Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL MNRL FFL

Introduction

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

- a monetary order for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of $1,242 pursuant to section 67;
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

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

Neither party raised any issues regarding the service of the documentary evidence and all were prepared to proceed with the application at the hearing.

Issues to be Decided

Is the landlord entitled to:

1) a monetary order for $1,242; and
2) recover their filing fee.

Background and Evidence

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

The parties entered into a written tenancy agreement starting December 1, 2018. Monthly rent was $1,200 plus utilities. The tenant paid the landlord a security deposit of $600 and a pet damage deposit of $600 (collectively, the "**Deposits**"), which the landlord continues to hold in trust for the tenants.

The tenants moved out of the rental unit on October 1, 2019.

The parties met at both the start and the end of the tenancy to conduct an inspection of the rental unit. However, the landlord did not complete either a move in or move out condition inspections report.

On March 17, 2020, the parties attended a hearing before another arbitrator of the Residential Tenancy Branch, regarding the return of the Deposits. In a written decision made that same day, the arbitrator found that tenants provided their forwarding address to the landlord when it served her with application materials for that hearing. The presiding arbitrator deemed the forwarding address to have been received by the landlord on the day of the hearing (March 17, 2020) and directed the landlord to "deal with the Deposits in accordance with section 38 of the Act" by April 1, 2020.

The landlord filed this application, claiming a monetary order for damage to the rental unit and unpaid utilities, on March 23, 2020. She seeks a monetary order of $1,242, representing the following:

Unpaid Utilities	$542
Replacement Blinds	$200
Wall Puddy and Trim	$50
Cleaning Supplies	$150
Labour to clean unit repair damage (30 plus hours)	$300
Total	**$1,242**

The landlord did not submit any documentary evidence (such as receipts, quotes, or invoices) supporting these amounts. The tenants submitted a handwritten note (the "**Note**") they received from the landlord which outlined the cost of various repairs to the rental unit. The amounts on the Note differ from the amounts claimed in this application.

The landlord testified that the tenants owe $542 in unpaid utilities. She did not submit any documentary evidence which corroborated this fact. She testified that the tenants had agreed that this amount could be deducted from the Deposits. Tenant AT testified that the tenants agreed that $317 could be deducted from the Deposits in satisfaction of unpaid utilities, as that was the amount that they understood they owed at the end of the tenancy. The Note states that the utilities owed amounted to $317. AT testified that the tenants did not agree that $542 could be deducted and that he does not believe that this is the correct amount owing for unpaid utilities.

The landlord submitted many photographs of the rental unit into evidence. She testified these photos were taken on October 1, 2019. The photos show dirty kitchen countertops and oven, a gnawed-on baseboard, stained baseboards, an un-swept floor covered in pet hair, scratched and dented walls, partially-patched walls (which were unpainted), and damaged vertical blinds.

AT denied that the rental unit was dirty at the end of the tenancy. He testified that he hired a cleaner prior to moving out, and that the rental unit was clean when the tenancy ended. At the end of the hearing, the landlord stated that it was possible some of the photos submitted into evidence were taken *during* the tenancy by her realtor, when she was showing it to prospective purchasers.

AT also testified that the tenants offered to repaint the walls to touch up the chipped paint and cover the patching of holes they did, but that the landlord explicitly instructed the tenants not to paint. The tenants submitted a text message chain from late-September 2020, wherein the landlord writes "Don't paint. That is my job" and "Again, do NOT paint. Thanks." The landlord did not deny having sent these text messages.

Tenant QM admitted that the chew marks on the baseboard were caused by the tenants' dog, and that the damage to the blinds was caused by the tenants.

The tenants opposed the monetary orders sought by the landlord, as they argued that the landlord failed to provide them with any proof of the cost of the repairs or cleaning. They argue that the Note is insufficient to establish that the landlord incurred the amount of damaged claimed. Additionally, they denied causing any damage to the rental unit other than the baseboard chew marks and the damaged blinds. They argued that the lack of a move-in condition inspection report makes it impossible for the landlord to establish the condition of the rental unit at the start of the tenancy, and that the landlord cannot therefore demonstrate that they caused the damage alleged.

Analysis

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

> The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:
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> - a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
> - loss or damage has resulted from this non-compliance;
> - the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
> - the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.
>
> (the "**Four-Part Test**")

Section 37 of the Act, in part, states:

> **Leaving the rental unit at the end of a tenancy**
>
> **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, and

Rule of Procedure 6.6 states:

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

So, the landlord must prove that it is more likely than not that the tenants breached section 27 of the Act (or the tenancy agreement), that she suffered a quantifiable monetary loss as a result, and that she acted reasonably to minimize the loss.

1. Utilities

The tenants admitted that they are required to pay for utilities under the tenancy agreement, and that they owe some arrears. As such, the first part of the Four-Part Test is satisfied.

The landlord has not provided any documentary evidence supporting her testimony that the amount owing for unpaid utilities (such as a utilities bill or statement of account) is $542. The tenants testified that the outstanding utilities are $317. In light of the lack of evidence to corroborate the landlord's testimony, I find that the landlord has failed to discharge her evidentiary burden to prove that the amount owing for utilities is $542.

I accept the tenants' testimony as to the amount owing. I order that they pay the landlord $317.

2. Damages to Blinds and Baseboards

The tenants admit having damaged these items. As such, the first part of the Four-Part Test is satisfied.

Again, the landlord failed to provide any documentary evidence to corroborate the amount claimed to repair this damage. The tenants did not provide any evidence as to how much they understood or believed the cost of these repairs to be. I find that the

landlord has failed to prove the amount of or value of the damage, and as such has not satisfied the third part of the Four-Part Test.

In this instance, nominal damages are appropriate. Policy Guideline 16 states:

> "Nominal damages" are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

I award the landlord nominal damages of $100.

3. Walls

As the tenants argued, without a copy of the move-in condition inspection report, I cannot determine the condition of the walls at the start of the tenancy. As such, I cannot determine if the tenants damaged them as alleged. I accept that, in light of their offer to paint the walls and their patching of some holes, that they may have caused some damage, however, I cannot say what kind of damage to the walls was patched.

Policy Guideline 1 permits tenants to make nail holes to hang pictures, so long as they follow the landlord's "reasonable instructions". I have no evidence of any such instructions. A tenant is only responsible for the cost of repainting the interior of the rental unit when the repainting is necessary due to damage for which the tenant is responsible.

The landlord has failed to prove on the balance of probabilities that the tenants have damaged that walls of the rental unit beyond the level of "reasonable wear and tear". As such I do not find that they are responsible for any cost associated with repairing or repainting the walls.

4. Cleaning (Labour and Supplies)

The landlord alleged the tenants left the rental unit in a state that was not "reasonably clean". The tenants denied this. No move-out condition inspection report was made at the end of the tenancy, so I cannot say what the condition of the rental unit was. In light of the landlord's suggestions that some of the photographs submitted into evidence may have been taken prior to the end of the tenancy (and prior to the tenants' allegedly hiring a cleaner), I find that they are not a reliable indicator of the true state of the rental unit's cleanliness at the end of the tenancy.

As such, I have no documentary evidence corroborating the landlord's testimony. Accordingly, I find that she has failed to prove on a balance of probabilities that the tenant breached section 27 of the Act by not properly cleaning the rental unit at the end of the tenancy. She therefore has failed to satisfy the first part of the Four-Part Test.

I decline to award any amount for this portion of the landlord's claim.

5. Filing Fee and Deposits

As the tenants have been substantially successful in this application, I decline to order that the landlord may recover her filing fee from the tenants.

Pursuant to section 72(2) of the Act, the landlord may retain $417 of the Deposits in satisfaction of the monetary orders made above.

I order that the landlord return the balance of the Deposits ($783) to the tenants by September 1, 2020.

Conclusion

The landlord has been partially successful. She may retain $417 of the Deposits in satisfaction of the monetary orders for unpaid utilities and nominal damages to the baseboard and blinds.

I order that the landlord pay the tenants $783 on or before September 1, 2020, representing the return of the balance of the Deposits.

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

Dated: August 14, 2020

Residential Tenancy Branch