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 Landlord on March 15, 2019 (the "Application"). The Landlord applied for compensation for damage to the unit, compensation for monetary loss or other money owed, to keep the security deposit and for reimbursement for the filing fee.

T.Y. and L.T. (the "Agents") appeared at the hearing for the Landlords. The Tenant appeared at the hearing. I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

Both parties had submitted evidence prior to the hearing. I addressed service of the hearing package and evidence and no issues arose.

The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered all documentary evidence and all 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 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:

1	Inspection condition report	$525.00
2	Permit application	$216.30
3	Return of HRU system	$1,886.85
	TOTAL	**$2,628.15**

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. The tenancy started November 01, 2017 and was for a fixed term ending October 31, 2020. Rent was $5,000.00 per month due on the first of each month for the first year, $5,100.00 for the second year and $5,250.00 for the third year. The Tenants paid a $2,500.00 security deposit.

The parties agreed on the following. The Tenants vacated the rental unit March 01, 2019. The Tenants provided the Landlords their forwarding address February 25, 2019 by email. The Landlords did not have an outstanding monetary order against the Tenants at the end of the tenancy. The Tenants did not agree to the Landlords keeping the security deposit at the end of the tenancy.

The parties agreed a move-in inspection was done October 29, 2017 and that the unit was empty at the time. A move-in Condition Inspection Report was submitted as evidence. It is signed by both parties.

The Tenant confirmed the Tenants received a copy of the move-in Condition Inspection Report but could not recall how or when. He said it was received a couple of weeks after the inspection and not within one week of the inspection.

T.Y. testified that the move-in Condition Inspection Report was provided to the Tenants by email. She did not know when this was done.

The parties agreed a move-out inspection was done March 02, 2019 and that the unit was empty at the time. A move-out Condition Inspection Report was submitted as evidence. It is signed by the Tenants but not the Landlords. T.Y. testified that the Landlords did not sign it because they did not agree with it.

The Tenant testified that the move-out Condition Inspection Report was sent to the Tenants for the first time as evidence on this hearing. He did not know when this was.

T.Y. testified that the move-out Condition Inspection Report was sent to the Tenants by registered mail and delivered March 27, 2019. T.Y. could not initially provide the tracking number for this. T.Y. subsequently provided Tracking Number 1 as noted on the front page of this decision. The Landlords had submitted Canada Post information showing this package was sent March 20, 2019 and delivered April 09, 2019.

Item 1: Inspection condition report $525.00

The Landlords submitted a Building Inspection Report for an inspection done March 04, 2019. T.Y. testified that the Landlords had the rental unit inspected for alterations after the Tenants vacated because the Tenants had made significant changes to the rental unit during the tenancy. T.Y. testified that this included changing locks, building walls, converting a closet to a bathroom and modification to the entire basement. T.Y. testified that the inspection was done by the same person who inspected the rental unit prior to the tenancy. T.Y. pointed to the Building Inspection Report where it states that the main concern and risk is in relation to electrical alterations that could be concealed.

T.Y. submitted that the Landlords had to have the inspection done to determine what the Tenants did to the rental unit. She said the Building Inspection Report shows that the Tenants did make electrical changes to the rental unit.

The Tenants had also had an inspection of the rental unit done. T.Y. submitted that the Landlords' inspection was not redundant because it was done specifically for alterations whereas the Tenants' inspection was only a general inspection. T.Y. submitted that the Landlords' inspection was also necessary because there was a conflict of interest between the Tenants and Landlords at the time as the Tenants were being evicted from the rental unit.

The Tenant testified as follows. There is no evidence that the company that did the Building Inspection Report inspected the rental unit prior to the tenancy and he disputes this. He did renovate the basement suite. He did install walls in the basement suite, but they were free-standing. A city inspector came and was fine with the renovations although there were some upgrades the Landlords were responsible for. The Landlords ultimately were not satisfied with the basement suite. He did have a closet converted to a bathroom. A plumber installed the shower for the new bathroom.

The Tenant further testified as follows. The Tenants had an independent inspector go through the rental unit and there were no issues with it. They gave the Landlords their inspection report February 28, 2019. The Landlords did not need to get another inspection done. Their inspection included an inspection for alterations.

Item 2: Permit application $216.30

The Agents testified as follows. The Tenants modified the rental unit without proper permits and without the Landlords' knowledge. The Tenants should have known permits were required for the modifications. When the city was notified of the modifications, they said a retroactive permit could be obtained. The Landlords applied and paid for a retroactive permit.

The Agents further testified as follows. The Tenants were told not to do further modifications; however, the Tenants did do further modifications. Because of this, the city has to look at the rental unit again. There is a further cost for this which is the basis for the request for $216.30.

I understood the Agents to be seeking compensation for the cost of having to apply for a further permit from the city. The Agents did not know if this was going to cost the same as the first permit. The Agents could not point to evidence showing a second permit was required. The Agents could not point to evidence that the Landlords had started this process.

The Landlords submitted a receipt for the $216.30 paid dated January 30, 2019.

The Tenant acknowledged he made modifications to the rental unit after the city issued the first permit. He said there were no modifications left at the end of the tenancy that required a permit as the basement was returned to the same condition.

In reply, the Agents said a further permit is required because the rental unit no longer looks as it did when the first permit was issued by the city.

Item 3: Return of HRU system $1,886.85

The Agents testified as follows. The Tenants moved the heat recovery unit from one room to another during the tenancy. The Tenants acknowledged on the Condition

Inspection Report that they moved the heat recovery unit. This request is for the cost of returning the heat recovery unit to its original location.

The Landlords submitted a quote for the cost of returning the heat recovery system to its original location.

The Tenant acknowledged he moved the heat recovery unit during the tenancy. He acknowledged he did this without the consent of the Landlords. The Tenant acknowledged he is responsible for the cost of moving the heat recovery unit back. However, he took the position that he should not have to reimburse the Landlords for this cost because the heat recovery unit is in a safe location, is operational and it is unnecessary to move it back.

Analysis

Pursuant to rule 6.6 of the Rules of Procedure, the Landlords, as applicants, have the onus to prove the claim. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

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.

There is no issue that the Tenants participated in the move-in and move-out inspections and therefore I find the Tenants did not extinguish their rights in relation to the security deposit under sections 24 or 36 of the *Act*.

Section 24 of the *Act* states:

> (2) 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…
>
> > (c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations. (emphasis added)

Section 36 of the *Act* states:

> (2) Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord…
>
> > (c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Section 18 of the *Residential Tenancy Regulation* (the "*Regulations*") states:

> 18 (1) The landlord must give the tenant a copy of the signed condition inspection report

(a) of an inspection made under section 23 of the Act, promptly and in any event within 7 days after the condition inspection is completed, and

(b) of an inspection made under section 35 of the Act, promptly and in any event within 15 days after the later of

(i) the date the condition inspection is completed, and

(ii) the date the landlord receives the tenant's forwarding address in writing.

(2) The landlord must use a service method described in section 88 of the Act [service of documents].

[emphasis added]

I am not satisfied the Landlords complied with the *Act* and *Regulations* in relation to the Condition Inspection Reports for the following reasons. I am not satisfied the move-in Condition Inspection Report was provided to the Tenants within seven days of the inspection as the Tenant said it was not and T.Y. did not know when it was provided. T.Y. said the move-in Condition Inspection Report was provided by email which is not a service method permitted under section 88 of the *Act*. The Landlords did not sign the move-out Condition Inspection Report as required. The move-out Condition Inspection Report was not sent to the Tenants within 15 days of the inspection.

Given the numerous instances of non-compliance with the *Regulations*, I find the Landlords did not give the Tenants copies of the Condition Inspection Reports in accordance with the *Regulations* and therefore extinguished their right to claim against the security deposit for damage to the rental unit.

I note that I find the Landlords' claim relates to damage to the rental unit as the claims arise from modifications made by the Tenants which I consider to be the equivalent of damage.

There is no issue that the Landlords received the Tenants' forwarding address February 25, 2019 as the parties agreed on this. I also note the forwarding address was provided on the move-out Condition Inspection Report. There is no issue that the tenancy ended March 01, 2019 as the parties agreed this is the date the Tenants vacated. Pursuant to

section 38(1) of the *Act*, the Landlords had 15 days from March 01, 2019 to repay the security deposit or claim against it for something other than damage to the rental unit. The Landlords did neither. The exceptions to this outlined in sections 38(2) to (4) of the *Act* do not apply here. Therefore, I find the Landlords failed to comply with section 38(1) of the *Act*. Given this, pursuant to section 38(6) of the *Act*, the Landlords must return double the security deposit to the Tenants. The Landlords owe the Tenants $5,000.00.

However, the Landlords can still claim for compensation and I consider that now.

Item 1: Inspection condition report $525.00

I accept that the Tenants made significant changes to the rental unit during the tenancy given the Tenant acknowledged moving the heat recovery unit from one room to another and acknowledged changing a closet into a bathroom. These are changes that go well beyond esthetic changes. These changes should not have been made without the Landlords' permission. The Landlords were entitled to have the inspection for alterations done upon the Tenants vacating because of the changes made. I do not accept that the Landlords should have relied on a home inspection sought by the Tenants on their own accord. The Landlords were entitled to have an inspection done by a company of their own choosing. I find the Tenants responsible for this cost as it is the actions of the Tenants that necessitated it.

Based on the Invoice submitted, I accept that the inspection cost $525.00 and award the Landlords this amount.

Item 2: Permit application $216.30

I understand the Landlords to be seeking compensation for the cost of a further permit application required due to additional modifications made by the Tenants after the first permit was issued. The Landlords have failed to prove they are entitled to this for the following reasons. There is no evidence before me showing that a further permit is in fact required and the Tenant disputed that a further permit is required. There is no evidence before me that the Landlords have started the application process or obtained information about the actual cost of this. The Agents did not know the actual cost. There is no evidence before me about the actual cost as the receipt relates to the first permit issued. In these circumstances, I am not satisfied the Landlords are entitled to compensation in the amount sought. This claim is dismissed without leave to re-apply.

Item 3: Return of HRU system $1,886.85

Policy Guideline 1 states:

> RENOVATIONS AND CHANGES TO RENTAL UNIT
>
> 1. Any changes to the rental unit and/or residential property not explicitly consented to by the landlord must be returned to the original condition.
>
> 2. If the tenant does not return the rental unit and/or residential property to its original condition before vacating, the landlord may return the rental unit and/or residential property to its original condition and claim the costs against the tenant. Where the landlord chooses not to return the unit or property to its original condition, the landlord may claim the amount by which the value of the premises falls short of the value it would otherwise have had.

There is no issue that the Tenants moved the heat recovery unit from one room to another without the Landlords' consent as the Tenant acknowledged this. The Tenants were not authorized to do this. This should not have been done in the first place. When it was done, the Tenants were responsible for returning the heat recovery unit to its original location as stated in Policy Guideline 1. It is not relevant that the Tenants believe the heat recovery unit is now in a better location. The rental unit is not the Tenants' property and it is not up to the Tenants to decide where the heat recovery unit is located. This is up to the Landlords. If the Landlords want to move the heat recovery unit back, they are entitled to do so. Further to Policy Guideline 1, the Tenants are responsible for paying to have this done. The Landlords are entitled to the compensation sought.

Based on the quote submitted, I accept that moving the heat recovery unit will cost $1,886.85. I award the Landlords this amount.

The Landlords are entitled to the following compensation:

1	Inspection condition report	$525.00
2	Permit application	-
3	Return of HRU system	$1,886.85
	TOTAL	**$2,411.85**

Given the Landlords were partially successful in this application, I award them reimbursement for the $100.00 filing fee pursuant to section 72(1) of the *Act*.

In summary, the Landlords owe the Tenants $5,000.00 as return of double the security deposit. However, the Tenants owe the Landlords $2,511.85 as compensation. Therefore, the Landlords are only required to return $2,488.15 to the Tenants. The Tenants are issued a Monetary Order in this amount.

Conclusion

The Landlords owe the Tenants $5,000.00 as return of double the security deposit. However, the Tenants owe the Landlords $2,511.85 as compensation. Therefore, the Landlords are only required to return $2,488.15 to the Tenants. The Tenants are issued a Monetary Order in this amount. If the Landlords do not return $2,488.15 to the Tenants, this Order must be served on the Landlords. If the Landlords do not comply with the Order, it may be filed in the Provincial Court (Small Claims) 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 *Act*.

Dated: July 18, 2019

Residential Tenancy Branch