Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFL, MNDCL-S**

Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Landlord under the Residential Tenancy Act (the Act), seeking:

- Compensation for monetary loss or other money owed;
- Recovery of the filing fee; and
- Retention of the security deposit.

The hearing was convened by telephone conference call and was attended by the Landlord, the Landlord's Spouse, and the Tenant F.G. (the Tenant), all of whom provided affirmed testimony. The Tenant acknowledged receipt of the Application and Notice of Hearing and attended the hearing on time and ready to proceed. As a result, the hearing proceeded as scheduled. As the parties acknowledged receipt of each other's documentary evidence and neither party raised arguments that any of the evidence before me should be excluded from consideration, I have therefore accepted all of the documentary evidence before me from both parties for consideration in this matter. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

Although I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Residential Tenancy Branch Rules of Procedure (the Rules of Procedure), I refer only to the relevant and determinative facts, evidence and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be emailed to them at the email addresses provided in the Application.

Preliminary Matters

Preliminary Matter #1

Although the Tenant stated that they had filed a Cross-Application seeking recovery of their security deposit, compensation for monetary loss or other money owed, and recovery of the filing fee, no Application was crossed with this Application and set to be heard before me at the same date and time. The Tenant provided me with their file number, and according to Branch records, the Tenant's Application was not crossed with that of the Landlord as it was not filed and processed by the Branch with enough time remaining before this hearing date to allow for the service of required documents on the Landlord in accordance with the timelines set out in the Rules of Procedure. A separate hearing was therefore scheduled for the Tenant's Application.

I advised the Tenant that the hearing of their Application would proceed as scheduled but advised the parties that pursuant to Policy Guideline 17, I would deal with the security deposit as part of this Application, as the Landlord sought retention of the security deposit as part of their Application.

Preliminary Matter #2

At the outset of the hearing I confirmed with the Landlord that they were seeking $3,039.68 from the Tenant as a result of the Application, and authorization to withhold the $875.00 security deposit. In their Application they broke the above noted claims down as follows:

- $100.00 for recovery of the filing fee; and
- $2,969.38 for monetary loss or other money owed as a result of Strata fines and damage cause by the Tenant as a result of a water leak from an unpermitted portable washing machine.

Although three Amendments to an Application for Dispute Resolution (the Amendments) are contained in the documentary evidence before me from the Landlord, the Landlord did not provide any evidence or testimony in relation to them at the hearing or any evidence or testimony regarding service of them on the Tenant. The first Amendment dated October 7, 2020, sought to increase the amount of the monetary claim to $3,944.38. The second Amendment also dated October 7, 2020, sought to increase the amount of the monetary claim to $5,694.38. The Third Amendment dated October 8, 2020, sought to add two additional claims, one for unpaid rent in the amount of

$1,750.00 and one for compensation for monetary loss or other money owed in the amount of $975.00.

As the Landlord confirmed at the outset of the hearing that they were seeking only $3,039.68 from the Tenant and authorization to withhold the $875.00 security deposit as a result of the Application, and gave no documentary evidence or testimony during the hearing in relation to the Amendments or the monetary amounts claim in them, I have therefore considered only the matters and monetary amounts claimed by the Landlord in the original Application, in this decision.

Issue(s) to be Decided

Is the Landlord entitled to compensation for monetary loss or other money owed in the amount of $2,969.38?

Is the Landlord entitled to recovery of the $100.00 filing fee?

Is the Landlord entitled to retain the security deposit or any portion thereof, and if not, is the Tenant entitled to the return of all, some, none, or double the amount of the security deposit?

Background and Evidence

The tenancy agreement in the documentary evidence before me, signed on July 11, 2019, states that the one year fixed term of the tenancy agreement commenced on August 1, 2019, and was set to end on July 31, 2020, after which time the tenancy would continue on a month to month (periodic) basis. The tenancy agreement lists only two tenants, F.G, and S.G. as occupants of the rental unit, one of whom is a minor child (S.G.). The tenancy agreement states that rent in the amount of $1,750.00 is due on the first day of each month, and includes water, electricity, heat, access to coin-operated laundry facilities, parking for one vehicle and basic appliances, such as a fridge and stove. The tenancy agreement also states that a security deposit in the amount of $875.00 was to be paid by the Tenant.

During the hearing the parties agreed that these were the correct terms for the tenancy agreement and that the $875.00 security deposit had been paid and was retained by the Landlord in full at the end of the tenancy as part of this Application. The parties also agreed that a Form K was signed by the Tenant, a copy of which was provided for my review, as the rental unit was located in a Strata property. However, the parties disputed

whether or not the Form K was provided and signed before or after the start of the tenancy and whether the Tenant was aware of Strata bylaws, specifically in relation to the number of occupants permitted in the rental unit and the use of a portable washing machine, at the time the tenancy agreement was entered into.

The Landlord stated that the Form K and the booklet containing Strata bylaws was provided to the Tenant at the time the tenancy agreement was entered into and that the Tenant was aware that no portable washing machines were permitted and that only two occupants were allowed to reside in the rental unit at the time the tenancy agreement was signed. The Tenant denied this, stating that the Landlord had intentionally concealed this information from them, knowing that they were a family of three at the time that the tenancy agreement was entered into and that the Landlord was aware of their spouse's pregnancy. Although the Landlord acknowledged that they were aware that the Tenant had a young child and that the Tenant's spouse was pregnant, they stated that the Tenant had advised them that only their child and their spouse would be residing in the rental unit, as they themselves were returning to their previous country of residence to sell some property. The Landlord also stated that the Tenant advised them that when they returned, they would be moving out into a larger unit before their second child was born.

The Landlord stated that they received three Strata fines in relation to the Tenant's behaviour or the behaviour of their guests and other occupants, as set out below:

- $100.00 for an incident on May 22, 2020, where it was reported to the Strata that children were running around the rental unit at 11:20 P.M., causing a disturbance to occupants of nearby units.
- $100.00 for an incident on May 25, 2020, where it was reported to the Strata that children were screaming in the rental unit at 11:30 P.M., causing a disturbance to occupants of nearby units.
- $200.00 as it was reported to the strata that there were four occupants in the rental unit, which is permitted under Strata bylaws to have a maximum of two occupants, as it is a one bedroom unit.

The Landlord submitted copies of three letters from the Strata, each dated June 1, 2020, in relation to the above noted incidents. The letters are addressed to the rental unit address and name the Tenants named in the tenancy agreement, F.G. and S.G. The letters set out the sections of the Strata bylaws that have been allegedly breached and state that they, the Tenants, are granted the opportunity to answer to the complaints, including a hearing before Strata counsel, if requested. The letters also state that failing to respond in writing within 21 days of the date of the letter will result in

the Strata Corporation determining at the next meeting whether to impose a fine or other penalty in relation to the complaints.

The Landlord stated that these letters were mailed directly to the Tenant at the rental unit address by the Strata Corporation and that when the Tenants did not respond in writing within the timelines required, the Strata imposed the above noted fines. The Landlord also submitted three letters addressed to them from the Strata Corporation, each dated July 23, 2020, wherein the Strata Corporation stated that they have reviewed the matters covered in the June 1, 2020, Letters, and levied the above noted fines in the name of the Landlord, as owner of the property. The Landlord therefore sought recovery of $400.00 from the Tenants for these fines.

The Tenant F.G. did not deny receipt of the above noted letters dated June 1, 2020, or state that they sought to dispute the complaints against them as permitted within the 21 day time period but stated they do not believe they should be responsible to pay the fines for noise as the Strata never provided them with proof that the noises originated from their rental unit, even after they requested such verification. The Tenant also denied culpability for having more than the allowable number of occupants in the rental unit as they stated that the Landlord knew at the time that the tenancy agreement was entered into that there were more than the permitted number of occupants in the rental unit but intentionally concealed this information from them, providing them with the Form K and the Strata bylaws only after they had signed the tenancy agreement and moved in. Finally, the Tenant stated that they did not believe they should be required to pay the fines as the fines were ultimately levied in the Landlord's name, not theirs.

Although the Landlord acknowledged that the Form K was not signed until after the start of the tenancy, the Landlord denied knowing at the time the tenancy agreement was entered into that there would be more than two occupants in the rental unit. They also reiterated that the Form K and Strata bylaws were provided to the Tenant before signing the tenancy agreement and that it was only ever supposed to be the Tenant's spouse and one child residing in the rental unit. Although the Landlord argued that the Tenant's parents also resided in the rental unit for a period of time, bringing the total number of occupants up to 6 once the Tenant's second child was born, the Tenant denied this allegation stating that their parents were only visiting. However, the Tenant acknowledged that their parents were inadvertently stuck living with them in the rental unit for several months with them when their flights were repeatedly cancelled due to the pandemic.

The Landlord stated that a portable washing machine used by the Tenant and their spouse leaked, causing $2,669.00 in damage and cleaning costs to the rental unit, Strata common property, and another unit in the building. The Landlord argued that the Tenant knew that the washing machine was not permitted as the previous occupant had expressly advised them of such and to be careful using it, and that in any event, the use of portable washing machines is clearly prohibited under the Strata bylaws. They also stated that the repair costs cannot be covered by the Strata Corporation's insurance as they are the result of the Tenant's unpermitted use of a portable washing machine and that they themselves do not have their own insurance coverage for such a cost. As a result, the Landlord stated that it is the Tenant's responsibility to pay for the full cost of cleaning and repairs. The Landlord submitted a security report from December 17, 2019, in relation to the flood, A letter to them from the Strata asking for entry to the rental unit to verify that required repairs had been completed, and two cleaning receipts, one in the amount of $180.00 and one in the amount of $105.00, in support of their claim.

Although the Tenant acknowledged that a portable washing machine used by them had leaked, damaging the rental unit, Strata common property, and another unit in the building, they argued that they should not be responsible for the costs sought by the Landlord for repairs, as they had thought the washing machine was permitted as it was given to them by the previous occupant and have not been provided with any proof from the Landlord about whether the amounts claimed would be covered by either the Landlord's insurance or the Strata Corporations' insurance. When asked, the Tenant acknowledged that they did not read all of the Strata bylaws provided to them by the Landlord, including the bylaw relating to portable washing machines.

The parties disputed whether a move in condition inspection was completed as required, with the Landlord arguing that one was and the Tenant arguing that one was not. In any event, they both agreed that no move in condition inspection report was completed or given to the Tenant at the start of the tenancy.

The parties agreed that on August 31, 2020, the Tenant gave written notice to end the tenancy effective September 30, 2020, by email, and that the tenancy subsequently ended on that date as a result. They also agreed that the Tenant's forwarding address was contained in the move out condition inspection report completed on September 30, 2020. However, they disputed whether the move out condition inspection was properly scheduled or completed at the end of the tenancy. The Landlord stated that the Tenant agreed in writing to the date and time of the move out condition inspection and that the inspection and report were completed with the Tenant on September 30, 2020, the date

the tenancy ended. The Landlord also stated that the Tenant refused to sign the condition inspection report as they did not agree with it. The Tenant denied agreeing to the date and time of the inspection and instead stated that the Landlord tried to complete it with them without warning when they attended the rental unit to pick up the keys. The Tenant stated that the inspection was not properly scheduled or completed with them and agreed that they refused to sign the move out condition inspection report as they felt that the Landlord was attempting to manipulate and take advantage of them by including move in inspection information on the form even though a proper move in inspection and move in condition inspection form were not completed at the start of the tenancy.

Overall the Tenant argued that the Landlord was being untruthful in the hearing, that the Landlord had failed in the exercise of their obligations as a landlord under the Act, that the Landlord had taken advantage of them as a newcomer to the country and that the Landlord had intentionally concealed information form them regarding the number of permitted occupants for the rental unit, allegations which the Landlord and their spouse denied.

Analysis

Section 7 of the Act states that if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. It also states that a landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with the Act, the regulations or their tenancy agreement, must do whatever is reasonable to minimize the damage or loss.

Residential Tenancy Policy Guideline (Policy Guideline) #16 states that the purpose of compensation for damage or loss is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred and that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due. Policy Guideline #16 further states that in order to be awarded compensation for damage or loss, the party seeking the compensation must prove, on a balance of probabilities:

- That the other party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- That a loss or damage has resulted from this non-compliance;
- The amount of or value of the damage or loss suffered by them; and
- That they have acted reasonably to minimize that damage or loss.

The tenancy agreement in the documentary evidence before me only lists F.G. and S.G., who is the minor child of the Tenant and their spouse, as tenants of the rental unit and there is no indication in the tenancy agreement or anywhere else in the documentary evidence before me from the parties, that any other occupants of the rental unit were either known to the Landlord or permitted by them, at the time the tenancy agreement was entered into. As a result, I do not accept the Tenant's argument at the hearing that the Landlord knew that there would be more than 2 occupants residing in the rental unit at the time the tenancy was signed and intentionally withheld information from them about the number of permitted occupants. While I acknowledge that the Form K was signed by the parties on August 10, 2019, 10 days after the start of the tenancy, I am none the less satisfied that it was signed by the Tenant F.G. and the Landlord. As a result, I find that the Tenant was aware on August 10, 2019, the date they signed the Form K, if not at an earlier date, that they were bound by the Strata bylaws and that they would be responsible for any Strata fines incurred if they or any persons they permitted onto the property, breached the bylaws.

As the tenancy had already commenced by the time the Form K was signed, I find that the Tenant was under no obligation to sign it if they did not wish to or if they did not agree with or wish to follow the Strata bylaws. However, the Tenant did sign the Form K and acknowledged being provided with a copy of the Strata bylaws by the Landlord. Although they admitted during the hearing that they did not read all of the Strata bylaws provided to them by the Landlord, I do not find their failure to read the bylaws before entering into the tenancy agreement or signing the Form K, in any way diminishes or negates their obligations to comply with them. As a result of the above, I find that the Tenant was required to comply with the Strata bylaws as set out in the Form K, as part of their tenancy agreement, as of August 10, 2019, including any bylaws relating to noise and the bylaw stipulating that a maximum of 2 persons are permitted to occupy a one bedroom unit.

As the Tenant did not deny receipt of the bylaw infraction letters from the Strata Corporation addressed to them at the rental unit, dated June 1, 2020, I find on a balance of probabilities that they received them. Although the Tenant argued that they were never provided with proof from the Strata that the noise complaints against them were valid, they also did not provide me with any evidence or testimony that they denied that their children had caused the alleged noise disturbances or that they had disputed the noise and other allegations against them, as permitted. Based on the above, and as the Tenant acknowledged having more than two occupants in the rental unit, I find

that the Tenant is therefore responsible for the $400.00 in bylaw infraction fines ultimately levied against the Landlord on July 23, 2020.

With regards to the matter of a portable washing machine, I am satisfied on a balance of probabilities by the bylaw infraction notice before me, that the Strata bylaws prohibit occupants from using them, and as stated above, I have already found that the Tenant was required to comply with the Strata bylaws as of August 10, 2019, the date the Form K was signed by them. Although the Tenant acknowledged that they had not read all the bylaws, and stated that they therefore thought the washing machine was permitted based on what the previous occupant of the rental unit told them, I find that the Tenant's failure to adequately inform themselves of the Strata bylaws or the accuracy of the information provided by the previous occupant of the rental unit to them with regards to the washing machine, in no way reduces, diminishes, or negates their obligations to comply with the Strata bylaws. Further to this, I am satisfied by the documentary evidence and testimony before me for consideration by both parties, that a leak was caused by the Tenant's use of an unpermitted portable washing machine, which damaged the rental unit, Strata common property and another unit of the property, resulting in monetary loss to the Landlord. However, I am not satisfied by the Landlord that they suffered the amount of loss claimed in the Application.

Although the Landlord claimed monetary losses in the amount of $2,669.00 in cleaning and repair costs as a result of the leak, they submitted only two cleaning receipts in support of this claimed amount, totalling $285.00. As the Landlord did not provided me with any documentary evidence or testimony regarding how the remaining balance claimed was calculated or to establish that losses in excess of $285.00 were suffered by them as a result of the leak, I am therefore not satisfied on a balance of probabilities that they were. As a result, I grant the Landlord only $285.00 in compensation for damage or loss suffered as a result of the water leak, as I am satisfied that these costs were incurred by the Landlord as a result of the Tenant's breach of the Strata bylaws and therefore their tenancy agreement, and that they mitigated their loss by having these services completed at a reasonably economic rate.

Having made these findings, I will now turn my mind to the matter of the security deposit. Based on the testimony of the parties, I am satisfied that the Landlord breached section 32(4) of the Act when they failed to complete a move in condition inspection report with the Tenant as required at the start of the tenancy. As a result, I find that the Landlord therefore extinguished their right to claim against the Tenant's security deposit for damage to the rental unit, pursuant to section 24(2)(c) of the Act. Although the Landlord argued at the hearing that the Tenant had failed to sign the move out condition

inspection as required, as I have found that the Landlord had already extinguished their rights in relation to the security deposit at the start of the tenancy, I find it unnecessary to assess if the Tenant subsequently extinguished their rights in relation to the security deposit at the end of the tenancy, as Policy Guideline #17, section B, subsection 8, states that the party who breached their obligation first will bear the loss.

The parties agreed at the hearing that the tenancy ended on September 30, 2020, and that the Tenant's forwarding address was provided to the Landlord in writing on September 30, 2020, as part of the move out condition inspection report end the tenancy. Branch records also indicate that the Landlord's Application was filed with the Branch on September 12, 2020, prior to the end of the tenancy. Despite the above noted finding that the Landlord extinguished their right to the security deposit in relation to damage to the rental unit, I find that the Landlord retained the right to withhold the security deposit as part of their Application seeking compensation for other monetary loss. As the Application filed on September 12, 2020, related to more than damage to the rental unit, such as the recovery of Strata bylaw infraction fines, and was filed within the timeline set out under section 38(1) of the Act, as it was filed prior to the end date of the tenancy, I find that the Landlord therefore complied with section 38(1) of the Act and was entitled to retain the Tenant's $875.00 security deposit pending the outcome of the Application.

As the Landlord was at partially successful in some of their claims, I award them recovery of the $100.00 filing fee pursuant to section 72(1) of the Act. Pursuant to section 72(2)(b) of the Act, I therefore authorize the Landlord to retain $785.00 of the $875.00 security deposit withheld by the Landlord, for recovery of $400.00 in Strata bylaw infraction fines, $285.00 in costs incurred as the result of a leak, and recovery of the $100.00 filing fee. I order the Landlord to immediately return the $90.00 remaining balance to the Tenant, and the Tenant is therefore provided with a Monetary Order in the amount of $90.00 for this purpose, pursuant to section 67 of the Act.

Conclusion

Pursuant to section 72(2)(b) of the Act, the Landlord is permitted to retain $785.00 of the $875.00 security deposit paid by the Tenant, the $90.00 remaining balance of which is to be immediately returned to the Tenant by the Landlord.

Pursuant to section 67 of the Act, I grant the Tenant a Monetary Order in the amount of **$90.00**. The Tenant is provided with this Order in the above terms and if the Landlord fails to immediately return to the Tenant the $90.00 remaining balance of their security

deposit, the Tenant may serve this Order on 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. The Landlord is cautioned that costs of such enforcement may be recoverable from them by the Tenant.

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

Dated: January 28, 2021

Residential Tenancy Branch