Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 0901016 BC LTD
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes Landlord: MNDL-S, FFL
Tenant: MNSDS-DR

Introduction

This hearing dealt with adjourned cross Applications for Dispute Resolution filed by the parties under the Residential Tenancy Act (the "Act"). The matter was set for a conference call.

The Landlord's Application for Dispute Resolution was made on August 14, 2020. The Landlord applied for a monetary order for losses due to the tenancy, permission to retain the security deposit and to recover their filing fee.

The Tenants' Application for Dispute Resolution was made on September 15, 2020. The Tenants applied for the return of their security deposit.

The Property Manager, Caretaker, the Bookkeeper (the "Landlord") and both the Tenants attended the hearing and were each affirmed to be truthful in her testimony. Both parties were provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing. The parties agreed that they have exchange the documentary evidence that I have before me in these proceedings.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Preliminary Matter - *Questions by the Arbitrator*

During the hearing, this arbitrator asked the Landlord several questions regarding their claim, their testimony, and their documentary evidence. The Landlord and the Landlord's agents repeatedly became upset with this Arbitrator, objecting to this

Arbitrator questioning of their evidence and their testimony. The Landlord questioned this arbitrator's right to ask questions that would test the testimony and evidence submitted to these proceedings regarding this claim. The Landlord was advised that the Rules of Procedure allow an Arbitrator to question a party or a witness. Section 7.23 of the Residential Tenancy Branch Rules of Procedure reads as follows:

> **7.23 Questions by the arbitrator**
>
> The arbitrator may ask questions of a party or witness if necessary:
>
> • to determine the relevancy or sufficiency of evidence;
> • to assess the credibility of a party or a witness; or
> • to otherwise assist the arbitrator in reaching a decision.

Preliminary Matter – *Landlord Testimony*

Throughout the hearing, the Landlord was unprepared to present their documentary evidence and to offer clear verbal testimony regarding some portions of their monetary claim. When asked to testify to specific details of their claim and to present their evidence, the Landlord repeatedly offered inconsistent testimony and was unable to reference their supporting documentary evidence.

This Arbitrator provided the Landlord with additional and ample time during these two proceedings to search through paperwork and confirm information. However, the Landlord remained unable to clearly testify to or present the documentary evidence they had submitted to these proceedings in support of their application.

Issues to be Decided

- Is the Landlord entitled to a monetary order for losses due to the tenancy?
- Is the Landlord entitled to retain the security deposit?
- Are the Tenants entitled to the recovery of their security deposit for this tenancy?
- Is the Landlord entitled to recover their filing fee?

Background and Evidence

While I have turned my mind to all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The parties agreed that this tenancy began on May 1, 2019, as a one-year fixed term tenancy that rolled into a month-to-month tenancy at the end of the initial fixed term. The parties also agreed that rent in the amount of $1,900.00 was due on the first of each month and that the Tenants' had paid the Landlord a $950.00 security deposit for this tenancy. Both the Landlord and the Tenants submitted a copy of the tenancy agreement into documentary evidence.

The parties to this tenancy agreed that this tenancy ended in accordance with the *Act* but disagreed as to the date this tenancy ended. The Landlord testified that the tenancy ended on July 31, 2020. The Tenants argued that the tenancy ended on July 21, 2020, the date the move-out inspection was completed, and they returned the keys to the rental unit. The parties agreed that the move-out inspection had been completed on July 21, 2020, and that the Tenant's provided with their forwarding address to the Landlord, in writing, during the move-out inspection. Both the Landlord and the Tenants submitted a copy of the move-in/move-out inspection report and the Tenants' forwarding address letter into documentary evidence.

In this case, the Landlord is claiming for $8,495.00 in the recovery of their costs to repair and renovate the rental unit due to water and mould damage in the rental at the end of this tenancy, and $425.00 in cleaning costs. The Landlord testified that on November 1, 2020, they conducted an inspection of the Tenants' rental unit after the Tenants had complained of moisture and mould problems in their unit. The Landlord testified that their caretaker did discover water stains and mould in the unit at that time but that in the course of their inspection, they noted that the Tenants' were splashing water on the floor and countertops, allowing the water to pool and that they were neglecting to clean up the spills. The Landlord testified that the Tenants were counselled during this inspection, and in a subsequent written letter, that they were required to clean up all water spilled on the floor and countertop, that they were to take care to not track water on the carpets and that they were to turn the heat up in the rental unit to prevent mould and condensation. The Landlord testified that the Tenants were new to this country and did not know how to care for this type of property.

The Landlord testified that they attend the rental unit about two weeks later for a follow-up inspection and that they felt the Tenants had taken appropriate steps to fix the water spillage they had been causing. The Landlord testified that due to the Covid-19 pandemic, they did not attend the rental unit again until the date of the move-out inspection, on July 21, 2020.

The Landlord testified that during the move-out inspection, they discovered extensive water and mould damage in the rental unit. The Landlord testified that they believe the Tenants continued to be careless with water throughout the rental unit, causing water damage to the walls, ceilings, countertops, and floors of the unit. The Landlord submitted 106 pictures of the rental unit and an affidavit from their caretaker into documentary evidence.

The Landlord testified that once the repairs were completed, the entire rental unit needed to be cleaned at the cost of $425.00. The Landlord testified that they are requesting to recover all of their repair and cleaning costs.

The Tenants testified that they were not careless with water and that they did not case the water and mould damage to the rental unit that the Landlord is claiming for in these proceedings. The Tenants' argued that they advised the Landlord of the water stains, mould, and moisture problems in the rental unit in November 2019, but that the landlord failed to fix the problem.

The Landlord testified that due to the extensive water and mould damage in the rental unit at the end of this tenancy, they were unable to rent the unit out for August 2020. The Landlord testified that they are claiming for their loss of rental income for August 2020, in the amount of $1,900.00.

When aske the Landlord confirmed that they had not shown the rental unit to any prospective renters during the Tenants' last month of tenancy.

The Tenants testified that they did not cause the damage and should not be responsible for an additional month's rent.

The Landlord testified that they are also claiming for $600.00 to repair the stained kitchen countertop at the end of the tenancy. The Landlord testified that the Tenants splashed cooking oil on the countertop, which caused a dark stain. The Landlord testified that it cost them $600.00 to have the countertop repaired at the end of this tenancy. The Landlord reference the previously submitted pictures as evidence to support this portion of their claim.

The Tenants testified that they did not stain the countertop during their tenancy and that the move-out inspection report noted that the kitchen countertops were in good condition at the end of their tenancy.

The Landlord testified that they are claiming for $250.00 to replace broken oven heating elements. The Landlord acknowledged that this broken element had not been noted on the move-out inspection, stating that it was not discovered until several days after the tenancy had ended.

The Tenants testified that they did damage the oven element during their tenancy and that the move-out inspection report noted that the oven was in good condition at the end of their tenancy.

The Landlord testified that they are claiming for $375.00 in cleaning, repairing, and purchasing new window blinds in the rental unit. The Landlord claimed that the blinds were dirty, yellowing, and that the bedroom blinds had been broken at the end of this tenancy. When asked, the Landlord testified that the window blinds were at least 10 years old at the end of this tenancy.

The Tenants testified that the window blinds are old and were yellowing throughout their tenancy. the Tenants testified that these blinds just broke due to age and normal wear and tear and that they should not be responsible for buying the Landlord's new blinds.

The Landlord testified that they are claiming for $350.00 in new tile grout for the rental unit. The Landlord testified that the grout was discoloured and cracking at the end of this tenancy and had to be replaced. When asked, the Landlord testified that the grout had been between 5 to 10 years old at the end of this tenancy.

The Tenants testified that the tile grout was old and just broke down due to age and normal wear and tear and that they should not be responsible for buying the Landlord grout.

Analysis

Based on the above, testimony and evidence, and on a balance of probabilities, I find as follows:

I have reviewed the totality of the Landlord’s claim before me, and I find that the Landlord is claiming for losses associated with unit #41, which is a townhome located in a 70+ unit townhome complex.

In this case, the Landlord is claiming for $8,495.00 in the recovery of their repair and renovation costs due to water damage and mould in the rental unit at the end of this tenancy. It is not in dispute, between these parties, that this rental unit required repairs

and renovations at the end of this tenancy; however, what is in dispute is what or who caused the damage that necessitated the need for the repairs and renovations.

I find that the parties, in this case, offered conflicting verbal testimony regarding the cause of the water and mould damage in the rental unit at the end of this tenancy. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. In this case, it is the Landlord who holds the burden to prove their claim.

I have reviewing all of the documentary evidence the Landlord submitted to these proceedings, and I find it difficult to reconcile some of the Landlord's evidence against the claims they have submitted to these proceedings. Specifically, the Attic Report dated June 12, 2019, confirming the presence of a roof leak and structural issues in unit #40 of this same building complex, and coincidentally the neighbouring unit to the Tenants' unit #41.

I find it troubling that when unit #40 reported a problem in their unit, this Landlord hired a professional inspection team to assess the problem, having a professional assessment completed and structural repairs made to that unit. However, when these Tenants located unit #41, the neighbouring unit to unit #40, just five months later, reported a similar problem, a caretaker was sent to attended the Tenants' unit to inspect the problem, not the same professional inspection company that was provided to unit #40.

Additionally, after reviewing the text message evidence submitted by the Landlord to these proceedings, I find that these messages show that without professional consultation, the Landlord and their caretaker determined there was no structural problem with the Tenants' rental unit (#41), like what the professionals had found in the neighbouring unit (#40), and instead determining that it was these Tenants who were to blame for the water and mould issues in their unit. I find it unreasonable of this Landlord to have concluded that the Tenants' rental unit could not of have the same structural problems as the neighbouring unit without a professional assessment.

I was also left disturbed by the manner in which the Landlord and the caretaker referred to these Tenants in their text message conversations, noting that the Landlord and the caretaker make several references to the nationality of these Tenants and the fact that they are recent immigrants to this country.

I also find it troubling that the Landlord failed to offer any verbal testimony, during these proceedings, regarding the presence of a water leak and mould in the unit directly adjacent to this rental unit, nor did they offered any testimony regarding the existence of this Attic Report that they included in their submitted documentary evidence for these proceedings.

I have read the statement of the Landlord's caretaker, and I note that there is no evidence before me to show that this caretaker was a licenced professional with the required training and certification to conduct the same level of inspection that was completed by the company that produced the June 12, 2019, Attic Report.

I find that it was unreasonable of this Landlord to not have had the same professional or similarly qualified inspection company attend the Tenants' rental unit, that they had attended the neighbouring unit, to determine if the same problems may have existed in this rental unit as existing in the neighbouring unit.

Overall, I find that that Landlord has failed to provide sufficient evidence, to satisfy me, that these Tenants were the cause the water damage they are claiming for in this proceedings, and that on a balance of probabilities this water and mould damage was most likely due to the same structural building deficiencies that were found in the neighbouring unit.

Consequently, I find that the Landlord has not met the onus to establish their claim that the Tenants caused the water and mould damage present in this rental unit at the end of this tenancy. Therefore, for the reasons stated above, I dismiss the entirety of the Landlord's claim for the recovery of repairs and restoration costs associated with water damage, water stains and mould damage in this rental unit.

Regarding the Landlord's claim for $425.00 in cleaning, during these proceedings, the Landlord testified that this cleaning was required due to the mess caused by the repair work and was completed after the repairs and renovations to this unit had been finished. As the Landlord has failed to prove that the Tenants caused this damage to the unit, I find that the Tenants are not responsible for the required cleaning in the unit after the repaired and renovations had been finished. Therefore, I dismiss this portion of the Landlord's claim.

The Landlord has also claimed for the loss of rental income for August 2020, in the amount of $1,900.00, as the Landlord was not able to rent the unit for that month due to the required repairs. As stated above, the Landlord has failed to prove that the Tenants

caused this damage to the unit and are therefore not responsible for the loss of rental income for August 2020. Consequently, I dismiss this portion of the Landlord's claim.

The Landlord has also claimed for $600.00 to repair a stained countertop and $250.00 to replace broken oven heating element. During these proceedings, the parties offered conflicting verbal testimony on both these items. As stated above, in cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

I have reviewed the Landlord move-out inspection report for this tenancy and noted that both the oven and the countertop were listed to be in good condition at the end of this tenancy. As the Landlord failed to recorded deficiencies in the countertop and the oven on the move-out inspection report, I decline to award the Landlord their requested amounts for these two items and dismiss this portion of the Landlord's claim.

Finally, the Landlord has claimed for $375.00 in new window blinds and $350.00 in new tile grout for the rental unit. In determining the suitable award for window blinds and grout, I must refer to the Residential Tenancy Branch guideline # 40 Useful Life of Building Elements. The guideline sets the useful life of window blinds at 10 years and grout at five years.

I accept the Landlord's testimony that the window blinds were 10 years old, and the tile grout had been 5 to 10 years old at the end of this tenancy. Accordingly, I find that both the window blinds and grout were at the end of their life expectancy and that the Landlord is not entitled to the recovery of their costs for either of these items, and I dismiss this portion of the Landlords' claim.

Additionally, section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord has not been successful in this application, I find that the Landlord is not entitled to recover the filing fee paid for this application.

Overall, I dismiss the Landlord's claim in its entirety.

As for the Tenants' application for the recovery of their security deposit for this tenancy, I accept the agreed-upon testimony of the Landlord and Tenant, and I find that this tenancy ended on July 21, 2020, the dated the Landlord conducted the move-out inspection and took back possession of the rental unit. In addition, I also accept the

testimony of these parties that the Tenant provided their forwarding address to the Landlord in writing during the move-out inspection on July 21, 2020.

Section 38(1) of the *Act* gives the landlord 15 days from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to file an Application for Dispute Resolution claiming against the deposit or repay the security deposit to the tenant.

> ***Return of security deposit and pet damage deposit***
>
> ***38*** *(1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of*
>
> *(a)the date the tenancy ends, and*
>
> *(b)the date the landlord receives the tenant's forwarding address in writing,*
>
> *the landlord must do one of the following:*
>
> *(c)repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;*
>
> *(d)make an application for dispute resolution claiming against the security deposit or pet damage deposit.*

Accordingly, I find that the Landlord had until August 5, 2020, to comply with section 38(1) of the *Act* by either repaying the deposit in full to the Tenants or submitting an Application for Dispute resolution to claim against the deposit.

I have reviewed the Landlord's application for this hearing, and I find that the Landlord submitted their Application for Dispute resolution to claim against the deposit on August 14, 2020, 9 days after the expiry of the statutory timeline to file for dispute resolution. I find that the Landlord breached section 38(1) of the *Act* by not filing their claim against the deposit within the statutory timeline.

Section 38 (6) of the *Act* goes on to state that if the landlord does not comply with the requirement to return or apply to retain the deposit within the 15 days, the landlord must pay the Tenant double the security deposit.

> ***Return of security deposit and pet damage deposit***
>
> *38 (6) If a landlord does not comply with subsection (1), the landlord*
>
> *(a) may not make a claim against the security deposit or any pet damage deposit, and*

> *(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.*

Therefore, I find that pursuant to section 38(6) of the *Act,* the Tenants have successfully proven that they are entitled to the return of double their security deposit. I find for the Tenants, in the amount of $1,900.00, granting a monetary order for the return of double the security deposit for this tenancy.

Conclusion

The Landlord's claim is dismissed in its entirety.

I find for the Tenants under section 38 of the Act. I grant the Tenants a **Monetary Order** in the amount of **$1,900.00.** The Tenant is provided with this Order in the above terms, and the Landlord must be served with this Order as soon as possible. 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: February 10, 2021

Residential Tenancy Branch