Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, FFL

Introduction

This hearing was convened as a result of the Landlords' Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for a monetary order for damage or compensation under the Act in the amount of $23,622.01, retaining the security deposit to apply to the claim; and to recover the $100.00 cost of their Application filing fee.

The Landlords, T.C. and C.C., and the Tenants, J.J. and A.W., appeared at the teleconference hearing and gave affirmed testimony. The Tenants also had legal counsel, S.W., ("Counsel") providing argument and some 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 Tenants and the Landlords were given the opportunity to provide their evidence orally and to 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.

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.

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.

Issue(s) to be Decided

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

Background and Evidence

The Parties agreed that the rental unit is a three-bedroom, four-bathroom, three-story townhouse that was new in 2012. They agreed to having signed a fixed term tenancy agreement that began on July 1, 2018, running to January 1, 2019, and then operating on a month-to-month basis. The Parties agreed that the Tenants paid the Landlords a monthly rent of $2,850.00, due on the first day of each month, and that the Tenants paid the Landlords a security deposit of $1,425.00, and a pet damage deposit of $1,425.00. The Parties agreed that the Tenants gave the Landlords their forwarding addresses via text messages; however, they could not agree on whether this occurred on July 9th or 10th, 2019.

The Parties agreed that they did a move-in inspection of the condition of the rental unit at the beginning of the tenancy; the Landlords said it happened on Tuesday, July 3, 2018, after the long weekend. The Landlords confirmed that they did not provide the Tenants with a copy of the condition inspection report ("CIR") from this inspection. The Parties agreed that they did not conduct a move-out inspection of the condition of the rental unit.

The Landlords submitted a monetary order worksheet with the following costs they say resulted from damage the Tenants did to the rental unit during the tenancy.

	Receipt/Estimate From	For	Amount
1	[Restoration company]	Water damage	$16,910.67
2	Carpet Quote [local carpeting company]	Pet urine/feces damage	$3,761.34
3	Loss of rental income	Loss of rent	$2,850.00

4	Application Filing Fee	Dispute Resolution Filing fee	$100.00
		Total monetary order claim	$23,622.01

#1 Restoration – Water Damage: $16,910.07

The Landlords said that the Tenant, J.J., called them in December 2018 about unexplained water marks on the downstairs ceiling. In the hearing, the Landlords said:

> The plumber came in and cut a hole in the wall. How did the water get there? [J.J.] said he would patch up the damage. In three months, we go back, again unexplained water damage.
>
> We did a walk-through and discovered that they had the garburator full of food and cigarette butts. The dishwasher can't run when the garburator is full and backed up; this caused the flood. The dishwasher was in perfect condition [at the start of the tenancy]. There was broken glass in the dishwasher. They also had a fish tank, which was in the area of the water damage – that could have been what caused it. The sub-floor under the main floor was damaged, too.

Counsel argued that the amount claimed by the Landlord is a quote or estimate, not an invoice or bill for the cost of the repair. In the hearing, Counsel said:

> There are no documents setting out what was paid, and type of work was requested by the water people. We would like evidence of that if the Landlords continue with this claim. It's prejudicial to face damages and assessment based on a quote.

The Tenant, J.J., said that there was a leak, and that when he called the Landlords about it, they responded by asking if it was the dishwasher. He said this is set out in their text messages. He said: "They already knew there was a problem with their dishwasher, with their plumbing. We had no idea what it was coming from and she responded 'dishwasher', which is prior knowledge of plumbing issues."

The Landlord said:

> For their first leak, I brought a plumber with me and he cut a hole in the ceiling. There was no comment about the dishwasher. The reason why I said dishwasher

> was because, when we lived there it needed the gasket replaced. We checked that first. We ran it and it was fine.
>
> The day we went, the garburator was full. We knew the holes were in the ceiling, so we wanted to do a walk through to see if those had been done [repaired]. We feel that [the Tenant] had had the garburator clogged. The initial time he called about the water mark, it was not the dishwasher. I felt there had been a spill on the floor and that he was not being honest. We don't know how that initial damage occurred.
>
> On a June 26th walk-through, we found the garburator full and the dishwasher on, but it was not draining.

Counsel said:

> The reason why we brought up that it was the Landlord, C.C., who made us aware of dishwasher, is because it goes back to the first walk-through. There was no formal report on the condition of the rental unit before they moved in. If there was a report of a leak and full gasket, the Tenants were not aware of it until December [2018]. It is all speculation as to what really happened. They had plumbers to inspect and drill holes, and my client understood the plumber was their friend.

Counsel referred to text messages contained in submissions: "Dec. 1.1 – 1.7", which she said illustrate the Parties' back and forth communication regarding the leaks and water damage.

Text messages on December 1, 2018, between the Landlord, C.C., and the Tenants included:

Tenant: Hey [C.] sorry to bug you. There's something leaking and it's coming into the basement. [1.28 p.m.]

Landlord: Dishwasher

Tenant: Has it leaked before?

Landlord: Yes, it has. [T.C.] can come by right now if your around to take a look at it.

Tenant: Yea I am home. Thanks. Sorry.

Landlord: No worries. [2.27 p.m.]

Landlord: Hey hows it going. Just heading home is [T.C.] still there. [6.58 p.m.]

Tenant: Hey, No he's not here anymore. They cut a few holes in the ceiling and couldn't find any pipes leaking. The plywood under the hardwood on the main floor was damp.

Landlord: They turned the dishwasher on and did a rinse cycle and still no sign. So keep an eye on it the next few days and let us know. Do you know if there has been any spills there recently?

Tenant: Ok I will. No there hasn't been any leaks. Mess.

Landlord: Okay. Keep an eye on it and we will see if anything else happens. If not then we will get it patched up :)

Tenant: Ok sounds good.
[reproduced as written]

The Landlord said that they wanted an updated scope of the work and that their numbers, the amounts of their claim have changed. "We can provide them with updated copies once completed."

Counsel said that they were requesting updated documents, because:

> …to assess damages, you need an exact amount as to what damage was caused to the owners. A quote is not sufficient, and we should know whether the damage is covered by insurance. They should set out disbursements, which helps us to calculate with clarity as to the damages to the Landlord.

When the hearing had to be adjourned at that point, Counsel opposed allowing the exchange of further documents. She said they should all have been collected and compiled before the Application was commenced. She said: "Their ideas and estimates were prematurely brought on."

The hearing was reconvened, and I advised the Parties that they were still under oath, further to their affirmations in the original hearing. I also advised them that pursuant to my interim decision in which I directed them not to upload any other evidence, I would not consider the Landlords' new evidence uploaded after the first hearing.

The Parties testified as to the remaining items on the Landlords' monetary order worksheet.

#2 Carpet Quote – Pet Urine/Feces Damage: $3,761.34

The Landlord said that the Tenants' pets damaged the carpets. The Landlord, C.C., said:

> I don't think allowing your animals to go on the carpet every day is normal wear and tear. The carpets were… – the smell was atrocious. We removed the carpets, and even the sub-floor smelled. The carpets should have had a few more years from them. Accidents happen, but they shouldn't happen so much that it seeps through the sub-floor.

The Landlord said that this damage was evident on:

> …all the stairs, both landings on both flights. The back bedroom was the worst, and it also had dog scratches on the window sill, which indicates the animal was in there for a long period of time. Every room smelled of urine. All the carpets had to come out.

The Tenant, J.J., said that the carpets were shampooed twice professionally:

> We provided receipts and a letter from the shampoo company. They would have informed me if they couldn't clean them, if they couldn't do it, or if they couldn't get it out. There's nothing that's not going to come out. There's a video with the minor staining on the carpets. To say my dogs urinated all over the place is a farce. They are well-trained, and they do their business outside.

The Tenant, A.W., asked the Landlords if there had been any dogs living in the rental unit prior to their tenancy. The Landlord, C.C., said: "We had two dogs there, but our dogs are crate-trained and were never left in the house for long periods of time." C.C. said she is self-employed and almost never left the dogs unattended.

Counsel directed my attention to statements of the Tenants' former house cleaner. In her statement, the cleaner, J.J. ("Cleaner"), said she cleaned the rental unit for the Tenants starting on July 5, 2018. She said she cleaned biweekly, including doing the move-out clean. The Cleaner commented on the dishwasher leaking and the garburator not working properly. She said at the start of her time working there, she noticed that carpets were not new and that they had some stains from previous tenants.

The Cleaner also said: "The carpets did not smell of any odor, and up until my final clean in the townhouse, the carpets remained in the same state as the first time I cleaned. There was not any odor or smells from the carpets on any level throughout my time cleaning for [J.]." The Cleaner signed the statement and provided her telephone number. The Tenants also submitted an invoice from the Cleaner for $450.00 dated July 3, 2019, and a carpet cleaner's invoice dated July 4, 2019, for having steam-cleaned the carpets at the rental unit.

The Tenant, J.J., submitted an approximately six-minute recording of a walk-through he did prior to moving out, showing how clean and undamaged the rental unit was, once their belongings were removed and the rental unit was cleaned. The Parties agreed that they did not do a move-out inspection of the rental unit.

Counsel said that the Landlords "keep saying that they removed all the carpets, but we don't have a replacement of the carpet cost. Nothing about the condition the carpets at the start of the tenancy. The burden is on them to establish that the carpets were new prior to [the Tenants] moving in."

#3 Loss of Revenue (Unable to rent in August 2019): $2,850.00

The Landlords argued that they should be compensated for August 2019 rent, since they were unable to rent it out right away after the tenancy ended.

The Landlord said: "We should have been left with a unit we could have rented out. Due to how complex it was, everything took much longer to be repaired. The Townhouse [repairs were] only completed in mid-November. Here it is December and we're still without a renter." They said it would have been easier to find a renter in the summer than at Christmas time.

Counsel said: "Unless the Landlord can establish that the damage was caused by my

Clients, while they were residing in the unit, then the loss of rent was not my clients' liability. [The Landlords] posted an [online advertisement] in August; therefore, the place must have been ready, or they wouldn't have listed it. We are in December and it's been a few months of Strata taking time, which is not my Clients' responsibility. There was no condition inspection report done to show the before and after."

The Tenant A.W. said: "The Landlords keep mentioning that they saw issues like carpets and water, since December [2018]. Why were we not advised? A video was taken in March [2019] without our permission and they didn't note any concerns. They clearly did not have concerns over what we were doing during the tenancy."

The Landlord, C.C. said:

> They're saying they don't know the cause of the water damage, but on June 26 we have video of a [leaking] dishwasher that was caused by their clogging the drain. [T.C.] said numerous times to get it cleaned up. There was no smoking; you were reminded numerous times not to smoke, there were butts in the garburator. We got complaints, we were feeling more uncomfortable. You guys broke several issues on the addendum. The garburator is still there, it still works if you use it correctly. After the 26th, we told you guys it has to get cleaned up. There was even a bird and a third dog living there. We were glad you gave notice when you did. This should have been done through your insurance, not ours. There was nothing wrong with the dishwasher after a new gasket on March 5; there were no issues with it again. [J.J.] said he would have the ceiling repaired in the basement.

The Tenant J.J. said:

> For the initial leak in December [2018], the first thing Ms. [C.] asked me was whether it was the dishwasher. They said it was too expensive to get a repair person, and they did it themselves; they brought someone in who cut a hole in the roof that I did say I'd fix. Neither of them is a licensed plumber and neither had a licensed plumber in. They never brought a certified plumber in; they brought their buddy in. They're trying to get things for free.
>
> In the Addendum – it addresses what to do if there are any plumbing problems. Why put it in the Addendum, if they didn't have plumbing issues already? My son

> put something down the toilet, I turned it off, removed the item. We communicated with them on every issue.

In their final statements in the reconvened hearing, the Parties said the following:

The Landlord said:

> There was testimony from the plumber – there was no leak. Also, [A.W.] emailed our plumber on September 27th, so they thought he was reputable enough to reach out for his input. The dishwasher never leaked once for me. On December 1 and March 3, the first thing [the Tenant] said to me is that 'we don't use the garburator'. We think he had cleaned up the spills and tried to make it something internal. We believe we walked in and discovered . . . once the drywall had been taken out of the ceiling, the subfloor was still damp, which is evidence of a spill before we got there.
>
> This experience was really upsetting, and we considered selling the townhouse, but it has been devalued by $25,000.

Counsel said:

> In the December communications submitted in my Client's evidence – the text messages 1.1 – 1.7 – there is no mention of the garburator, but there was mention from Landlord of the dishwasher.
>
> Regarding the $25,000.00 – even at the last hearing, the Landlords were claiming that the repairs were not done yet, that they were still waiting on the Strata, so when they came up with that claim it was out of nowhere. You establish an amount of damages in a receipt for repairs and testimony of what work was done. That was never provided in this case, and my Clients shouldn't be prejudiced by a premature claim. There was insurance coverage before the claim started, now they're saying that some things that were done would not come out of Landlords' pockets. How much damages, if any, were caused by my clients?
>
> There is no disclosure form signed or a CIR regarding the state of the house prior to moving in.

As for the pet urine and carpets – the Landlords claim they have two dogs, so there's no evidence of which pets caused the damage. So you don't have a case.

Analysis

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

Before the Parties testified, I advised them of how I would analyze the evidence presented to me. I explained that the party who applies for compensation against another party has the burden of proving their claim on a balance of probabilities. Policy Guideline 16 sets out a four-part test that an applicant must prove in establishing a monetary claim. In this 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.

["Test"]

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 of CIRs in accordance with the regulation.

Section 32 of the Act requires a tenant to make repairs for damage 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), 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).
>
> Reasonable wear and tear refer 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.
>
> [emphasis added]

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.

In this case, the Landlords did not provide a copy of a CIR from the move-in inspection they say occurred after the long weekend at the beginning of July 2018. Further, the Tenants provided a video walk-through after their possessions were removed from the rental unit and after it was cleaned. I find this evidence indicates that the rental unit was reasonably clean and in good repair, other than a few scratches on the wall, which I find to be normal wear and tear. Of course, the presence of odour in the rental unit can not be determined from this evidence.

I find pursuant to section 36 of the Act that the Landlords have extinguished their right to claim against the security deposit; however, they may still claim compensation for

damages or loss suffered as a result of the tenancy.

#1 Restoration – Water Damage: $16,910.07

During the hearing, the Landlords indicated more than once that they did not know what caused the water damage to the rental unit. First, they said the following:

> We did a walk-through and discovered that they had the garburator full of food and cigarette butts. The dishwasher can't run when the garburator is full and backed up; this caused the flood. The dishwasher was in perfect condition [at the start of the tenancy]. There was broken glass in the dishwasher. They also had a fish tank, which was in the area of the water damage – that could have been what caused it. The sub-floor under the main floor was damaged, too.
>
> [emphasis added]

The Landlords also said:

> The initial time he called about the water mark, it was not the dishwasher. I felt there had been a spill on the floor and that he was not being honest. We don't know how that initial damage occurred.
>
> [emphasis added]

I find that the Landlords are speculating as to what caused the damage to the rental unit. They did not direct me to a statement from a professional plumber or contractor who advised them of what caused the problem. They addressed two incidents of water damage to the rental unit – December 2018 and March 2019. They suggest they know that the second leak was caused by a plugged garburator; however, they did not direct me to a licensed plumber's statement confirming this suggestion.

Further, the Landlords did not indicate how different sources of damage can be distinguished from each other. I question how the Tenants can be held responsible for an appropriate portion of the repair work, had there been sufficient evidence that the Tenants were responsible for either spill, leak or flood. Without more objective cause/effect evidence, I find that the Landlords have failed the first two steps of the Test. Accordingly, I dismiss the Landlord's claim for compensation for water damage without leave to reapply.

#2 Carpet Quote – Pet Urine/Feces Damage: $3,761.34

The Parties indicated that they did a move-in walk through inspection of the rental unit early in the tenancy; however, the Landlord did not provide a copy of a CIR, as a baseline of the condition of the rental unit at the start of the tenancy. The Parties agreed that they did not do a move-out inspection of the rental unit; however, from the Tenants' six-minute recording of a walk-through, I find that the rental unit was in a state of reasonable cleanliness and repair after their belongings were removed and the cleaning was complete (aside from any odour).

The Cleaner gave evidence contradicting that of the Landlords, as to the presence of pet urine odour on the carpets resulting from the tenancy. The Cleaner also said the carpets were not new, and that they had some stains from previous tenants. Based on the absence of a CIR, combined with the Tenants' evidence that contradicts that of the Landlords, I find that the Landlords have not provided sufficient evidence to prove the first step of the Test in this matter on a balance of probabilities.

Further, the Landlords submitted a quote or estimate for the replacement of the carpeting they claim was damaged by the Tenants. I find this is not sufficient evidence of the value of the loss required by step 3 of the Test.

When I consider the evidence before me overall, I find that the Landlords did not provide sufficient evidence to support their claim for damaged carpets; therefore, I dismiss their claim for compensation for carpet damage without leave to reapply.

#3 Loss of Revenue (Unable to rent in August 2019): $2,850.00

The Landlords said: "We should have been left with a unit we could have rented out." Based on all the evidence before me in this matter and on a balance of probabilities, I find that Counsel's statement is compelling in this matter: "Unless the Landlord can establish that the damage was caused by my Clients, while they were residing in the unit, then the loss of rent was not my Clients' liability."

I have dismissed the Landlords' compensation claims for damage to the rental unit; therefore, I find the Tenants are not responsible for the Landlords' inability to obtain new tenants as soon as possible after the tenancy ended on July 3, 2019. Accordingly, I dismiss this claim without leave to reapply.

Given that the Landlords are unsuccessful in their claims, I decline to award them recovery of the $100.00 Application filing fee.

Conclusion

The Landlords' claim for compensation for damage or loss against the Tenants is unsuccessful. The Landlords did not provide sufficient evidence to establish their monetary claims on a balance of probabilities. The Landlords' Application is dismissed wholly without leave to reapply.

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: January 7, 2019

Residential Tenancy Branch