Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDL-S MNRL-S**

Introduction

This hearing dealt with the landlords' 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 in the amount of $1,000.00 pursuant to section 67.

All parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The landlords testified, and the tenants confirmed, that the landlords served the tenants with the notice of dispute resolution form and supporting evidence package. The tenants testified, and the landlords confirmed, that the tenants served the landlords with their evidence package. I find that all parties have been served with the required documents in accordance with the Act.

Issue(s) to be Decided

Are the landlords entitled to a monetary order for $1,000.00?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into a written, fixed-term tenancy agreement starting September 30, 2018 and ending March 31, 2019. Monthly rent was $2,800.00 and was payable on the first of each month. The tenants paid the landlords a security deposit of $1,000.00. The landlords still retains this deposit.

Only tenant AG signed the tenancy agreement. However, the parties agreed that tenant CL was a party to the agreement as well, along with three other tenants who were not named as parties to this application (the "**Non-Party Tenants**"). Tenants AG and CL (the "**Tenants**") testified that the Non-Party Tenants vacated the rental unit one month prior to the end of the tenancy agreement. The circumstances of this departure are not relevant to the present proceeding.

At the start of the tenancy the parties conducted a condition inspection walkthrough and the Tenants were given a copy of the written report. However, no such report was entered into evidence. At or about this time, the landlords gave the Non-Party Tenants a key to the upstairs front door (the "**Upstairs Key**"). The landlords testified that this key was their only copy. They testified that they offered to make a copy of the Upstairs Key for the Tenants, but that the Tenants refused. The Tenants did not deny this.

The Tenants testified that they were given a key to the backdoor of the rental unit (the "**Backdoor Key**"), and that they used this key (or the keypad on the back door) to access the rental unit.

Recycling Bins

In February 2019, an issue with the Tenants' and Non-Party Tenants' usage of recycling bins emerged, the specifics of which were not clearly explained by the landlords at the hearing. I understood the landlords' testimony to be that they had received a complaint from the strata corporation that the occupants of the rental unit were over-stuffing their outdoor recycle bin, and using other recycle bins that they were not permitted to use. The landlords did not enter any documents into evidence in support of this, other than an undated photograph of two closed recycling bins (the significance of which was not made clear in the hearing).

The Tenants denied that they overstuffed bins or used ones they were not permitted to use, but conceded that the Non-Party Tenants might have done so.

The landlords testified that the Tenants did not put the recycling bins out for pick up on the scheduled date (February 28), and this caused the landlords some further problems with the strata.

The landlords testified, and the Tenants agreed, that landlord CS and tenant CL spoke on the phone later on February 28, and landlord CS insisted that the Tenants, that same night, dispose of the contents of four recycling bins which, landlord CS asserted, were full of material from the Tenants. Tenant CL testified that she was unable to do so that night, but would likely have been able to the following day. She testified, and the landlords agreed, that she advised landlord CS of this, but that landlord CS insisted that the bins be emptied that night, and if they were not, that the landlords would do it, and charge the Tenants a fee. The parties agree that the amount of the fee was not discussed on the call, and that later that night the landlords came and removed the contents of the bins. The parties agreed that the landlords did not bring up the issue of the fee until one month later, at the end of the tenancy.

At the end of the tenancy the landlords told the Tenants that their fee for removal would be $200.00. The landlords testified that this number was not based on any cost incurred by them, but was arrived at by assigning each bin an arbitrary cost of $50.00, and multiply by four.

At some point during the hearing, after the landlords had given evidence on the issue of the fee, and how it was arrived at, landlord CZ left the hearing (unbeknownst to this arbitrator) to call a waste disposal company. At the end of the hearing, landlord CZ advised me that the waste disposal company told him that their cost for picking up the recycling would have been $300.00. No documentation was provided in support of this amount (and none would have been accepted, due to its extreme lateness). As such, I give no weight to the hearsay evidence provided by landlord CZ.

Move Out

The Tenants vacated the rental unit at 6pm on March 31, 2019. The parties agree that when they did so, they did not leave the Backdoor Key or the Upstairs Key in the rental unit. The parties agree that the parties conducted a condition inspection report on April 1, 2019, at which time the Tenants gave the landlord the Backdoor Key. The Tenants did not have the Upstairs Key, and, it would seem, the Non-Party Tenants did not return it to the landlords when they vacated the rental unit.

The landlords did not provide the Tenants with a copy of the move-out condition inspection report at the time the inspection, as the Tenants did not provide the landlords with their forwarding address.

The Tenants did not provide their forwarding address to the landlords until May 2, 2019. The landlords made this application on May 14, 2019. A copy of the move-out condition inspection report was not included in the landlords' evidence package, and has not yet been served on the Tenants.

Landlord's Damages

The landlords allege they suffered damages as follows:

Loss of Opportunity to Earn Rental Income	$500.00
Repairs to rental unit	$150.00
Recycle Bin Fee	$200.00
Cost to Replace Upstairs Lock	$150.00
Total	$1,000.00

Loss of Opportunity to Earn Rental Income

In their application, the landlords argue that the Tenants' failure to return the keys on March 31, 2019, deprived the landlords of the opportunity to rent the rental unit out until April 2, 2019 (the date they wrote the Backdoor Key was returned). At the hearing the landlords stated they made an error and that the Backdoor Key was returned on April 1, 2019.

The landlords testified that they could rent the rental unit out for $250.00 per night, and would have been able to do so within a day of posting it. The landlords testified that they did not have any prospective renters in place to rent the rental unit for the night of April 1, 2019, nor had they advertise its availability for that night.

The Tenants argued that the landlords were saying they intended to rent the rental unit out on AirBnB (which the landlords denied), and that such rentals are prohibited by the municipal bylaws in the city the rental unit is located. As such, they are, no award should be made for loss of income, as an income gained, would have been done by illegal means.

Replace Upstairs Lock

The landlords testified that since they did not possess another key to the upstairs door lock (the "**Upstairs Lock**"), and the Upstairs Key was not returned, they had to replace the Upstairs Lock hardware. They testified that the cost was $150.00, although they uploaded no documentary evidence in support of this. They testified that they paid cost a further $50.00 to have the new lock installed, and produced an invoice showing this amount.

The Tenants deny that they should be responsible for paying for a new lock, as they were never given a copy of the Upstairs Key. They are that if they were given a copy (as they argue the Act requires the landlord to do) they would have returned it, with the Backdoor Key.

The Tenants argue, in the alternative, that if they are to pay for the replacement parts, they entirety of the door hardware need not be replaced (as was done by the landlords). Rather, the Tenants argue that only the deadbolt needed to be replaced, which would $44.99. The Tenants submitted a screenshot from Home Depot showing a deadbolt which would costs this amount.

The landlords argue that the Upstairs Lock hardware is all of a piece, and the replacement of the entirety of the hardware is required. They entered a photo of Upstairs Lock into evidence, which appears to show a single-piece dead bolt, door plate, and handle. The models of deadbolts entered into evidence by the Tenants would, on a cursory view, not appear to be compatible with the Upstairs Lock hardware.

Repairs to Rental Unit - Scratches

The landlords testified that, in addition to the replacing Upstairs Lock, they needed to hire a contractor to "sand and stain" the upstairs door trim due to scratch marks caused by the Tenants or the Non-Party Tenants. They submitted a photo of these marks. They also submitted an invoice which shows the cost of this work was $50.00.

The Tenants deny they caused these scratches, and suggest that they were caused by the landlords removing furniture from the rental unit during the course of the tenancy (the landlord deny doing so). They argued that the landlords did not submit any

evidence of the state of the upstairs door at the start of the tenancy, so there is insufficient evidence to determine the cause of the scratches.

In the alternative, the Tenants argued that these scratches are reasonable wear and tear, and that they should not be responsible for repairing them.

Repairs to Rental Unit – Water Damage

The landlords allege that Tenants caused water damage to the floor of the rental unit by unplugging the bar fridge when they left, which caused ice to melt in the icebox and leak onto the floor, causing damage to the floor and baseboards. The landlord testified that they discovered the leak the night of March 31, 2019, and were able to soak up much of the water with towels, preventing the further damage.

The landlords entered a photograph of the damaged area, and a copy of the contractor's invoice of $50.00 for repairing the damage.

The Tenants testified that they turned off the bar fridge to aid in the defrosting process while they were cleaning the rental unit prior to their departure, but that they turned in back on before they vacated. The submitted a photo of the interior of the fridge and surround ground taken minutes before they vacated, which does not show any damage to the floor or baseboards. The photograph does show pools of water on the glass shelves of the bar fridge.

The Tenants argue that as there was no water damage when they vacated the rental unit, they are not responsible for any of the water damage as alleged by the landlords.

Analysis

Rule of Procedure Rule 6.6 states:

> **6.6 The standard of proof and onus of proof**
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> The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.
>
> The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application.

As the landlords are making an application for damages, they bear the onus of proving on a balance of probabilities that they suffered the damage they allege.

Residential Tenancy Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It 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 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:
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> - 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.

The duty to minimize loss is also set out at section 7(2) of the Act:

> **Liability for not complying with this Act or a tenancy agreement**
>
> **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 will apply these principles to each of the landlords' claims for damage in turn.

Loss of Income

The landlords provided no evidence that, had the Tenants returned the Backdoor Key on March 31, 2019, that they would have been able to rent out the rental unit on April 1, 2019. As such, they have failed to meet their evidentiary burden. I am not persuaded by their predictions of what might have happened had the Backdoor Key been returned one day earlier. Common sense dictates that it is highly improbable that the landlords would have been able to post an advertisement and obtain and vet a suitable tenant within a 24 hour period.

As such, I decline to order that the Tenants compensate the landlords for any loss of opportunity to earn income.

Recycling Bin Fee

The landlords were unable to refer me to any portion of the tenancy agreement or the Act which permitted them to levy a fee against the Tenants for failure to put out recycling bins or which requires the Tenants to do so. As such, I find that the landlords have failed to discharge their onus to demonstrate that the Tenants breached the Act or tenancy agreement.

Additionally, the landlord provided no documentary evidence of any damage they actually suffered as a result of the Tenants' alleged actions (such as a fine from the strata counsel or disposal costs from junkyard or recycling depot).

Accordingly, I decline to order that the Tenants pay the landlords any amount related to the recycling bin fee.

Repairs to Rental Unit - Water Damage

Based on the evidence, I find that the actions of the Tenants caused ice in the bar fridge to melt, and eventually leak onto the floor of the rental unit. I find that even though the water was not on the floor when the Tenants vacated the rental unit (as seen in their photograph), that the ice continued to melt after they left and leaked onto the floor causing damage.

Section 32(3) of the Act states:

> (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.

I find that the Tenants did not do repair the damage they caused.

Section 7(1) of the Act states:

> (1)If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

I accept the landlords' evidence that the cost of repairing the damage caused by the leaking water was $50.00. Accordingly, I order that the Tenants compensate the landlords that amount.

Repair to Rental Unit – Scratches

I agree with the Tenants argument that there is insufficient evidence to determine whether the scratches on the Upstairs Door were present at the start of the tenancy. It was within the landlords' power to enter such evidence, in the form of the move-in condition inspection report. They failed to do so, and therefore failed to discharge their evidentiary burden.

Accordingly, I decline to order that the Tenants pay the landlords any amount related to the scratches.

Upstairs Door

Section 37(2) of the Act states:

> **Leaving the rental unit at the end of a tenancy**
> (2)When a tenant vacates a rental unit, the tenant must
> (b)give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

This section obligates tenants to return keys in the possession or control of the Tenants. I find that the Upstairs Keys were not in the possession or control of the Tenants. They were in the possession or control of the Non-Party Tenants at the end of the tenancy. I find that the Non-Party Tenants breached the Act by failing to return the Upstairs Key at the end of the tenancy.

Policy Guideline 13 states:

> Co-tenants are jointly and severally liable for any debts or damages relating to the tenancy. This means that the landlord can recover the full amount of rent, utilities or any damages from all or any one of the tenants. The responsibility falls to the tenants to apportion among themselves the amount owing to the landlord.

I find that the Tenants and Non-Party Tenants are co-tenants, and are therefore jointly and severally liable for any damage the landlords might have suffered as the result of the loss of the Upstairs Key.

Based on my review of the photographic evidence provided by the landlords, I find that it was necessary for the landlords to replace all of the upstairs door hardware (as

opposed to only the deadbolt, as the Tenants argued). I heard no evidence from the Tenants, beyond a mere assumption of Tenant AD that the replacement of the deadbolt only was even possible on the upstairs door.

I accept the landlords' evidence that the replacement lock hardware cost $150.00 and that they paid a contractor $50.00 to install the hardware. I find that these were reasonably incurred costs.

I do not find that the landlord breached the Act by failing to provide a copy of the Upstairs Key to the Tenants. I accept the landlords' testimony that the Tenants were offered a copy of the Upstairs Key, and that the Tenants refused. Section 25 of the Act, upon which the Tenants relied, does not obligate a landlord to provide a copy of a key to a tenant, rather it requires a landlord to replace the locks at the start of the tenancy, at a tenant's request.

This is not the situation in this case. The Tenants did not testify that they requested the locks to be rekeyed. Indeed, they did not even testify that they requested copies of the Upstairs Key, and were denied. Rather, I find that they declined the landlords' offer for a copy of the Upstairs Key, and that the Tenants alone caused themselves not to have copies of the Upstairs Key.

Accordingly, I find that the landlords are entitled to a monetary order for $200.00 representing compensation for the purchase of the replacement lock hardware and its installation.

In summary, I find that the tenants must pay the landlords $50.00 for water damage caused to the rental unit and $200.00 in costs related to the replacement of the Upstairs Lock.

Pursuant to section 72, I order that the landlords may credit these amounts against the $1,000.00 security deposit they currently hold in trust for the tenants. I order that the landlords return the balance of the security deposit ($750.00) to the Tenants in accordance with the Act.

Conclusion

Pursuant to sections 67 and 72, I order that the landlords may retain $250.00 of the Tenants' security deposit. I order that they return the balance ($750.00) to the Tenants in accordance with the Act.

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: August 30, 2019

Residential Tenancy Branch