred as a result of the tenancy. Landlords who fail to complete move-in or move-out inspections and CIRs extinguish their right to claim against the security and/or pet damage deposits for damage to the rental unit, pursuant to sections 24 and 36. Further, landlords are required by section 24(2)(c) to complete and give tenants copies CIRs in accordance with the regulations.
Section 32 of the Act requires a tenant to make repairs for damage that is caused by the action or neglect of the tenant, other persons the tenant permits on the property, or the tenant's pets. Section 37 requires a tenant to leave the rental unit undamaged and reasonably clean. However, sections 32 and 37 also provide that reasonable wear and tear is not damage, and that a tenant may not be held responsible for repairing or replacing items that have suffered reasonable wear and tear.

Policy Guideline #1 helps interpret these sections of the Act:

> The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises)2, or for cleaning to bring the premises to a higher standard than that set out in the *Residential Tenancy Act* or *Manufactured Home Park Tenancy Act* (the Legislation).
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> Reasonable wear and tear refers to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. An arbitrator may determine whether or not repairs or maintenance are required due to reasonable wear and tear or due to deliberate damage or neglect by the tenant. An arbitrator may also determine whether or not the condition of premises meets reasonable health, cleanliness and sanitary standards, which are not necessarily the standards of the arbitrator, the landlord or the tenant.

Policy Guideline #16 ("PG #16") states: "The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party claiming compensation to provide evidence to establish that compensation is due."

The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the Act. Further, an applicant must prove the following, pursuant to PG #16:

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

[the "Test"]

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails. According to PG #16:

> A party seeking compensation should present compelling evidence of the value of the damage or loss in question. For example, if a landlord is claiming for carpet cleaning, a receipt from the carpet cleaning company should be provided in evidence.

LANDLORD'S CLAIMS

The Landlord does not have a move-in CIR to compare the condition of the rental unit to the move-out CIR when the tenancy ended. However, I find the Landlord provided evidence that the rental unit was newly renovated and recently painted when the Tenant moved in, with which the Tenant agreed, although with qualifications. This assists in determining the reasonableness of the Landlord's claim for damages; however, pursuant to section 24 of the Act, the Landlord has extinguished his right to claim against the security and pet damage deposits.

From listening to the audio recording of the walk-through, and the Parties' testimony in the hearing, I find that the residential property was not left "reasonably clean" by the Tenants. There were some matters noted in the audio recording on which the Parties agreed – that the Tenant's cleaning woman did not do a reasonable job cleaning, and that there were stains and dirt left on carpeting, walls, baseboards and railings. Further, the Tenant did not clean up the dog excrement in the yard, and she left 24 lightbulbs burned out or missing.

Based on the evidence before me overall, I find that the Landlord established the first two steps in the Test on a balance of probabilities - that the Tenant violated the Act by not leaving the residential property reasonably clean and undamaged, and that the Landlord suffered a loss as a result of this violation.

The Landlord did not submit a Monetary Work Sheet, setting out the details of his claim.

Rather, he submitted a quote from a contracting company that estimated what it would take to "clean, prime and paint" the rental unit ("Estimate"). The Estimate was for the whole job, including labour and materials.

The Landlord has not set out what part of the $5,565.00 applies to cleaning, priming or painting. The Estimate does not set out a value for each loss the Landlord claims. There is no way to determine if the hourly rate charged and the time spent on each service is reasonable in the circumstances.

Policy Guideline #40 ("PG #40") is a general guide for determining the useful life of building elements for determining damages. The useful life is the expected lifetime, or the acceptable period of use of an item under normal circumstances. In PG #40, the useful life of venetian blinds is 10 years. However, the Landlord did not give evidence of how old the blinds were, so I cannot determine the useful life left in them at the end of the tenancy. Further, the Landlord did not make a monetary claim for the replacement of the blinds, so the value of this loss is unspecified. Accordingly, I dismiss this claim without leave to reapply.

According to Policy Guideline #1, a tenant is responsible for "replacing light bulbs in his or her premises during the tenancy". Therefore, the Tenant was responsible for replacing lightbulbs as they burned out and making sure they were all working at the end of the tenancy. However, the Landlord did not provide any evidence of the value of the light bulbs, so I dismiss this claim without leave to reapply.

According to section 7(2) of the Act, step four in the Test, and Policy Guidelines #5 and 16, the party claiming damages has a legal obligation to do whatever is reasonable to minimize the damage or loss. This duty is commonly known in the law as the duty to mitigate. This means that the victim of the breach must take reasonable steps to keep the loss as low as reasonably possible.

The Landlord claimed $5,565.00 as the cost of the repair from the 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 if he had insurance to cover the cost, for which the Tenant could be responsible for the deductible. Overall, I find that steps were not taken to minimize the loss, in accordance with PGs #5 and 16 and section 7 of the Act.

I have found that the Landlord suffered some undisputed loss in terms of cleaning, as evidenced by the audio recording of the move-out walk-through; however, I find on a balance of probabilities that the Landlord had insufficient evidence to prove steps 3 and 4 of the Test or that he had fully complied with section 7 of the Act in proving the value of the loss or that he mitigated the loss. Nevertheless, I find the Landlord did suffer a loss due to the condition in which the Tenants left the rental unit. Therefore, I award the Landlord a nominal amount of 10% of his claim or **$556.50**; otherwise, I dismiss the Landlord's application without leave to reapply.

TENANT'S CLAIMS

The Tenant's first claim is for recovery of a month's rent, "due to the Landlords asking us to leave for personal use of the house, when the house was listed for rent again as of March 31st, 2019." However, this contradicts the Parties' evidence in the hearing that the Tenant notified the Landlord of the impending end of the tenancy, not the other way around. Therefore, I dismiss this claim without leave to reapply.

The Tenant's second claim was for double the return of the security and pet damage deposits. Section 38 of the Act states:

> **38** (1) Except as provided in subsection (3) or (4) (a), within 15 days after the
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> later of
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> (a) the date the tenancy ends, and
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> (b) the date the landlord receives the tenant's forwarding address in writing,
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> the landlord must do one of the following:
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> (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
>
> (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

I find that the Tenant provided her forwarding address to the Landlord on February 6, 2019, and that the tenancy ended on January 31, 2019. Therefore, pursuant to section 38(1), the Landlord was required to return the $1,000.00 deposits within fifteen days of February 6, 2019, namely by February 21, 2019, or make an application for dispute resolution to claim against the security deposit. The Landlord provided no evidence that he returned any of the deposits. The Landlord applied to claim against the deposits on February 27, 2019. Therefore, I find the Landlord failed to comply with his obligations under Section 38(1).

The consequences for a landlord failing to comply with the requirements of section 38(1), are set out in section 38(6)(b) of the Act:

> (6) If a landlord does not comply with subsection (1), the landlord
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> (a) may not make a claim against the security deposit or any pet damage deposit, and
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> (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

I find the Landlord must pay the Tenant double the amount of the security deposit.
There is no interest payable on the security deposit. I award the Tenant **$2,000.00** for double the return of the security and pet damage deposits.

Set-Off of Claims

I have granted the Landlord a nominal monetary award of $556.50 for damages, and the Tenant a monetary award of $2,000.00 for return of double the security and pet damage deposits. After setting off these two awards, I grant the Tenant a monetary order of $1,443.50.

Since the Parties were both partially successful in their claims, I decline to award either the recovery of their $100.00 Application filing fees.

Conclusion

The Landlord claimed for damage sustained in the form of stains, dirt and odour left in the rental unit by the Tenants. However, he did not support his claim with an explanation of the materials and labour required to do the repair work, nor did he provide evidence that he minimized or mitigated the loss. As such, I have granted the Landlord a nominal award of 10% of his claim in the amount of $556.50.

The Tenant's claim for a month of free rent is denied, as it is inconsistent with the evidence that the Tenant gave notice to end the tenancy, not the Landlord. The Tenant's claim for recovery of double the security deposit is successful in the amount of $2,000.00. Neither Party is awarded recovery of the $100.00 Application filing fee. After setting off the awards, I grant the Tenant a monetary order under section 67 of the Act from the Landlord in the amount of **$1,443.50**.

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: July 10, 2019

Residential Tenancy Branch