Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding EMH HOLDINGS INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S, FFL

Introduction

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

- a monetary order for damage to the rental unit, pursuant to section 67;
- authorization to retain the tenants' security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The individual landlord EH ("landlord"), the landlords' agent, the four tenants ("tenant AM," "tenant SK," "tenant OS," and "tenant EW"), and the tenants' agent attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 84 minutes.

The landlord stated that she was the director of the landlord company named in this application and that she had permission to speak on its behalf (collectively "landlords"). The landlord confirmed that her husband, who is the landlords' agent and an employee of the landlord company, had permission to speak on the landlords' behalf. The tenants confirmed that their agent had permission to speak on their behalf.

The tenants' agent confirmed receipt of the landlords' application for dispute resolution hearing package and the landlords' agent confirmed receipt of the tenants' evidence. In accordance with sections 88, 89 and 90 of the *Act*, I find that the tenants were duly served with the landlords' application and the landlords were duly served with the tenants' evidence.

The landlords' agent stated that he could not view seven digital videos, contained on a USB drive, received from the tenants' agent in person on October 19, 2020. The tenants' agent confirmed the above service method and date. The landlords' agent stated that he tried to view it on the day before this hearing, October 25, 2020, and the files could not be opened, despite him trying on two different computers. He claimed that he did not have enough time prior to this hearing, to notify the tenants' agent that he could not view it. He said that he was prepared to proceed with the hearing if the evidence was excluded. The tenants' agent agreed to proceed with the hearing and testify about the evidence if it was excluded.

I notified both parties that I could not consider the tenants' seven digital videos in the hearing or in my decision, which both parties agreed was entitled "Video evidence of minimal air movement - These videos show the air-movement of all fans in the suite on March 14th, 2020." I informed them that the evidence was received by the landlords late, less than seven days prior to the hearing, not including the service or receipt date, contrary to Rule 3.15 of the Residential Tenancy Branch ("RTB") *Rules of Procedure ("Rules")*. I notified them that the landlords could not view the evidence, despite multiple efforts, and because of the late submission, was unable to notify the tenants that it was not viewable. The tenants are required to ensure that the landlords can view the digital evidence at least seven days prior to the hearing, which did not occur, as required by Rule 3.10.5 of the RTB *Rules*.

Both parties confirmed that they were ready to proceed with the hearing and they did not require an adjournment of this application.

Issues to be Decided

Are the landlords entitled to a monetary order for damage to the rental unit?

Are the landlords entitled to retain the tenants' security deposit?

Are the landlords entitled to recover the filing fee for their application?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the landlords' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on August 15, 2019. Monthly rent in the amount of $3,100.00 was payable on the first day of each month. A security deposit of $1,550.00 was paid by the tenants and the landlords continue to retain this deposit. A written tenancy agreement was signed by both parties. The rental unit is a ground-floor townhouse, which was occupied by the four tenants, who are all university students. Tenant SK moved out of the rental unit, while the three remaining tenants continue to reside in the rental unit and signed a new tenancy agreement with the landlords in August 2020.

The landlords seek a monetary order of $6,888.35, to retain the tenants' security deposit of $1,550.00 towards this amount, plus the $100.00 application filing fee. The tenants dispute the landlords' entire application.

The landlords' agent testified regarding the following facts. The landlords' agent is a building science consultant and a construction professional. There was "uncontrolled humidity" inside the rental unit that was "likely caused by the tenants" who are "four university girls" in a "dance program" that "take showers throughout the day." There was blistering in the paint, damage to the drywall, and mold on the windowsills and the wood inside the rental unit. The landlords had the mold removed by an independent contractor who provided a report and opinion. There were comments and dialogue between the tenants' parents, the tenants, and the landlords, as per the emails and text messages provided by the landlords. The tenants disagreed with the cost of the damages and all evidence was sent by the landlords to the tenants and the RTB. There were text messages provided, where on March 2, 2020, tenant AM advised the landlords' agent that there was water at the windowsills, along with photographs of the glass, the window frames and sills, the mold, and the water blisters. The landlords' agent went to the rental unit on the same date, March 2, 2020, to inspect the issue, talked to one of the tenants' father, who was the representative for all tenants, and exchanged emails.

The landlords' agent stated the following facts. The tenants claimed that because of the humid weather outside, the water issue was beyond their control, and mold continued to grow inside the rental unit. The landlords believe it is because the tenants took too many showers and did not use the bathroom fans for long enough. The landlords provided a psychometric chart, which shows that the cold air entering the rental unit was dry air, not wet, so it should reduce the humidity inside. The tenants told the landlords that the bathroom fans' performance was less than optimal, and it took three hours to exchange the air inside the rental unit. However, the landlords' agent tested the fans in both bathrooms, with a piece of paper, and they work properly and extract humid air

inside. The landlords have not made any repairs or modifications to these fans and the fans' grills were dirty, so the landlords only cleaned them. There was water accumulation and moisture behind the wood and drywall, which had been there for a significant amount of time. The landlord purchased the rental unit in 2011, she lived there on her own until 2012, when the landlords' agent moved in and they had a child together in the unit and lived there until 2014. The landlords rented the unit out to seven different occupants between August 2014 to July 2019, when these four tenants moved in August 2019. The landlords did not "experience any condensation issues" while they were living in the rental unit for three years and no other occupants reported any condensation issues to the landlords from 2014 to 2019.

The landlords' agent testified regarding the following facts. The tenants failed in their obligation to minimize the damage and loss, contrary to section 7 of the *Act*, and also failed in their responsibility to properly clean and maintain the rental unit, contrary to section 32 of the *Act*. The landlords took action right away by inspecting the rental unit, speaking to the tenants and their parents, requested repairs which the tenants refused to do, so the landlords completed the repairs because of the mold and the health of the tenants. The landlords' expert report verified the landlords' agent's opinion, that the condensation was due to the tenants' activities. However, the landlords do not have an expert report claiming that these four tenants caused the condensation rather than the previous occupants that lived at the rental unit. The landlords provided all invoices and receipts to the tenants, who refused to pay.

The tenants' agent testified regarding the following facts. The landlords assume and infer that the condensation issue is out of control and the tenants excessively shower at the rental unit, simply based on their age and their dance program. It is common for each person to shower once per day, which is the norm and is not unreasonable. The landlords' air handling system requires maintenance and the landlords cannot assume that the problem did not exist with previous occupants, simply because it was not reported to the landlords. The tenants took measurements of the bathroom fans, using scientific equipment. The master bathroom fan requires repair and maintenance because it sounds different, does not produce any cfm, and it does not exhaust or work properly. The landlords' agent claimed that it is not possible for the fan not to produce any cfm at all, meaning it does not work. The tenants do not know what work was done by the landlords on this bathroom fan. The landlords told the tenants to run fans for longer, which the tenants did, and it made no difference. The tenants' actions were reasonable, they notified the landlords of the water issue in a timely manner, and they were not negligent as per section 32 of the *Act*.

Tenant OS stated the following facts. There were drops of water at the windows and it became excessive pooling of water on February 21, 2020, so the tenants cleaned the water and notified the landlord on March 2, 2020 when they found mold. They did not know that the water was a problem because they are not used to the humidity in the Vancouver area, since they are from Alberta, where the air is dryer with less humidity. They are young girls, from 18 to 20 years old, and they live in a townhouse where they do not open the blinds for safety since they live on a busy street and are on the ground level. The landlords' agent claimed that because they did not open their blinds, the tenants did not see the water condensation at the windows.

Tenant EW stated the following facts. The tenants were told by the landlords to run the fans 24 hours per day, which they did, and there were no other changes made by the tenants. They did not excessively cook or shower at the rental unit. Each of the tenants only shower up to once per day, sometimes not even once per day. All four tenants left the rental unit, due to the covid-19 pandemic, from March 14 to June 14, 2020. From June 14 to July 5, 2020, there were only three tenants at the rental unit and from July to August 2020, there was only one tenant living at the rental unit. While the tenants were away from the rental unit, they had a local person check in on the rental unit on a regular basis.

Analysis

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove a loss, the landlords must satisfy the following four elements on a balance of probabilities:

1) Proof that the damage or loss exists;
2) Proof that the damage or loss occurred due to the actions or neglect of the tenants in violation of the *Act*, *Regulation* or tenancy agreement;
3) Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4) Proof that the landlords followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

On a balance of probabilities and for the reasons stated below, I dismiss the landlords' application of $6,888.35 without leave to reapply. Accordingly, I find that the landlords are not entitled to retain the tenants' security deposit of $1,550.00 and this claim is dismissed with leave to reapply. The tenants' security deposit is to be dealt with at the end of the tenancy in accordance with section 38 of the *Act*.

The landlords provided a voluminous number of videos, audio recordings, photographs, reports, expert evidence, emails, text messages, letters, and other documents, with their application. However, the landlords' agent did not go through this evidence during the hearing, despite having ample time to do so and despite speaking for the majority of the hearing time, as compared to the tenants. He referenced providing packages of emails and text messages but did not point to any specific provisions or details. He referenced expert reports but did not have his experts attend the hearing to testify as witnesses to explain their scientific findings. He attempted to tender his own testimony as expert evidence, but did not review any of his own qualifications, education, or work experience or provide any documentary evidence to confirm such qualifications. He simply announced his job title of building science consultant and construction professional.

The landlords' agent referenced a monetary order worksheet provided but did not go through any of the numbers or claims during the hearing. He did not confirm what items were being sought, how much was being sought for each item, or how the tenants were responsible for each item. He simply indicated the total amount of $6,888.35.

As noted above, it is the landlords' burden of proof, as the applicants, on a balance of probabilities, to prove a monetary claim.

I find that the tenants adequately dealt with the water issue in a reasonable, timely manner. While the tenants were initially unsure as to the seriousness of the water issue, since they had not experienced it previously and they attempted to rectify the matter by cleaning the water initially, they reported the matter to the landlords' agent within a reasonable period of time when they noticed mold. The landlords' agent then inspected the rental unit, hired professionals to repair the issue, and paid for these repairs. I find that this cost is to be borne by the landlords, as it is a repair and maintenance issue related to the rental unit, which the landlords are responsible for under section 32 of the *Act*. I find that the tenants did not cause the water condensation issue through wilful or negligent actions.

I do not accept the landlords' argument that because no water condensation issues were reported by the previous seven occupants who lived in the rental unit during a five-year period, prior to these tenants moving in, that there were no such issues. I do not accept the landlords' submission that because they did not "experience any condensation issues" when their own family lived at the rental unit during a three-year period, no such issues actually existed.

The landlords' agent agreed that none of his expert reports indicated that these four tenants were the sole cause of this water issue. I find it unreasonable for the landlords to assume that these water issues were caused solely by the tenants during a seven-month period from August 2019 to March 2020, rather than during an eight-year period from 2011 to 2019, when the rental unit was occupied by ten different people, including the landlords and their family.

I find it unreasonable for the landlords to assume that the above water issues were caused solely by the tenants, simply because they are young women who are involved in a dance program. I accept the tenants' testimony that they only shower up to once per day, per person, and I find that reasonable. I find that the tenants followed the landlords' requests to run the bathroom fans for 24 hours per day, in order to minimize the water issues at the rental unit.

As the landlords were unsuccessful in their application, I find that they are not entitled to recover the $100.00 filing fee from the tenants. This claim is dismissed without leave to reapply.

Conclusion

The landlords' application to retain the tenants' security deposit of $1,550.00 is dismissed with leave to reapply. The tenants' security deposit is to be dealt with at the end of the tenancy in accordance with section 38 of the *Act*.

The remainder of the landlords' application is dismissed 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: October 29, 2020

Residential Tenancy Branch