Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFL, MNDL, MNDCL**

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

- Authorization to recover the filing fees from the tenants pursuant to section 72;
- A monetary order for compensation for damage caused by the tenant, their pets or guests to the unit, site or property pursuant to section 67; and
- An order for compensation for monetary loss or other money owed pursuant to section 67.

The landlord attended the hearing with his counsel, WZ. The tenant, YZ also attended the hearing with his counsel, CB. As only the single tenant YZ attended the hearing, in this decision, all references to the "tenant" will be attributed to the tenant, YZ unless otherwise specified.

None of the remaining tenants attended the hearing. Counsel for the landlord provided evidence that each of the remining tenants was served with the Notice of Dispute Resolution Proceedings package by registered mail on October 28, 2019. The tracking numbers for the mailings are provided on the cover page of this decision. The tenants that did not attend this hearing are deemed to have been served with the Notice of Dispute Resolution Proceedings package five days after mailing pursuant to sections 89 and 90 of the *Act*. Counsel for the tenant acknowledged service of the Application for Dispute Resolution Proceedings Package and had no issues with timely service of documents.

This hearing proceeded in the absence of the remaining tenants.

Preliminary Issues
Tenant's counsel sought an order for the action against his client be dismissed on the grounds that YZ was not a party to any tenancy agreement. Counsel submits that only

the landlord and the tenant YGZ entered negotiations for the terms of the tenancy and only YGZ should be liable for any compensation order if I determined the landlord is entitled to such. Counsel for the landlord opposed the application stating that YZ was present when the negotiations took place and she had witnesses that could verify that fact. Landlord's counsel also submitted that the reason the tenants moved into the rental unit together was so that they could live together as a family. I determined that the tenant YGZ did not attend the hearing and was therefore unable to verify whether he alone entered into the tenancy agreement and that in the absence of a signed tenancy agreement between the parties, I was unable to make a finding that the parties named as respondents were occupants rather than tenants. Therefore, I found that each of the tenants named on the landlord's application are jointly and severally responsible for any orders I made pursuant to section 67 of the *Act* should the landlord's application succeed.

Issue(s) to be Decided

Is the landlord entitled to:

- Authorization to recover the filing fees from the tenants pursuant to section 72;
- A monetary order for compensation for damage caused by the tenant, their pets or guests to the unit, site or property pursuant to section 67; and
- An order for compensation for monetary loss or other money owed pursuant to section 67.

Background and Evidence

At the commencement of the hearing, pursuant to rules 3.6 and 7.4, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony. While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The hearing was originally set for one hour. Although I advised both parties that the hearing would not proceed beyond one hour and that each party was required to provide their evidence within the hour; the hearing prolonged for 2 hours and 50 minutes. Counsel for the tenant had provided written submission 3 days prior to the hearing but did not call his client as a witness. In light of this, and to be procedurally fair to both sides, I allowed counsel for the landlord to provide written submissions to me by the end of day on February 28, 2020. Counsel for the landlord was advised not to provide any further evidence, just written submissions. The submissions provided by

the landlord's counsel on February 28th also contained appendices A to W, made up of several pieces of documentary evidence not supplied to me or opposing counsel 14 days before the hearing as required by Rule 3.14 of the Residential Tenancy Branch Rules of Procedure. The submissions of counsel also apparently include claims for additional items (such as unpaid rent) that was not originally sought on the landlord's Application for Dispute Resolution.

As the evidence contained in the submissions and was provided to me after the hearing concluded and was not in accordance with Rule 3.14 and was provided contrary to the directions I gave regarding the acceptable content and; none of that evidence is recorded or would be used in this decision. Only the testimony that was provided during the hearing and submitted in accordance with Rule 3 of the Rules of Procedure is recorded in this decision. The landlord's additional claim for unpaid rent will not be determined in this decision, as the landlord did not seek an amendment to the claim to have it included.

The landlord gave the following testimony. The rental unit is one of three units in a house. The landlord's son owns the house where the rental unit is located. The owner of the house visits occasionally, doesn't sleep there or live there, but has use of the kitchen and bathroom when visiting. The house has the following layout: It is a three-level home with two basement suites. One of the basement suites is fully self-contained unit, not occupied by the tenants in this application. The other basement suite was rented to the tenants however the tenants shared the living room, dining room, equipment room, a bathroom and a laundry room with the landlord. A kitchen is shared with the landlord and a second adjoining kitchen used for fry cooking that could be accessed by the tenants. The tenants also had access to an elevator in the house where they could access one of the bedrooms on the second floor of the house with an ensuite bathroom. The first floor of the house was accessible to everyone, including the landlord who works in the house part time. The landlord acknowledges that there was a period where the landlord's brother and wife lived in the house for approximately 12 days commencing February 5, 2019.

No tenancy agreement was signed by the parties. The arrangement for the tenants to move into the rental unit was facilitated by "J", a mutual friend/acquaintance of the landlord and tenants. By oral agreement, the tenancy was scheduled to begin on January 1, 2019. Rent was set at $1,200.00 per month, however the tenants asked to move in on December 15, 2018 and it was agreed that the security deposit of $600.00 would cover rent for the half month's December rent. Although rent was set at a

monthly rate, the tenants paid rent twice: once in January and once in March as lump sum payments. The landlord does not claim the tenants missed paying rent.

At the commencement of the tenancy, the landlord was away overseas but was planning on coming back for January 1, 2019 to do a condition inspection report with the tenants. Due to the tenants moving in early, the landlord did not do a condition inspection report with the tenants.

On April 30, 2019, an incident occurred whereby "J" and one of the tenants was involved in an altercation. Due to the incident, the police advised "J" and the tenants to have no contact with one another and to stay 500 meters away from one another. The landlord directed me to the police report to corroborate this incident. The landlord stated that the no contact order also affected his ability to communicate with the tenants and do work on the patio of the house, although this information does not appear on the police report.

The landlord served the tenants with a One Month Notice to End Tenancy for Cause on May 10, 2019. The effective date on the Notice was June 15, 2019. On June 14th, the landlord sent a letter to the tenants advising he would be attending at 1:00 p.m. to retrieve the keys and repossess the property. Although not stated on the letter, counsel submits that the purpose of the visit was *'essentially to inspect'*.

When they attended on that date, the rental unit was vacant, however the landlord states that it was left unclean with visible damage to some areas, including glue drips on the hardwood flooring and glue in the locks of the doors. The landlord claims there was a urine stain on one of the carpets. No remote controls were returned to the landlord. In one of the bathrooms accessible to the tenants on the second floor, 2 rubber gloves were found stuffed in the toilet and the one in the basement suite suffered from a clog. The clogged toilet was easily repaired, however the toilet with the rubber gloves required more extensive repairs. A video of the repairman removing the rubber gloves was provided as evidence.

The landlord successfully located new tenants to occupy the rental unit commencing June 20, 2019. A copy of the tenancy agreement with the new tenants was provided as evidence by the landlord.

On July 2, 2019, the landlord's elevator maintenance company noted that the elevator's controller and components were corroded and rusted and some wires were cut. When the landlord went to use the gas fireplace on August 20, the landlord noticed wire

harnesses were cut, valves were cut off, and AC adaptors went missing. The landlord submits the elevator and fireplaces were located in the common area of the house and their usage was not exclusive to the tenants.

To corroborate his claim for compensation, the landlord provided invoices from the elevator repair company, a house cleaner and a carpet cleaner. For the glued locks the landlord provided bills of sale from Home Depot and a handwritten invoice from the handyman hired remove garbage, replace wood flooring and produce a wooden door for a bedroom. The same handyman invoiced the landlord an additional $2,500.00 for 'compensation of the delay in the patio project'. A different handyman provided handwritten notes invoicing the landlord for 'debugging' the remote control, dislodging the rubber gloves from the toilet.

On August 20th, while showing the house to his friend, the landlord tried to turn on the fireplaces and discovered they wouldn't work. He looked at the control panel and saw wires were cut and there was 'extensive damage' done. The landlord testified the fireplaces hadn't been used up until August 20, 2019. The landlord submitted a translated copy of a handwritten invoice from a contractor hired to fix the fireplaces at a cost of $4,800.00 for the work. No photos of the fireplace damage was provided.

Due to the landlord's understanding that he was subject to a no-contact order, the landlord submits that after April 30th, he was unable to finish a patio repair. This resulted in a loss of rent for the other self-contained basement unit. (Counsel clarified that the landlord's Application for Dispute Resolution misstated the loss of rent claim was for an inability to rent out the tenants' rental unit, not the other self-contained unit.) The landlord had a tenant lined up to rent the other individual basement suite but the landlord was unable to rent it out because the landlord believed he was subject to the no-contact order.

Lastly, the difficult situation with the tenants caused anger, depression and anxiety for the landlord, causing him to seek the service of a traditional Chinese medicine practitioner. The landlord seeks compensation for these expenses and submitted invoices for the remedies he purchased.

Tenant's counsel submits the following. The tenants in this case are related. In relation to the other tenants, YZ is the son of the tenants YGZ and NJG. HG was the tenant's wife at the time. "J", acting on behalf of the landlord, secured the rental unit for the tenant's father YGZ. There was no condition inspection report done at the commencement of the tenancy. As "J" was the intermediary, he or the landlord himself

should have been there to conduct a condition inspection report with the tenants at the commencement of the tenancy. The landlord's failure to attend and conduct a condition inspection report with the tenants at the commencement of the tenancy is a breach of the *Act*. The true nature of any pre-existing damage to the rental unit is therefore unknown at the commencement of the tenancy. Also, the landlord did not provide the tenants with any written opportunities to participate in a condition inspection when the tenancy ended, also required by the *Act* and regulations. Without any condition inspection report, the nature of pre-existing damage to the rental unit or the common areas of the house are unknown when the tenancy began.

The elevator was 'fixed' on January 28, 2019. Tenant's counsel points to the service order history of the elevator repairman which indicates the battery is not holding a charge. The battery was replaced, the lift was raised out of the pit, the slack on the rope was reset, and the rope safety switch was tested. The repairman notes the cover of the gate operator was removed and the owner was to fix the 2nd floor nosing. Based on this, counsel submits that it is unknown who contributed to the damage. Further, the landlord told the tenants not to use the elevator during the tenancy and the tenant submits it wasn't used anytime after January 28th.

Counsel for the tenant also notes that during the tenancy, the landlord and his friend, "J" shared the common areas of the house with the tenants. The landlord spent many days in the main floor of the house doing office work and had full use of the common facilities including the fireplaces, the elevator and the bathroom on the second floor used by the tenants. During the tenancy, the landlord's brother and his wife also spent time using the common areas where the damage was sustained. Counsel submits that the landlord cannot prove who damaged the elevator, the fireplaces, the hardwood floors or the toilets as these were commonly used by both the landlord and his guests.

Counsel for the tenant submits that his client left the rental unit shortly after the altercation with "J", on or about May 8, 2019.

Analysis

In each of their submissions, counsel for the landlord and tenant provided decisions made by different arbitrators of the Residential Tenancy Branch. While I have taken the time to read the decisions provided, I note that section 64(2) of the *Act* states: The director must make each decision or order on the merits of the case as disclosed by the evidence admitted and is not bound to follow other decisions under this Part.

Section 7 of the *Act* states: 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.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.
Rule 6.6 of the Residential Tenancy Rules of Procedure indicate the onus to prove their case is on the person making the claim. The standard of proof is on a balance of probabilities. If the applicant is successful in proving it is more likely than not the facts occurred as claimed, the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; and
4. Steps taken, if any, to mitigate the damage or loss.

In order for the landlord's compensation claim to succeed, the landlord bears the onus to prove that the tenants contravened the *Act*, regulations or tenancy agreement as stated in section 7.

The landlord faces a difficult task to prove the likelihood that the tenants caused damage to the rental unit, due to the undeniable superseding facts that the landlord and the tenants shared the common areas and facilities in the house and that no condition inspection report was conducted at the beginning or end of the tenancy.

- <u>damaged elevator</u>

During the tenancy, both the landlord and the tenants had access to the elevator. The landlord also had friends, family and guests present in the shared space during the tenancy that could have caused the damage. Likewise, since the damage to the elevator was noted on July 2nd, the damage could have been sustained to the elevator after the tenancy ended on June 15, 2019. While the landlord may suspect it was the tenants, I find the landlord has not provided sufficient evidence to satisfy me that any of the tenants caused this damage during the tenancy. In reviewing the service order dated July 2, 2019, the service technician indicates a corrosive liquid was spilled on the equipment while the service record for the elevator shows the elevator's battery was replaced in January 2019. The July 2nd service order indicates the components are 'rusted and corroded' giving rise to the possibility that the service technician could have

caused the damage or that the damage was old. I am left questioning the likelihood of rusting and corrosion to the components caused by vandalism as alleged by the landlord shortly before the tenancy ended. Likewise, the damage to the elevator was recorded after the commencement of the tenancy with new tenants, giving rise to the possibility that the damage could have happened after the end of the tenancy with these tenants. Given the landlord's inability to prove on a balance of probabilities, that it is more likely than not the tenants caused damage to the elevator, his claim for repairs for the elevator damage is dismissed.

- Washroom and toilet damage

The bathroom that suffered from rubber gloves in it was shared by the landlord and the tenants. While the possibility exists that any of the tenants could have flushed the gloves down the toilet, it is just as likely that the landlord or any person permitted on the shared property did the damage. Although it is unlikely that the landlord would purposefully do this himself, the rubber gloves could have been flushed down the toilet while the toilet was being cleaned by the landlord or someone hired by the landlord to clean it. Once again, the landlord bears the onus to prove the tenants caused the damage to the rental unit. Without a condition inspection report conducted in the presence of the tenants, signed by the tenants acknowledging the state of condition and repair at the end of the tenancy, the landlord is left in a position where the condition of the toilet is unknown at the time the tenancy ended. Further, in the space shared by both the landlord and the tenants, the landlord has not provided sufficient evidence to satisfy me that the tenants did the damage. The landlord's claim for repairing the toilet and washroom is dismissed.

- Carpet cleaning, house cleaning, garbage removal

Section 14 of the Residential Tenancy Regulations ("Regs") state:
the landlord and tenant must complete a condition inspection described in section 23 or 35 of the *Act [condition inspections]* when the rental unit is empty of the tenant's possessions, unless the parties agree on a different time.

Sections 23 and 35 of the *Act* require the landlord and tenant to participate in move-in and move-out condition inspections and document them in written reports. Sections 17 and 18 of the Regs indicate it is the landlord's responsibility to schedule the inspections and provide a copy to the tenant. Both the landlord and the tenant testified a condition inspection report was not completed, contrary to the *Act* and Regulation.

During the hearing, the landlord acknowledged he did not perform a condition inspection report with the tenants at the commencement of the tenancy. Although he indicated the reason for not doing so was because the tenancy began early while he was out of town, the landlord is still required to comply with the regulations and participate in a condition inspection report. Likewise, the landlord gave testimony that no condition inspection report was done with the tenants at the end of the tenancy and no written opportunities were provided to the tenants to have one done.

Section 21 of the Regulations state that in dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary. Without a condition inspection report signed by the parties acknowledging the pre-existing conditions of the rental unit, the landlord has put himself in a position where he cannot prove, on a balance of probabilities, the existence of the damages allegedly caused by the tenants when the tenancy ended. Though his testimony bears some weight, he has not met the burden of proof to show me the difference in condition between move-in and move-out.

The landlord has provided photographs of the state of cleanliness and repair at the conclusion of the tenancy. With respect to the landlord's claim for cleaning, I cannot determine what debris belongs to the landlord and what belongs to the tenants in the shared space used by both parties. The same holds true for the landlord's claim for garbage removal. In a space shared by both the landlord and the tenant, there is no viable way for me to determine whose garbage is whose or for me to determine whether the landlord or the tenants left the shared space unclean when the tenants vacated. With respect to the carpet cleaning, the landlord has not provided any photographs to depict how 'dirty' the carpets were or whether it suffered from a urine stain when the tenants vacated the rental unit. Due to these factors, I find the landlord has not provided sufficient evidence to satisfy me of the existence of the damage or loss (point 1 of the 4 point test) and I dismiss these portions of the landlord's claim.

- <u>Gas Fireplace</u>

The fireplace that the landlord claims required repair is also located in the part of the house designated as common area for the tenants and the landlord. During his testimony, the landlord did not indicate the fireplaces were ever used by himself or any of the tenants while the tenants were occupying the rental unit or the shared space. It wasn't until August 20th, more than two months after the subject tenants vacated the rental unit and well into the new tenants' tenancy that the landlord discovered the

damage to the fireplaces. I note here that the landlord did not indicate any damage to them on a condition inspection report. Lastly, while the invoice from the person hired to repair indicates parts and labour was charged to fix them, there is no indication on the rate charged for the repairs or the cost of the parts ordered.

While the landlord has reasonable grounds to suspect that whatever damage to the fireplaces he submits was caused by the tenants, I find the landlord has not provided sufficient evidence to prove to me the damage was caused by the tenants in a rental unit whose fireplaces are shared by both the landlord and the tenants. In terms of the 4 point test, the landlord has not proven the damage or loss exists (Point 1). Also, the landlord is has not supplied satisfactory evidence to convince me of the value of the damage or loss. (Point 3). For these reasons, the claim for this damage is dismissed.

- Garage Remote Control

The landlord submits that the garage remote control was not returned on June 15th when the tenants left the rental unit. The tenant TZ who attended the hearing provided evidence that he left the rental unit on May 8th, at least a month prior to the effective date noted on the One Month Notice To End Tenancy for Cause of June 15. Given this, I find the tenant TZ unable to dispute the landlord's assertion that the remaining tenants did not return the remote controls at the end of the tenancy. The landlord has provided a handwritten invoice from his serviceman to corroborate the claim for the replacement remote control and I find the cost of $180.00 to replace it to be reasonable. I award the landlord **$180.00** in compensation.

- Locks and door

The landlord provided receipts for locks from Home Depot totalling $824.16 and a handwritten invoice, translated into English for the labour involved in changing the locks. This invoice came to a sum total of $1,980.00. Curiously, included in this invoice is a notation that an additional $500.00 was charged for cleaning and replacing wooden flooring and $600.00 for producing a wooden door. The replacement of the wooden flooring does not appear in the landlord's monetary order worksheet filed on February 4th for the hearing. No amendment was filed to seek compensation for the flooring and none will be issued. The landlord is at liberty to file a further application if he seeks compensation for floor damage. The landlord's claim for a door is corroborated by a photo of a damaged door. Once again, without a condition inspection report signed by the parties acknowledging the pre-existing conditions of the rental unit, the landlord is in a position where he cannot prove, on a balance of probabilities, the existence of the damages *caused by the tenants* when the tenancy ended. Though his testimony bears

some weight, he has not met the burden of proof to show me the difference in condition between move-in and move-out. The claim for door damage is dismissed.

The claim for purchasing new locks and replacing them is also dismissed. The landlord has provided multiple photos of doorknobs he testified were filled with glue and required replacement. I have reviewed the photos as submitted and referred to by the landlord and am unable to verify any trace of glue in any of them. While one of the photos clearly depicts a door handle whose interior components appear to be mangled and gnarled, I do not find any evidence of glue as the landlord claims. As the landlord bears the onus to prove it is more likely than not the facts occurred as claimed, I find the landlord has not provided sufficient evidence to prove the existence of the damage or loss. The claim for replacement locks and labour to replace them is dismissed.

- Claim for Lost Rent

Due to the altercation with "J", the landlord indicated he was bound by the police or some other authority to cease contact with the tenants and because of that, he could not rent out the 'other' basement unit to the house. I have read the police report submitted as evidence by the landlord and was unable to find any reference to a '*no contact'* order between the landlord and any of the tenants. Although he may have felt uncomfortable in their presence, I find there is insufficient evidence to show that the landlord should be compensated for damages resulting from any violation of the *Act*, regulations or tenancy agreement committed by the tenants. The landlord was still at liberty to find tenants to occupy the second rental unit during the time the subject tenants were living in the other unit. This portion of the claim is dismissed.

- Patio Work Delay

The landlord submits that altercation with "J" also delayed construction work on the landlord's patio because his contractor was prevented from attending the house to continue working. Once again, turning to the police report, I find little evidence to indicate the landlord's contractor was prevented from attending at the house to continue his work. There was no altercation between the tenants and the landlord's contractor; it appears the choice to discontinue work on the patio was made by the landlord. Once again, I find that on a balance of probabilities, the applicant has not succeeded in providing sufficient evidence to establish this portion of the claim. Point 1 – the existence of the damage or loss has not been established. Point 3 – the value of the damage or loss is also not clearly established. The invoice from the contractor indicates he was paid $2,500.00 from the landlord for compensation for delay in the patio project, however he doesn't indicate how this figure was arrived at.

I note here that although counsel for the landlord states in her submissions that she was willing to call the contractor to testify, she was advised at the commencement of the hearing that the hearing (lasting 2 hours and 50 minutes) was set for one hour and to ensure the evidence was presented during the time allotted. The contractor's evidence was not adduced at the hearing as the landlord did not call him to testify. The landlord's claim for patio delay is dismissed.

- Medical Expenses for Traditional Chinese Medicine

The landlord seeks $2,640.00 for consultation fees and purchase of herbal medicine due to the '*stress and anxiety'* brought on by the deteriorating relationship with the tenants. Although the landlord provided a consultation letter from a traditional Chinese Medical practitioner that indicates the chief complaint is *'angry from tenant damage his house cause insomnia, bad dreams, depression, bad appetite, bitter taste in mouth, dry mouth and thirsty.'* I find the landlord has not shown a direct causation attributable to the actions of the tenants. While his practitioner has made observations regarding the tenant's condition, I am not satisfied the practitioner has pinpointed the landlord's conditions to the conflict he had with the tenants rather than any other aspect in the landlord's life. In terms of the 4 point test, the landlord has not provided sufficient evidence to satisfy me that his claim for medical expenses results from a violation of the *Act*, regulation or tenancy agreement by the tenants. (point 3). This portion of the landlord's claim is dismissed.

The majority of the landlord's claim was dismissed. The filing fee will not be recovered by the landlord.

Conclusion

I issue a monetary order in the landlord's favour in the amount of **$180.00.**

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: March 30, 2020

Residential Tenancy Branch