Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding REMAX LITTLE OAK REALTY and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFL MNDCL-S MNDL-S

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for unpaid rent and for compensation for damage or loss under the *Act* pursuant to section 67 of the *Act*;
- authorization to retain the tenants' security deposit in partial satisfaction of this claim pursuant to sections 38 and 67 of the *Act*; and
- recovery of the filing fee for this application from the tenants pursuant to section 72 of the *Act*.

The landlord's agent D.L. (herein referred to as "the landlord") appeared at the date and time set for the hearing of this matter and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenants did not attend this hearing, although I left the teleconference hearing connection open until 2:30 p.m. in order to enable the tenants to call into this teleconference hearing scheduled for 1:30 p.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

As only the landlord attended the hearing, I asked the landlord to confirm that the tenants had been served with the Notice of Dispute Resolution Proceeding for this hearing. The landlord testified that the two tenants were individually served with the landlord's notice of this hearing by Canada Post registered mail on June 7, 2019, and submitted two Canada Post registered mail tracking numbers into evidence as proof of service, which I have noted on the cover sheet of this Decision. The landlord testified

that the tenants' packages were sent to the tenants' address for service provided by the tenants on their Application for Dispute Resolution for a previous hearing (file number noted on the cover sheet of this Decision) which took place on April 30, 2019 and was reconvened on June 20, 2019. The landlord testified that the tenants never provided him with their forwarding address.

The landlord testified that he had served the tenants with the landlord's evidence, individually, by Canada Post registered mail on May 29, 2019, and submitted two Canada Post registered mail tracking numbers into evidence as proof of service, which I have noted on the cover sheet of this Decision. The landlord explained that he served the evidence to the tenants on the date that he filed the landlord's Application for Dispute Resolution, which was prior to receiving the notice of this hearing from the Residential Tenancy Branch, because he had served the evidence for the purposes of the previous hearing (first held April 30, 2019, and adjourned to June 20, 2019) for which he was under the impression was going to address his Application for Dispute. I note that the previous hearing was to address only the tenants' claims and that the tenants' decided to withdraw their Application at the adjourned hearing on June 20, 2019.

Section 90 of the *Act* sets out when documents that are not personally served are considered to have been received. Unless there is evidence to the contrary, a document is considered or 'deemed' received on the fifth day after mailing it is served by mail (ordinary or registered mail).

Residential Policy Guideline 12. Service Provisions provides guidance on determining deemed receipt, as follows:

> *Where a document is served by Registered Mail, the refusal of the party to accept or pick up the Registered Mail, does not override the deeming provision. Where the Registered Mail is refused or deliberately not picked up, receipt continues to be deemed to have occurred on the fifth day after mailing.*

Therefore, I find that tenants were deemed served with the notice of this hearing on June 12, 2019, the fifth day after mailing, and the landlord's evidence on June 3, 2019, the fifth day after mailing, in accordance with sections 89 and 90 of the *Act*.

Preliminary Issue – Amendment of Landlord's Application

The landlord submitted an Amendment to the original Application to clarify the "also known as name" for tenant A.C., by providing it fully and separately instead of providing the last name within parentheses. Pursuant to my authority under section 64(3)(c) of the Act, I amended the landlord's Application to correctly provide the "also known as" name of tenant A.C.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for compensation for damage or loss?
Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. Only the aspects of this matter relevant to my findings and the decision are set out below.

A written tenancy agreement was submitted into documentary evidence by the landlord, and the landlord confirmed the following information pertaining to this tenancy:

- This fixed-term tenancy began January 1, 2016 with a scheduled end date of December 31, 2017, after which the tenancy continued on a month-to- month basis.
- Monthly rent of $1,550.00 was payable on the first of the month.
- The tenants paid a security deposit of $775.00, which continues to be held by the landlord.

The landlord testified that landlord and the tenants participated in a condition inspection of the rental unit at move in, and that the tenants were provided with a written copy of the condition inspection report, sent to them in the mail. The landlord submitted a copy of the completed move-in inspection report, signed by the tenant A.C. into documentary evidence.

The landlord testified that the tenants moved out by January 1, 2019 as a result of the landlord obtaining an order of possession. The landlord confirmed that a move-out condition inspection was not scheduled with the tenants, therefore no written condition inspection report at move-out was completed. The landlord submitted photographic evidence in support of his claims pertaining to the condition of the rental property at move-out.

The landlord testified that the tenants never provided their forwarding address to the landlord and that the landlord only became aware of the tenants address for service as it was noted on the tenants' Application for Dispute Resolution for a previous hearing held April 30, 2019.

The landlord filed an Application for Dispute Resolution on May 29, 2019, seeking to retain the tenants' security deposit against a claim of $12,953.28 for compensation for damages and loss caused by the tenants, set out on a Monetary Order worksheet.

In support of their claim, the landlord submitted into evidence invoices for the cost of garbage removal around exterior of rental property due to municipal order during tenancy ($1,831.91), municipal water bills unpaid by the tenants ($428.40), and replacement for fridge taken by tenants ($263.38). A copy of the tenancy agreement submitted into evidence confirmed that water was not included in the monthly rent.

The landlord also claimed $250.00 for a municipal bylaw infraction attributed to the tenants' operating a business without a business licence in the rental unit. The landlord submitted evidence of the bylaw notice infraction and testified that it had been charged to the property owner's property tax bill. However, the landlord submitted no evidence of this amount being charged to the property owner's tax bill, or that the property owner paid this amount.

The landlord also claimed $9,392.09 for the cost of "damage/garbage/repairs to unit after tenancy".

The landlord submitted an estimate dated March 4, 2019 for the cost of repairs for damage caused by an exterior door installation by tenants ($787.50) through an enclosed upper patio.

Analysis

Section 67 of the *Act* provides that, where an arbitrator has found that damages or loss results from a party not complying with the *Act*, regulations, or tenancy agreement, an arbitrator may determine the amount of that damage or loss and order compensation to the claimant. The claimant bears the burden of proof. The claimant must show the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* by the other party. If this is established, the claimant must provide evidence of the monetary amount of the damage or loss incurred, which is usually done through the submission of invoices or receipts into documentary

evidence. The amount of the loss or damage claimed is subject to the claimant's duty to mitigate or minimize the loss pursuant to section 7(2) of the *Act*.

In this case, the landlord has submitted six heads of claim for compensation on the Monetary Order Worksheet, which I have addressed below:

Item #1 - Bylaw Infraction

I accept the landlord's unchallenged testimony and evidence that a bylaw infraction was issued against the tenants, however the landlord failed to provide sufficient evidence that this charge was transferred to the property owner and billed to their property tax, as no receipt of payment or tax bill was submitted into evidence. As such, based on the testimony and evidence before me, on a balance of probabilities, I find that the landlord failed to establish that the landlord incurred this loss, therefore the landlord's claim fails for this item.

Items #2, #3, #4 and #6 – Garbage removal during tenancy, water utility bills, cleaning/garbage removal/repairs, and fridge replacement

Section 32(2) of the *Act* requires that 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.

Section 37(2) of the *Act* sets out the requirements for a tenant to fulfill when vacating the rental unit, as follows, in part:

> 37(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 accept the landlord's testimony and evidence that garbage removal costs of $1,831.91 were incurred due to an order by the municipality, that the tenants were required to pay for water under the terms of the tenancy agreement and that the tenants failed to pay the water bills of $428.40 submitted into evidence, and that a replacement used fridge was required to be purchased by the landlord at a cost of $263.38 as a result of the tenants removing the originally provided rental unit fridge.

As such, based on the testimony and evidence before me, on a balance of probabilities, I find that the landlord provided sufficient evidence to establish that the tenants contravened the tenancy agreement by failing to pay the water utility bills, the tenants contravened the section 32(2) *Act* by failing to maintain the standards required under of

the *Act* and that the tenants contravened section 37(2) of the *Act* by causing damage beyond reasonable wear and tear and failed to leave the rental unit reasonably clean. As the claimant has shown that the damages and losses claimed stemmed directly from violations of the tenancy agreement and contraventions of the *Act* by the other party, and sufficient evidence was submitted to establish that the landlord incurred the amount of the loss claimed, I find that the landlord is entitled to a monetary award for the amounts claimed for these above-noted items, totalling $2,523.69.

The landlord has submitted two invoices (#1470 and #1490) totalling $9,392.09 for a variety of labour and material costs, with only some of the items of work itemized. It is the claimant's responsibility to submit a detailed explanation of their claim, as such, where the landlord has failed to do so, I have been unable to make determinations.

Included in the above-noted amount are charges of $1,847.00 for labour related to garbage removal from personal belongings/garbage left inside the rental unit and in the yard, removal costs of a chicken coop and illegal stair structure erected in the yard by the tenants of $365.00, the associated garbage disposal costs of $933.11, and cleaning costs of $288.00. The landlord submitted photographic evidence in support of this claims.

Based on the testimony and evidence before me, on a balance of probabilities, I find that the landlord provided sufficient evidence to establish that the tenants contravened section 37(2) of the *Act* by failing to leave the rental unit reasonably clean. As the claimant has shown that the loss claimed stemmed directly from a contravention of the *Act* by the other party, and sufficient evidence was submitted to establish that the landlord incurred the amount of the loss claimed, I find that the landlord is entitled to a monetary award for the amounts claimed for garbage removal and disposal, and cleaning totalling $3,433.11.

In determining damages related to repair and replacement costs for building elements, my assessments are determined in accordance with Residential Tenancy Policy Guideline 40. Useful Life of Building Elements. This Guideline notes:

> *Useful life is the expected lifetime, or acceptable period of use, of an item under normal circumstances…if the 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 or replacement.*

The landlord claimed $3,220.00 for costs related to repairing holes in the wall and painting. As the landlord testified that the rental unit was last painted in 2014, no replacement cost for paint is attributable to the tenants, based on Policy Guideline 40, which provides that paint has a useful life of four years. Therefore, the landlord is not entitled to a monetary award for this claim.

The remainder of the landlord's claims were not itemized on the invoices, and included claims for a variety of building elements repairs or replacements pertaining to exterior and interior doors, flooring, light fixtures,

The landlord testified that the rental house was built around 1985, therefore some of the non-itemized items claimed may have been original to the house, although the landlord testified that some interior renovations had been done approximately 10 years ago.

Based on the evidence and testimony presented to me, on a balance of probabilities, I find that the landlord has failed to provide sufficient evidence to establish the amount of loss incurred by the landlord for the remainder of the claims, and as such the landlord is not entitled to a monetary award for the remaining items claimed on invoices #1470 and #1490.

Item #5 – Estimate for Repairs to Enclosed Patio

The landlord claimed an estimate for damages of $787.50 to an enclosed patio. Policy Guideline 40 provides that balconies, decks and porches have a useful life of 10 to 20 years. As the age of the house, and therefore the exterior building elements of the house, were estimated to be approximately 30 years old, this exceeds the useful life for the enclosed patio. Therefore, the landlord is not entitled to a monetary award for this claim.

Summary of Monetary Award and Set-off Against Security Deposit

In summary, I find that the landlord has established entitlement to a monetary award of $5,956.80.

Further to this, as the landlord was successful in obtaining a substantial monetary award through this application, I find that the landlord is entitled to recover the $100.00 filing fee from the tenants.

The landlord continues to retain the tenants' $775.00 security deposit. The landlord testified that the tenants did not provide him with their forwarding address in writing, as required by section 38(1)(b) of the *Act* to trigger the return of the security deposit, other

than through the tenants' Application for Dispute Resolution for the previous hearing held on April 30, 2019. The tenants' included a claim for the return of the security deposit as part of that Application for Dispute Resolution, however, the tenants withdrew the claim for the return of the security deposit at the reconvened hearing held on June 20, 2019. I find that the 15 days for the landlord to submit an Application for Dispute Resolution to claim against the security deposit did not begin until the conclusion of tenants' claim to the security deposit on June 20, 2019. In this case, the landlord submitted their claim during the interim between hearings on May 29, 2019. As such, I find that the landlord fulfilled the requirements under section 38(1) of the *Act* and is entitled to retain the security deposit in partial satisfaction of their claim for damages.

In accordance with the offsetting provisions of section 72 of the *Act*, I set-off the total amount of compensation owed by the tenants to the landlord of $5,956.80, against the tenants' security deposit of $775.00 held by the landlord, in partial satisfaction of the total monetary award in favour of the landlord.

As such, I order the landlord to retain the tenants' security deposit of $775.00 and I issue a Monetary Order in the landlord's favour for the remaining amount of the monetary award owing in the amount of $5,281.80, explained as follows:

Item	**Amount**
Monetary award in favour of landlord	$5,956.80
Recovery of the filing fee from the tenants	$100.00
LESS: Security deposit held by landlord	($775.00)
Total Monetary Order in Favour of Landlords	**$5,281.80**

Conclusion

I order the landlord to retain the $775.00 security deposit for this tenancy in partial satisfaction of the monetary award granted to the landlord for compensation.

I issue a Monetary Order in the landlord's favour against the tenants in the amount of $5,281.80 in satisfaction of the remaining amount of loss owed, and to recover the landlord's filing fee for this application.

The landlord is provided with this Order in the above terms and the tenants must be served with this Order as soon as possible. Should the tenants fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court 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 *Residential Tenancy Act*.

Dated: October 10, 2019

Residential Tenancy Branch