Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL, MNDC, FFT

Introduction

In the first application the landlord seeks a monetary award for cleaning and repair to the rental unit.

In the second application the tenant seeks recovery of a security deposit and compensation for having to occupy the premises during remediation work, the result of a water leak.

Both parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

It was apparent that the person TK,, the tenant MW's spouse and listed as a tenant in the tenants' application was not a tenant on the tenancy agreement. A reference to "the tenant" in this decision is therefore a reference to the tenant MW.

Issue(s) to be Decided

Did the tenant leave the premises reasonably clean and free of damage but for reasonable wear and tear, as he was required to do by s. 37(2) of the *Residential Tenancy Act* (the "*RTA*"")? If not, were there mitigating circumstances? If not, what is a reasonable measure of damages in the circumstances?

Is the landlord responsible to the tenant for the diminution in the amenity of the rental unit caused by a water leak and remediation of the damage it caused? If so, what is a reasonable measure of damages in the circumstances?

Background and Evidence

The rental unit is a two bedroom condominium apartment. The landlord is the owner of the apartment. The building is relatively new, built in the last ten years or so.

The tenancy started in March 2019. There is a written tenancy agreement showing a fixed term expiring in March 2021. The monthly rent was $3200.00, due on the first of each month. The landlord received a $1600.00 security deposit and has returned $571.00 of it to the tenant.

The parties appear to have had a good relationship during the tenancy and until August 2020. On August 2, it was discovered that the air conditioning system in the rental unit was leaking water into the living room and a bedroom. The floors and parts of walls were wet. According to the landlord, the system is operated by the strata. The landlord has no control over the system other than having a thermostat.

The leak was significant. A strata representative inspected the problem, a problem apparently not confined only to this suite. The leak was reported on August 2 and a plumber attended on August 7 and again on August 11 to finally fix the leak. By this time areas of wall in the rental unit had become soft with moisture.

The landlord testifies that she was charged with the cost of repairing the leak, though she presents a bill that was sent to the strata plan management company.

The landlord engaged a remediation company that attended and ran dehumidifying blowers in the rental unit and turned the heat up to 30 degrees in order to dry out the wet areas of the flooring. This work occurred between August 11 and 14 and involved significant noise and disruption of the normal use of the rental unit.

After the remediation work had finished, the tenant reported that the rental unit continued to have an odor and poor air quality. The landlord engaged another repair company that determined that the flooring and underflooring had been badly water damaged. The landlord was told the entire wood floor and carpeting would have to be removed and replaced.

The landlord says that the repair company told her it would need vacant possession of the rental unit in order to do the work. The parties discussed ending the tenancy. On August 14 the tenant emailed the landlord expressing his concern about the health threat posed by the condition of the rental unit. He noted that the landlord's repair work would render the unit uninhabitable. The tenant's email included an extract from the Residential Tenancy Policy Guidelines on "frustrated tenancy agreements" and noted that, as per their discussions, he was looking for a new place to live and would move as quickly as possible.

On or about August 18 the landlord emailed the tenant indicating he would have to vacate by the end of the month. No official notice was given in accordance with the *RTA*.

The tenant and his family vacated the rental unit on August 27, the only day the tenant could get a moving truck on such short notice. The landlord says the tenant gave her no warning about when he was leaving, though her correspondence to the tenant says he must by gone by September 1 to accommodate her repair schedule or else additional costs would be incurred.

The parties met at the rental unit on August 31 for a move-out inspection. Although the landlord says the parties conducted a move-in inspection, she did not have with her the move-in inspection report on August 31. The parties went through the rental unit with the landlord taking photographs. The tenant says he declined to sign any move-out condition report because the landlord did not have the move-in report with her.

The landlord's photos show some areas requiring minor cleaning and a number of walls show multiple screw or bolt holes from which the tenant had mounted a television and the like. The tenant says that because of the short move-out date the landlord gave him he did not have time to do the minor cleaning or repair the holes in the walls.

Analysis

Ending of the Tenancy

It is apparent that both parties were of the view that the rental unit was not reasonably habitable after the remediation work drying it out and that it would certainly be uninhabitable once repairs started.

I find that the parties reached a consensus that the tenancy agreement had been frustrated by the damage caused by the air conditioner leakage and the anticipated repairs, and that there was no likelihood the premises would be reasonably habitable in the near future. Though he alludes to a lack of knowledge about what "frustration" of a tenancy agreement might mean, he informed himself in August and quoted the extract definition from the Policy Guideline.

In such a circumstance the landlord was not obliged to provide the tenant with any particular notice to end the tenancy under the *RTA*.

Inherent in a finding of frustration is that it occurred as a result of some event outside the control of the parties. In this case, the only evidence is that the air conditioner was a part of the strata and not an independent unit under the control of the landlord; a system she might then have been under an obligation to maintain and the failure of which would have been her responsibility.

Tenant's Claim for Loss of Use

There is no question but that the tenant suffered significant disruption due to the intrusion related to diagnosis and repair of the leaking system, the remediation work to dry the rental unit out and then the aftereffects of water damaged flooring and walls. However, as the landlord bears no responsibility for the system failure that caused it all, she cannot be responsible for the loss and inconvenience suffered by the tenant during the month of August as a result.

I dismiss the tenant's claim for damages for loss of use of the rental unit.

Landlord's Claim for Cleaning and Repair

In the circumstances of this case I find the tenant was not responsible to clean and repair the rental unit before he vacated. The rental unit is scheduled to undergo a renovation/repair so extensive that vacant possession is being required. Any minor cleaning the tenant might have ignored, like wiping a counter or a sink or flushing a toilet will be instantly subsumed into the major cleaning that will inevitable occur after repairs are completed.

Similarly, it is very likely in my view that areas of wall will require replacement due to water damage. That will involve filling cracks and holes with "mud" and sanding. The

filling and sanding the tenant might have been required to do (and as outlined in Residential Tenancy Policy Guideline #1) will be an insignificant addition to that work.

I therefore dismiss the landlord's claim for the cost of cleaning and repair.

Conclusion

The claims of the landlord and the tenant are both dismissed.

The tenant is entitled to recover the $1029.00 remainder of the security deposit and I grant him a monetary award in that amount against the landlord.

Each party will bear the cost of their own filing fee.

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: January 07, 2021

Residential Tenancy Branch