Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Puppy Holdings Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNDC, MNSD, FF

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the "Act") for Orders as follows:

1. A Monetary Order for damages to the unit - Section 67;
2. A Monetary Order for compensation - Section 67;
3. An Order to retain the security deposit - Section 38; and
4. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Preliminary Matters

The Landlord made its application on October 7, 2019. The Landlord provided its evidence to support the claims to the Tenant by mail on January 13, 2019. The Tenant has received the evidence, has no objections and is satisfied that it has had sufficient time to review the evidence.

The Landlord confirms that the Landlord named in the tenancy agreement is not the Landlord named on the application. The Landlord states that the original landlord was replaced in 2007 or 2007 as the Landlord for the tenancy. The Tenant does not dispute that the Landlord is properly named in the application.

In speaking to the evidence package the Landlord stated that the photos in the evidence package were taken in late or early January 2020. The Landlord also stated that they were taken after new tenants moved into the unit on December 1, 2109. The Landlord also stated that the photos were taken just after the Tenant moved out. The Landlord also stated that some were taken in October 2019 and some in January 2019. The Landlord was cautioned about giving inconsistent evidence and encouraged to ensure that it gives clear and consistent evidence. During these directions the Landlord raised his voice, interrupted and spoke over the arbitrator several times. The Landlord's comments could not be discerned, and the Landlord was then cautioned not to disrupt the proceedings by such behavior and to wait until given opportunity to give evidence or argument. The Landlord stated that the arbitrator was biased and asked the arbitrator to remove herself.

Residential Tenancy Branch (the "RTB") Policy Guideline #10 provides that an arbitrator will refuse to conduct a hearing if he or she is satisfied that there is a reasonable apprehension of bias. A reasonable apprehension of bias exists when an arbitrator is satisfied that a person who is informed of all the facts would reasonably conclude that there is an appearance of bias on the part of the arbitrator. The Guideline sets out several examples of bias. Blacks Law Dictionary defines bias as, inter alia, a preconceived opinion, a predisposition to decide a cause in a certain way, to incline to one side and as a condition of mind, which sways judgement and renders a judge unable to exercise his functions impartially in a particular case. Rule 6.10 of the RTB Rules of Procedure provides that disrupting the hearing will not be permitted and that the arbitrator may give directions to any person in attendance at a hearing who is rude or hostile or acts inappropriately.

The Landlord did not provide any reasons for any reasonable apprehension of bias sch as those set out in the policy guideline. It appeared that the request for removal was solely in response to directions given to the Landlord just before the request. As the request for the arbitrator's removal was predicated on the Landlord's behavior during

the hearing and my directions given in relation to that behavior and not in relation to anything else, I declined to remove myself from the proceedings and the hearing continued.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The following are agreed facts: The tenancy under written agreement started on November 1, 2005 and ended on September 30, 2019. At the outset of the tenancy the Landlord collected $475.00 as a security deposit. The Parties mutually conducted a move-in inspection with a completed report copied to the Tenant. For the last year of the tenancy rent of $1,190.00 was payable on the first day of each month. The Landlord received the Tenant's forwarding address prior to the move-out.

The Landlord confirms that Tenant DA is not named on the tenancy agreement. The Landlord states that this person was named as this person acted on behalf of the Tenant for the end of tenancy matters. Tenant DA states that its role was only to assist the Tenant and its family in the move-out of the Tenant. Tenant JD is ill and unable to attend the hearing.

The Landlord states that on August 6, 2019 it gave the Tenant an offer for a move-out inspection for September 30, 2019. The Landlord states that this offer was made in writing and left under the door of the unit. The Landlord states that it also provided move-out instructions to the Tenant at the same time. The Landlord states that two days after the move-out it made a second offer for an immediate inspection while in a phone call to Tenant DA. Tenant DA states that no offers were made by the Landlord and that sometime around September 30, 2019 the Landlord only called to complain about the state of the unit. Tenant DA states that it never saw the move-out instructions until they were included with the Landlord's evidence package.

The Landlord states that the Tenant left the hardwood floors in the combined living and dining room damaged requiring refinishing. The Landlord states that because the living room and dining room floors are connected the whole area had to be refinished. The Landlord claims $1,444.00 for the cost of refinishing and provides a receipt dated October 28, 2019. The Landlord confirms that while it refinished all the floors in the unit the Landlord is only claiming 60% of the total costs to represent the total area of the damaged flooring. The Landlord states that the floors were new in 1959 and were refinished prior to the start of the tenancy in about October 2005. The Landlord did not provide supporting evidence of this refinishing. Tenant DA states that the photos do not clearly depict damage and may be only stains. Tenant DA states that the move-out report does not note any damage to the living room floor and only notes damage to the dining room floor. Tenant DA states that during the tenancy a desk and chair covered this area. Tenant DA argues that even if the Tenant left the damage it was only wear and tear given the age of the floor.

The Landlord states that the Tenant left the kitchen ceramic tiles damaged and claims $400.00 for replacement and repairs of the tiles. The Landlord states that the tiles were new in October 2005. The Landlord provides a receipt dated October 30, 2019 for the replacement costs of $408.00. The Landlord states that the tiles carried a life time warranty but that the Landlord could not locate the warranty and could not recall where the tiles were originally purchased with that warranty. Tenant DA states that the damage to the tiles was from wear and tear only.

The Tenant does not dispute the Landlord's claim of **$80.00** for the repair of one wall.

The Landlord states that the Tenant left the unit and blinds dirty and claims $360.00. The Landlord confirms that a receipt dated October 4, 2019 was provided for the cost of the blinds in the amount of $127.00. No invoice was provided for any cleaning costs. The Landlord states that the cleaning was done by its employee during its regular

employment and no other costs were incurred for the employee's time. The Landlord states that it is actually claiming $360.00 for the cleaning costs plus $127.00 for the blind cleaning. Tenant DA states that since the monetary order predates the invoice for the blinds, the amount of $360.00 on the worksheet can only be taken as an estimate for the blind costs.

The Landlord states that the Tenant failed to leave a chandelier in place that had been provided with the tenancy. The Landlord claims $160.00. The Landlord states that the actual cost is $112.00 as set out in the receipt dated October 6, 2019 for $253.94 and that this receipt includes an unrelated cost. The Landlord states that it should be entitled to the full amount claimed as it took the employee's labour to install the chandelier. Tenant DA states that it has no evidence to rebut this claim.

The Landlord states that the Tenant failed to leave the drapes that were provided for the dining room, living room and bedroom. The Landlord also states that only the drapes in the dining room were missing and that the other drapes were still there but dirty. The Landlord states that the drapes were new in 2005 and could not be cleaned. The Landlord states that the tracks for the drapes were broken and missing the attachment loops. The Landlord set out a claim of $750.00 for this cost in the monetary order worksheet and states that the actual cost being claimed is $938.40. Tenant DA states that the move-in report only makes a check mark beside windows and coverings and that the Landlord has not provided any evidence that drapes were in the unit at move-in. Tenant DA states that there were no drapes in the living room and bedroom and that drapes were only over the patio door at move-out.

The Landlord states that the extent of damages left by the Tenant caused the Landlord time into the month of October 2019 to make the repairs and as a result the Landlord was unable to rent the unit for that month. The Landlord claims lost rental income of $1,400.00. Tenant DA states that the Landlord made only maintenance and repairs that

are done in the normal course of its business and that the Landlord does not have a right to claim lost rental income for damages that are only wear and tear.

Analysis

Section 36(2)(a) of the Act provides that 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 does not offer the tenant at least 2 opportunities, as prescribed, for the inspection. As the Landlord did not provide any supporting evidence of having made offers for a move-out inspection and given the Tenant's evidence that no offers were made, I find on a balance of probabilities that the Landlord has not substantiated that the required offers were made. As a result, I find that the Landlord's right to claim against the security deposit for damages to the property is extinguished. Although the Landlord has made a claim for lost rental income, as this claim is for additional compensation based on damages to the unit, I consider that the Landlord's right to retain the security deposit for this claim is also extinguished.

Section 38(1) of the Act provides that within 15 days after the later of

(a)the date the tenancy ends, and

(b)the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c)repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d)make an application for dispute resolution claiming against the security deposit or pet damage deposit.

As the Landlord's right to claim against the security deposit for damage to the unit was extinguished at move-out I find that the Landlord could not retain the security deposit pending the determination of its claims. The only option was for the Landlord to return the security deposit and to proceed independently with its claim for damages to the unit. Based on the undisputed evidence that the Landlord received the Tenant's forwarding

address and on the undisputed evidence that the Landlord did not return the security deposit I find that the Landlord must now pay the Tenant double the security deposit plus zero interest of **$950.00.**

Section 37 of the Act provides that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party, that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed, and that costs for the damage or loss have been incurred or established.

RTB Policy Guideline #40 provides that the useful life of hardwood floors is 20 years. Although the Landlord did not provide supporting evidence of having refinished the floors at the outset of the tenancy, as the Tenant did not provide any evidence to rebut this evidence, I find on a balance of probabilities that the floors were refinished in 2005 and that the useful life of the floors was then reasonably extended to 2025. Although the Landlord gave confusing evidence of the date that the photos of the unit were taken, I accept the Landlord's later and more composed evidence that the photos of the wood flooring were taken before the next tenancy. The Tenant gave only evidence that the damaged area was covered by a desk and chair during some portion of the tenancy. This is not evidence of pre-existing damage. Given the move-in report indicating no damage to the floors and the photo of the floors taken at move-out I find on a balance of probabilities that the Landlord has substantiated that the damage was caused by the Tenant during the tenancy. As the tenancy ended in 2019, I find that there were 6 years of useful life lost and that the Landlord is entitled to compensation for this period of loss. As the Landlord has claimed costs of $1,444.00 for the repairs to only combined living

and dining room floor, I find that the Landlord is entitled to 6/20 of this amount or **$433.20**. (1444/20=72.20, 72.20 x 6 = 433.20)

RTB Policy Guideline #40 provides that the useful life of tiles is 10 years. Given the evidence that the tiles are older than the 14-year tenancy and without any evidence to support that the tiles have a longer life, I find that the Landlord has not substantiated that the Tenant left damage beyond reasonable wear and tear in the circumstances. I dismiss the claim for tile repairs.

As the Tenant does not dispute the Landlord's claim of **$80.00** for the repair of one wall, I find that the Landlord is entitled to this amount.

Given the Landlord's evidence that no outside cleaning costs were incurred and as the Landlord provided no evidence to support an allocation of any costs to the employee's time to clean, I find that the Landlord has not provided sufficient evidence to substantiate the cleaning costs claimed at the hearing. As the Tenant provided no evidence that the blinds were left clean and given the Landlord's evidence of no cleaning, supported by photos of unclean blinds I find that the Landlord has substantiated that the Tenant left the blinds dirty. Given the receipt for the costs incurred I find that the Landlord is entitled to **$127.00.**

Given the undisputed evidence that the Tenant removed a chandelier from the unit I find that the Landlord has substantiated the need for its replacement. As the Landlord provided no invoice or details for the costs of its employee to install the chandelier and given the receipt for the separate cost of the chandelier, I find that the Landlord is only entitled to the **$112.00** as the separate amount set out on the receipt.

RTB Policy Guideline #40 provides that the useful life of drapes is 10 years. Based on the Landlord's evidence that the drapes were new in 2005 I find that the drapes were 14 years old at the end of the tenancy, that they no longer had any useful life remaining

and that the Landlord did not incur any loss in relation to the drapes. I therefore dismiss the claim for replacement costs of the drapes.

The Landlord has not proven that the Tenant caused the Landlord to refinish and replace all the flooring. There is no evidence of the time taken for this job and no evidence of any portion of time spent on the area damaged by the Tenant. The remaining damages caused by the Tenant were minor. I reasonably consider that the replacement and repair of the entire unit flooring would have taken the most time for completion and this time could not be considered as being a result of anything the Tenant did. I also consider that the majority of the work done to the unit after the end of the tenancy was required for maintenance and upgrades to be done by the Landlord in the usual course of its business. For these reasons I find on a balance of probabilities that the Landlord has not substantiated that the damages left by the Tenant caused the amount of lost rental income claimed and I dismiss this claim.

As the Landlord's application has met with some merit, I find that the Landlord is entitled to recovery of the **$100.00** filing fee for a total entitlement of **$862.20.** Deducting this amount from the **$950.00** owed to the Tenant leaves **$87.80** to be returned to the Tenant. As Tenant DA is not a tenant on the tenancy agreement, I make the order solely for Tenant JD.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **$87.80**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the RTB under Section 9.1(1) of the Act.

Dated: February 05, 2020

Residential Tenancy Branch