Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFT

Introduction

This hearing dealt with the landlord's 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 tenant's security and key deposits, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord's agent (landlord") and the tenant 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 52 minutes.

The landlord confirmed that he was the owner of the landlord company named in this application and that he had permission to speak on its behalf at this hearing.

The tenant confirmed receipt of the landlord's application for dispute resolution hearing package and the landlord confirmed receipt of the tenant's evidence. In accordance with sections 88, 89 and 90 of the *Act*, I find that the tenant was duly served with the landlord's application and the landlord was duly served with the tenant's evidence.

Pursuant to section 64(3)(c) of the *Act*, I amend the landlord's application to add a claim to retain the tenant's security deposit of $1,050.00 and key deposit of $100.00. The landlord requested the amendment during the hearing and the tenant did not object to same. The landlord said that he did not initially apply to retain the deposits because the tenant was still living at the rental unit when he filed this application on July 17, 2020.

Issues to be Decided

Is the landlord entitled to a monetary order for damage to the rental unit?

Is the landlord entitled to retain the tenant's security and key deposits?

Is the landlord entitled to recover the filing fee for this 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 landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on May 1, 2019 and ended on September 1, 2020. Monthly rent in the amount of $2,100.00 was payable on the first day of each month. A security deposit of $1,050.00 and a key deposit of $100.00 were paid by the tenant and the landlord continues to retain both deposits. A written tenancy agreement was signed by both parties.

The landlord seeks a monetary order of $18,694.00, plus the $100.00 application filing fee. The tenant disputes the landlord's entire application.

The landlord testified regarding the following facts. The tenant caused flood damage at the rental unit, so strata called the restoration company in order to repair the damage. The unit below the tenant's had to be repaired and the restoration company charged strata, which in turn charged the landlord's bank account for $1,630.13. The landlord provided an invoice for same. Emergency services restoration had to be performed in the rental unit, including using dehumidifiers and saving the flooring, for a cost of $5,618.84, which the landlord paid to strata, as above. The landlord provided an invoice for same. The estimate for repair work in the rental unit, including repairing the flooring is $10,578.33, but the landlord has not done the work yet and new tenants have moved into the rental unit as of September 1, 2020, the day the tenant moved out. The landlord intends to do this work, but it was too expensive to pay for at the time. The landlord provided an estimate for same. The landlord paid for a baseboard repair and install of $672.00 but forgot to provide the invoice for same to the tenant and the RTB. The landlord paid $94.49 and provided an email receipt for same for a tech service call regarding the flood at the rental unit.

The landlord stated the following facts. He provided invoices and a letter from strata about what happened. He did not provide bank records or receipts because he did not think he had to. Section 12 of the parties' written tenancy agreement indicates that the tenant is required to carry tenant's insurance, he signed this provision, and he breached it by not having tenant's insurance, as per the tenant's email to the landlord. Residential Tenancy Policy Guideline 16 discusses damage and loss in section A and references section 7 of the *Act*. The landlord's tech report indicates that a possible cause is the tenant put too much soap in the washing machine, which is usually taken care of by the filter which has a pressure release to avoid damage. But the tenant fell asleep at 10:00 p.m. and the flood occurred, as notified by the property manager.

The tenant testified regarding the following facts. He noticed excessive water spewing from the washing machine, so he turned off the water supply and stopped the leak. The tenant called the technician to inspect the washing machine and before he came, the tenant cleaned up the water mess. The restoration company did not install floor fans when the technician came. The technician saw the washing machine, not the leak since the tenant cleaned it up, and the tenant told him it was a filter issue, so he inspected the filter and then put it back inside the washing machine. The technician did not tell the tenant he put too much soap inside the washing machine at that time or when the tenant called later for an explanation. Another technician was then sent to the rental unit and the tenant provided a copy of a technician report indicating that it was a loose filter, not too much soap as claimed by the landlord, that caused the leak. The technician told the tenant when he came the second time, and in his report, that putting too much soap would have only caused a leak the size of a puddle, but a bigger leak would be caused because of a loose filter.

The tenant stated the following facts. The tenant got a second opinion from another plumbing company and provided an invoice for same, indicating that it was not too much soap that caused the leak, but an untwisted cap, which became loose from vibration of the washing machine. The tenant provided an email from the building manager indicating that someone else in the same rental building had the same washing machine leak and the tub hose disconnected and was shaken loose because of vibration. The tenant provided the model numbers for the washer and dryer and said that these washing machines all had the same issue of vibration in the rental building. The tenant did not have tenant's insurance at the time but the insurance company he spoke to, said that it would not be covered anyway because it was wear and tear of the washing machine. The insurance company told the tenant that it would be covered under the landlord's homeowner insurance so the landlord could claim for it, but he did

not. When the tenant questioned the landlord about this, the landlord refused to answer the question.

The landlord responded to the tenant's testimony, with the following facts. The other unit that experienced the washing machine issue in the same rental building was not on the same day as the tenant's leak and was a different issue from the tenant's issue. the landlord did not personally claim that there was too much soap in the washing machine, it was in the technician's report. Only a technician should be used, not a plumber, like the tenant used. The tenant admitted that he broke the lease and did not carry tenant's insurance so he should be responsible for the leak and the landlord's monetary claims.

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 landlord 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 tenant 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 landlord 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 landlord's application of $18,694.00 without leave to reapply. I find that the landlord failed parts 2, 3, and 4 of the above test.

The landlord did not provide receipts to show the amounts that he actually paid for the work for four of the five claims made. He only provided one email receipt for $94.49 for the tech service call but it did not include any explanation of the work done, how many people did the work, what the rate was per hour per person, whether the work was done on the same date of the receipt, or other such information.

For the claims of $1,630.13 for the emergency repairs to the unit below and $5,618.84 for emergency services for the rental unit, the landlord only provided invoices with balances due. He claimed that he had bank records to show that strata deducted his

bank account for the restoration work done but did not provide these records for the hearing.

The landlord did not provide an invoice or receipt for the $672.00 for the baseboard repair and install at the rental unit. The tenant claimed that he only had an email estimate of $600.00 for this claim, from the landlord.

The repairs to the rental unit in the estimated amount of $10,578.33 was never done by the landlord and new tenants have now moved into the rental unit, on the date the tenant moved out, September 1, 2020. These new tenants may have caused or may cause in the future, additional damage to the flooring and the areas requiring repair. There is no way to determine if the landlord will actually perform this repair work in the future, with new tenants residing there, if he is awarded the monetary amount for this claim.

I also find that the tenant did not cause the water damage at the rental unit. I find that the tenant provided sufficient documentary proof to show that the damage may have been caused by a loose filter, vibration or an untwisted cap in the washing machine. I find that these were not caused by the tenant but may be from wear and tear. The tenant obtained two different opinions to show this information. The landlord only obtained one opinion, indicating that there was too much soap in the washing machine, but the tenant denied using too much soap. The opinion from the tenant's professional indicates that too much soap would only cause a small-sized puddle, not a large leak or flood, as indicated in the technician's report. The tenant was present during the time of the leak, while the landlord was not. The tenant spoke with the two technicians who gave him opinions, in order to obtain more information.

As the landlord was unsuccessful in this application, I find that the landlord is not entitled to recover the $100.00 filing fee from the tenant.

The landlord continues to hold the tenant's security deposit of $1,050.00 and key deposit of $100.00, totalling $1,150.00. Over the period of this tenancy, no interest is payable on the security deposit. As the landlord is not entitled to retain the tenant's deposits, I order him to return the deposits to the tenant within 15 days of receiving this decision. The tenant requested the return of his deposits during the hearing. Where the landlord has made an application to retain the deposits, I must consider its return, even if the tenant has not made an application for it, as per Residential Tenancy Policy Guideline 17. The tenant is provided with a monetary order for $1,150.00.

Conclusion

The landlord's entire application is dismissed without leave to reapply.

I issue a monetary order in the tenant's favour in the amount of $1,150.00 against the landlord. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: November 10, 2020

Residential Tenancy Branch