Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL, MNDL, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for a monetary claim of $4,500.00 for compensation for damage caused by the Tenant, their pets or guests to the unit, site or property, for compensation of $8,000.00 for monetary loss or other money owed, and to recover the cost of her $100.00 Application filing fee.

The Landlord, the Tenant, and an agent for the Landlord (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, the Landlord, and the Agent 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; 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. The Tenant said he had received the Application and/or the documentary evidence from the Landlord and had reviewed it prior to the hearing. The Tenant said he did not submit any documentary evidence to the RTB for service on the Landlord.

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.

At the onset of the hearing, the Agent noted that the Tenant had obtained a monetary

order of $1,762.00 in another hearing. The Agent said the Tenant has applied for a garnishing order and additional fees, so that the total he is claiming is $1,964.00.

The Agent proposed that the Parties agree to offset each other's claim exactly; however, the Tenant said he did not accept this proposal, so the hearing proceeded.

Issue(s) to be Decided

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

Background and Evidence

The Parties agreed that the periodic tenancy began with a tenancy agreement between the Tenant and a previous Landlord on May 1, 2016. The Parties agreed that the monthly rent owing by the Tenant to the Landlord is $881.00, due on the first day of each month. The Parties agreed that the Tenant paid a security deposit of $425.00 for the rental unit and no pet damage deposit.

The Parties agreed that the rental unit is an apartment on top of a garage and is approximately ten years old.

The Tenant stated that the original landlord did not do a condition inspection of the rental unit at the start of the tenancy. The Tenant said he just moved in. The Parties agreed that the Tenant moved in approximately two months prior to the Landlord purchasing the residential property. In the hearing, the Landlord said that she "visited all the tenants" upon purchasing the residential property; however, she did not conduct an inspection of the rental unit(s) nor prepare a condition inspection report ("CIR") at the start of her ownership of the residential property.

The Parties agreed that the Landlord served the Tenant with a Two Month Notice to End the Tenancy for Landlord's Use on January 16, 2018; however, the Parties agreed that the Tenant did not move out until April 30, 2018.

The Landlord did not submit a Monetary Order Worksheet as evidence, but she addressed her monetary claims throughout the hearing.

Flooring

The Landlord said that everything in the rental unit was new 10 years ago. She said the flooring had to be replaced, because “the Tenant smoked a lot in the suite.” She added: “When you enter the suite, there is the overwhelming smell of smoke. I’m allergic to smoke, so it was impossible for me to move into the suite, but I tried my best. I had to replace the carpeting, because the smoke had seeped into the walls and floors. I couldn’t afford to paint the ceiling.”

The Landlord submitted a detailed receipt setting out that she paid $2,035.00 for the replacement of the flooring.

The Tenant responded by saying that the tenancy agreement does not have a no-smoking clause. He asked the Landlord if she replaced just the carpeting or the hard wood floors, too. The Landlord said “the whole flooring had to be redone. It was redone with laminate throughout.”

The Tenant asked what the point of replacing laminate that was not damaged with new laminate. He said laminate does not absorb the smell of smoke like carpeting does. He also said the rental unit had cheap carpeting that was 10 years old when he moved out.

The Agent said that when the Landlord took possession, she visited each tenant and told them specifically that there was no smoking allowed in the residence. The Landlord said that the Tenant promised her that he would not smoke in the rental unit. The Tenant agreed, saying, “At that time, I genuinely did not smoke. I had smoked in the coach house before the conversation.” However, the Tenant said that he started and stopped smoking “all the time”.

The Tenant also said that the rental unit was an apartment on top of a garage and that as soon as the car in the garage started, you could smell the exhaust. He said you cannot tell if it was smoke or exhaust that caused the odour in the rental unit.

The Tenant said that he was the fourth person to live in the rental unit in the ten years since it was new, and that the carpets were due for replacing, anyway. He asked “how much other wear and tear was done by other people? I wasn’t the only one to be using that carpet. I don’t think there was any damage to the carpet, other than the gentleman before me who had a bed on wheels.”

Drywall Repair and Painting

The Landlord said that there were “several holes” in the walls and door in the rental unit. She said “You come in the main door, the door handle went inside the wall and made a big dent. I don’t know if when he was moving out that they pushed the door hard enough that he made a hole in there. There was a hole when I last visited with a rental manager.”

The Landlord said there was also a hole in the wall beside the window in the living room covered by a calendar on the wall. She said the painter included patching those holes in his invoice, and had to use two coats of paint throughout the suite, because of the smell of smoke. She said: “It was about 450 square feet, except the ceiling; I was trying to be as thrifty as I could. I wanted to repair the damage and be able to breathe inside.”

In response, the Tenant said:

> You do a walk-around of the car you’re renting - was there any paperwork saying that there were damages when I moved in? When I moved out it was a lot cleaner than when I moved in. That has no bearing on the previous or present owner.
>
> When you open the door – the landing is just big enough for the door to open – it’s a tight squeeze and there’s a narrow stairwell.
>
> The hole in the wall behind the door was almost perforated right through when I was in there. There was no willful damage. There were two holes by the doors – one near the ground that the [telephone company] guy had to cut in the wall. The calendar hole was there from day one when I moved in. The previous tenant had left a calendar there and I put mine up.

Other Damage

The Landlord said there was a big hole in the bathroom door. The Tenant explained how that came to be:

> A foot and a half in front of the bathroom door is a stacker washer/dryer with no brackets or shelving. There was an uneven load in the washer while the dryer was going. The dryer came right off. It came down and crashed into the door, so there’s a basketball size hole. It didn’t go through to the outside, though. Just the dryer came down. The dryer pushed the door out and saved the outside of the door. Is that my fault? It’s not intentional. Was it carelessness?

The Landlord then asked if the Tenant could address how the kitchen tap came off the base and was left hanging by the hose. She said he showed it to her and that there was no rust in the base of it.

The Tenant said that he fixed that tap several times, and yes, it was corrosion.

> There are big washers made of some kind of metal that corroded. That's why it kept coming off. It's a double sink, you tap part of it to turn it on – tap a lever to turn on water. If you look at the tap, there's no damage at all, but if you pick the tap up and pull it up, that's the problem. If I had intentionally grabbed that tap and pulled as hard as I could, the arm part would have broken right off and the rest would have been affixed to the counter. It was corroded off from underneath. These washers - when you tighten them they bend. There was no willful, intentional damage at all. I didn't get the Landlord to fix it, because I could fix it myself, and I didn't want to have to deal with her.

Nuisance Claim

The Landlord said that she is also making a claim, because the property was declared a "nuisance property", while [the Tenant] was living in the property; multiple calls were made to the police from neighbours. She said the nuisance designation was in place in April 2018 and it goes until 2020. The Landlord's Agent said: "It's quite difficult to quantify how much damage this represents. This claim is for compensation for loss of value of the property." The Agent said the documentary evidence shows calls to police or ambulances would be subject to a nuisance fee of several hundred dollars. He said: "For the purpose of this hearing she's claiming compensation of $1,000.00."

The Landlord submitted a letter from the City, which details the "nuisance abatement fees". This indicates that the following fees will be charged the homeowner:

1) Nuisance service call response fee: $795.75 per
2) Administration and overhead fee: $424.25 per response

The Landlord said that she has not had to pay anything to the City in this regard.
The Landlord said the nuisance designation cannot be reversed. She said:

> The Tenant agreed to move out, but on April 18, 2018, the police attended for breach of the peace. These multiple attendances are unbeknownst to me. I was

> shocked to get this letter [from the city] and couldn't reverse the decision by the city after his departure. Any disturbance that may not need the police to attend on a life threatening basis could not be made, because I was afraid that the city will fine me. I'm not the person calling the police - it was the neighbours who lived there. Luckily there are no further calls.

The Tenant said: "On October 17, 2017, a friend of mine died in the unit. A lot of this 'uttering threats' at the neighbours had to do with another guy, who lived four houses down. This guy was harassing [the Landlord] about me – it went on and on and on."

The Tenant said that the complaint in April 2018 is valid: "You have me dead in the water. We were having a food fight, that went down the alley and [the neighbour] feels it necessary to phone the police. Police were taking pictures of donuts."

The Tenant said that he wished he "had known about this nuisance thing, because I would absolutely have contested it. Never have police shown up when it wasn`t necessary. There was my friend's heart attack on August 12, 2017, when an ambulance was called. And when he died – I called an ambulance on October 17, 2017. But how is this a nuisance? The food fight, okay, but that's once."

The Landlord said that she did not have to pay any fines for the calls to the police. She said that the "nuisance designation" means that any fines were prospective. She said the nuisance designation stays with the property for two years. She said when she sold the property: "I lost value on my property. I had to disclose it and so people would be aware that they couldn't call the police or ambulance. I was in financial rush to sell it as quickly as I could." The Landlord did not provide an explanation or documentary evidence as to how this affected the sale price of the residential property.

The Tenant responded by saying: "She bought the property in July 2016, paid $840,000.00, and in September 2018 she sold it for $978,000.00. What I'm getting at is that it's a gross exaggeration on her part."

The Agent said the Landlord did not bring a claim when the Tenant left, as she was prepared to forgive. She only knew that she had to bring this Application and that she has a common law right to set off the claim [against the Tenant's prior monetary order]. The Agent said: "The difficulty is that she's had to implement repairs, since moving in in 2018. Contractors can testify on her behalf."

The Agent summarized the Landlord's monetary claim as follows:

$ 500.00 miscellaneous repairs, such as the kitchen taps;
$1,500.00 for drywall and painting;
$2,035.00 for flooring;
$1,000.00 for loss of value because of the nuisance designation.
$5,035.00

The Landlord submitted banking account information showing that she sent an e-transfer to a flooring contractor for $2,035.00, and a $500.00 deposit to the painter, plus a $1,000.00 transfer to the painter, once the job was finished.

The Agent said that in April 2018, the Tenant forfeited his deposit, saying that it could go toward damages. The Agent said there was correspondence submitted documenting this forfeiting of the deposit; however, the Landlord did not indicate where this was in her documents and I did not find anything in this regard.

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 start and the end of a tenancy, in order to establish that any damage occurred as a result of the tenancy. If the landlord fails to complete a move-in or move-out inspection and CIR, they extinguish their right to claim against either the security or pet damage deposit for damage to the rental unit, pursuant to sections 24 and 36 of the Act. Further, a landlord is required by section 24(2)(c) to complete a CIR and give the tenant a copy in accordance with the regulations.

In the case before me, the Landlord did not conduct a condition inspection of the rental unit when she purchased the residential property, and the previous landlord had not done one, either. Accordingly, and pursuant to section 24 of the Act, the Landlord extinguished her right to claim against the security deposit for damage to the rental unit. However, she may still make a claim for a monetary order for compensation for damage to the rental unit.

The party who applies for compensation against another party has the burden of proving their claim. Policy Guideline #16 sets out a four-part test that an applicant must

prove on a balance of probabilities in establishing a monetary claim. In your case, the Landlord must prove:

1. That the Tenant violated the Act, regulations, 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.

I have analyzed the evidence before me with this test ("Test") in mind.

Flooring

The Tenant said that he did not have a no-smoking clause in this tenancy agreement with the former owner of the residential property. I find it more likely than not that the tenancy agreements of other tenants who lived in the rental unit prior to the Tenant would also have been without a no-smoking clause. Further, without an incoming CIR, the Landlord cannot establish that the rental unit did not smell of smoke prior to the Tenant moving in. I find that the Landlord has not established that any damage to the flooring was caused by the Tenant; therefore, she has failed to prove the first two steps of the Test.

In addition, 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. If an 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 of the replacement.

In PG #40, the useful life of carpeting is 10 years. The evidence before me is that the carpets were new in 2006, so they were approximately 10 years old at the end of the tenancy and had 0% of their useful life left. Accordingly, PG #40 indicates that the carpets were due to be replaced when they were replaced, regardless of how the Tenant's behaviour affected them.

PG #40 says that the linoleum has a useful life of 20 years, so at the end of the tenancy, there were 10 years or 50% of the useful life left in this part of the flooring. However, I find that the Landlord did not provide evidence to counter the Tenant's response that

smoking does not affect linoleum. Further, without a CIR, the Landlord cannot establish that any damage to this flooring was caused by the Tenant and not a prior tenant.

As such, I dismiss the Landlord's flooring claim without leave to reapply.

Drywall Repair and Painting

The Landlord submitted evidence that there were holes in the walls and a door of the rental unit and the Tenant acknowledged that two of them were made during his tenancy.

Landlords and tenants rights and obligations for repairs are set out in sections 32 and 37 of the Act. Section 32 states:

> **Landlord and tenant obligations to repair and maintain**
>
> **32** (1) A landlord must provide and maintain residential property in a state of decoration and repair that
>
> > (a) complies with the health, safety and housing standards required by law, and
> >
> > (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.
>
> (2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.
>
> (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]

Section 37 of the Act says:

> (2) When a tenant vacates a rental unit, the tenant must
>
> > (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear

I find from the evidence before me that the Landlord has established that the Tenant is responsible for one of the holes in the wall and one in the bathroom door, so she has met the first two steps of the Test. However, the Landlord only submitted an amount charged for the repair and painting of the walls overall. There is no estimate or invoice or receipt of any kind from the painter setting out how much he billed for different types of work and no evidence about the door repair. As such, I find the Landlord failed to establish the value of repairing these holes, or that these costs are reasonable – that the Landlord has minimized the damage, by getting different quotes, for instance. I find on a balance of probabilities that the Landlord has not provided sufficient evidence to be compensated by the Tenant for claims under this heading.

Further, PG #40 states that the useful life of interior paint is four years. As a result, the rental unit was six years overdue for a new coat of paint, so I find the Tenant is not responsible to compensate the Landlord for this aspect of the repairs.

Based on my consideration of the evidence before me, I dismiss the Landlord's claim for drywall repair and painting without leave to reapply.

Other Damage

PG #40 states that the useful life of plumbing fixtures is 10 years. As a result, the kitchen sink tap was at the end of its useful life at the end of the tenancy, and so the Tenant cannot be found to have caused the Landlord any loss in this regard.

The Tenant explained how the hole in the bathroom door occurred and I find that the Landlord did not provide sufficient evidence that it was caused by the actions or neglect of the Tenant.

As a result, I dismiss this aspect of the Landlord's claim without leave to reapply.

Nuisance Claim

The Landlord claimed $1,000.00 for this aspect of her Application; however, she Submitted insufficient evidence that she incurred any cost, as a result of it. I find that the Landlord has not proven steps two through four of the Test in this regard, so I dismiss this claim without leave to reapply.

I found that the Landlord has not met the burden of proof on any of her claims for compensation from the Tenant, and I have dismissed her claims without leave to

reapply. As a result, I also dismiss the Landlord's claim for recovery of the $100.00 Application filing fee.

Conclusion

The Landlord was wholly unsuccessful in her Application for monetary compensation from the Tenant, as she was unable to provide suitable evidence to support her allegations on a balance of probabilities. I dismiss the Landlord's Application without leave to reapply.

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 29, 2019

Residential Tenancy Branch