Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Prompton Real Estate Services Inc. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL-S, MNDL-S, MNDCL-S, FFL

Introduction

This hearing dealt with the landlord's application for monetary compensation against the tenant for unpaid and/or loss of rent; damage to the rental unit; and, other damages or loss under the Act, regulations or tenancy agreement; and, authorization to retain the tenant's security deposit and pet damage deposit.

The landlord's agents appeared for the hearing; however, there was no appearance on part of the tenant.

Since the tenant did not appear, I explored service of hearing materials upon the tenant.

The landlord had been granted a Substituted Service Order by the Director authorizing the landlord to serve the tenant by email.

The landlord submitted copies of emails showing the proceeding package was sent to the tenant, via email, on December 29, 2020 and evidence was sent to the tenant via email on January 5, 2021. Additional evidence was sent to the tenant, namely a copy of the tenancy application form, on March 2, 2021. The emails provided as proof of service demonstrate the landlord used the email address authorized for service in the Substituted Service Order, the date of sending the emails, and the attachments. I was satisfied the landlord served the tenant in accordance with the Substituted Service Order and the Act and I proceeded to hear the landlord's claims in the absence of the tenant.

Issue(s) to be Decided

1. Has the landlord established an entitlement to recovery of the amounts claimed against the tenant?
2. Is the landlord authorized to retain the security deposit and pet damage deposit?
3. Award of the filing fee.

Background and Evidence

The tenancy commenced on July 1, 2019 for a fixed term of one year and then continued on a month to month basis. The landlord, a property management company acting on behalf of the owner, collected a security deposit of $1237.50 and a pet damage deposit of $1237.50. The tenant was required to pay rent of $2475.00 on the first day of every month. The landlords provided a copy of the tenancy agreement and its addendums as evidence.

A move-in inspection report was prepared with the tenant at the start of the tenancy. The move-in inspection report was provided as evidence.

On September 22, 2020 the tenant notified the landlord, via email, that he would be ending the tenancy effective September 30, 2020. The landlord provided a copy of the email the tenant sent to the landlord on September 22, 2020. In the email the tenant writes that he must return home, to another country, due to an emergency; that he cannot afford to pay rent for October 2020; and, that he would give up his deposits in lieu of rent for October 2020. The tenant then signed a written notice to end tenancy on September 23, 2020 with an effective date of September 30, 2020. Both of these documents were submitted as evidence.

The landlord did not set up a move-out inspection with the tenant before he vacated the rental unit on September 30, 2020. The tenant left the keys with the building concierge, but not the visitor pass, and the landlord proceeded to perform the move-out inspection without the tenant present. The move-out inspection report was provided as evidence.

The landlord's agents submitted they found the unit with flooring damage and in need of some minor wall and baseboard repairs, along with cleaning. The landlord proceeded to have the walls and baseboard repaired, and the unit cleaned. The owner decided not to repair the floors but the owner agreed to lower the rent to $2280.00 and the landlord advertised the unit at the lesser amount of $2280.00 per month. The landlord's agent

testified that most prospective tenants were not interested in renting the unit with the damaged floors but the landlord was eventually successful in finding replacement tenants for a new tenancy set to commence on May 1, 2021.

The landlord seeks to recover the following amounts from the tenant:

Description	Amount claimed	Reason
Unpaid/loss of rent for October 2020	$2475.00	The tenant gave short notice to end tenancy and damaged the rental unit.
Cleaning	$170.00 + gst	Tenant did not leave the rental unit clean.
Repairs to wall and baseboard	$150.00 + gst	Tenant responsible for what appears to be dog chewing on corner of wall and baseboard.
Unreturned visitor pass	$100.00	Tenant failed to return visitor pass given at the start of the tenancy.
By-law fines	$100.00 + $100.00	Tenant caused imposition of by-law fines.
Floor damage	$5670.00	Tenant caused floor damage (likely water or liquid damage).
TOTAL	$8781.00	

The landlord provided an invoice for the cleaning and minor repairs along with photographs of the rental unit at the end of the tenancy. The landlord also provided evidence as to the cost to replace the visitor pass.

With respect to the by-law fines, the landlord provided copies of two letters from the strata corporation addressed to the owner and the landlord, dated: July 28, 2020 and August 18, 2020. The July 28, 2020 letter describes an infraction on June 15, 2020 and a letter sent out on June 17, 2020 resulting in a $100.00 fine. The letter of August 18, 2020 shows the infraction referred to in the letter of June 17, 2020 has a “decision pending”. The August 18, 2020 letter also points to another infraction on June 30, 2020 and a letter going out on July 3, 2020.

I noted the by-law infractions concern the same offence. I enquired as to whether the tenant had been provided the strata by-laws and been notified of the warnings and first infraction in January 2020. The landlord’s agent stated that the tenant would have been provided a copy of the by-laws at the start of the tenancy and been notified of the warnings and first offence by the landlord’s office although documentary evidence of

such was not provided as evidence. As for the “decision pending” notation in the August 18, 2020 letter for the June 15, 2020 infraction the landlord’s agents stated this was an error on part of the strata corporation. I asked whether the landlord had paid the strata fines. The landlord’s agents looked up the information in their system and responded that the fines had not been paid.

With respect to the flooring damage, the landed obtained a quote from one contactor. The contractor provided an estimate for three different scenarios: (1) replacing the laminate floor with new laminate in the damage areas only for a cost of $3465.00; (2) replacing the laminate floor with vinyl plank in the entire rental unit at a cost of $5775.00; or, (3) replacing the laminate floor in the entire rental unit with new laminate at a cost of $5670.00.

The landlord is seeking recovery of $5670.00 because to replace just the damaged area would mean the floors would not match. The landlord’s agents stated that the contractor informed them that the same flooring that was originally installed cannot be purchased even though the landlord stated the flooring was new at the start of the tenancy. The owner decided not to replace the damaged floor and re-rented the unit for a lesser monthly rent of $2280.00.

Analysis

Upon consideration of all of the unopposed evidence before me, I provide the following findings and reasons.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Unpaid and/or loss of rent

A tenant in a month to month tenancy, such as in this case, is required to give the landlord at least one full month of advance written notice to end the tenancy, as provided under section 45 of the Act. Based on the unopposed evidence before me, I accept that the tenant failed to give the landlord such notice to end tenancy and gave the landlord only 8 days of advance notice which is a very short amount of time to secure a replacement tenant.

I noted the landlord did not provide me with copies of advertisements to demonstrate that a reasonable effort was made to mitigate loss of rent; however, the landlord's agent testified that there were advertising efforts made without delay, and for reasons provided later, I am satisfied the tenant also caused damage to the rental unit and that also contributed to the inability to secure replacement tenants in a quick amount of time.

For reasons provided above, I grant the landlord's request to recover unpaid and/or loss of rent from the tenant for the month of October 2020 in the amount of $2475.00, as requested.

Cleaning and repairs to wall and baseboard

Under section 37, a tenant is required to leave the rental unit reasonably clean and undamaged at the end of the tenancy. Reasonable wear and tear is not considered damage and a landlord may not pursue a tenant for the cost to remedy reasonable wear and tear, or any pre-existing damage.

The tenancy agreement addendum and the move-in inspection report both indicate the rental unit was new at the start of the tenancy and this is consistent with the testimony of the landlord's agents.

Since the landlord did not invite the tenant to participate in the move-out inspection despite receiving his notice to end tenancy, I do not consider the move-out inspection report to be the best evidence of the condition of the rental unit at the end of the tenancy in itself. However, I have been provided photographs and invoices as evidence of the condition of the rental unit at the end of the tenancy and I find that all these pieces of evidence together are consistent and reliable.

Upon review of the photographs taken after the tenant vacated, I accept that the walls and baseboard were damaged during the tenancy.

The photographs also show a unit that was not left reasonably clean.

The landlord provided an invoice showing the cost to clean and repair the walls and baseboard and I award the landlord the sum provided on the invoice of $336.00, including tax, as requested.

Visitor pass

The move-in inspection report, which was signed by the tenant, shows the tenant was provided a visitor parking pass at the start of the tenancy. The move-out inspection report shows that the two suite keys were returned and the garage remotes were returned but not the visitor's pass. Based on the unopposed evidence before me, I accept that the tenant failed to return the visitor's pass and that a replacement pass costs $100.00. Therefore, I grant the landlord's request for $100.00 for the missing visitor's pass, as requested.

By-law fines

The landlord provided two letters in an effort to show the landlord incurred two fines of $100.00 each due to the tenant's violations of the strata by-laws; however, I find the letters are inconsistent with respect to the infraction from June 15, 2020. The July 28, 2020 letter indicates a fine of $100.00 was imposed for the June 15, 2020 infraction but then in the letter of August 18, 2020 it indicates that there is a "decision pending" with respect to the June 15, 2020 infraction. The landlord's agents asserted the "decision pending" was an error on part of the strata corporation; however, I find the oral assertion in the absence of documentary evidence of an error is insufficient to satisfy me. Further, when I asked the landlord's agents whether the fines have been paid the landlord's agents stated they had not. Based on the evidence before me, I find I am unsatisfied the landlord has actually suffered a loss for these two by-law infractions and I deny the landlord's request to recover $200.00 from the tenant.

Floor damage

As stated previously, I accept that the rental unit was in new condition at the start of the tenancy based on the tenancy agreement, the move-in inspection report and the landlord's agent's testimony. Upon review of the photographs, I also accept that the flooring was damaged at the end of the tenancy, most likely by water or some other

liquid, causing the edges of the laminate planks to lift and peel. Therefore, I accept that the tenant is responsible for the floor damage.

The issue is the landlord's loss as a result of the floor damage. It is important to note that monetary awards are intended to be restorative. A landlord is expected to repair and maintain a property at reasonable intervals. Where a building element is so damaged that it requires replacement, an award will generally take into account depreciation of the original item. To award the landlord full replacement value of certain building elements that were already used would generally result in a betterment for the landlord. I have referred to Residential Tenancy Branch Policy Guideline 40: *Useful Life of Building Elements* to estimate depreciation.

Policy guideline 40 does not provide an estimated life for laminate flooring; however, considering laminate is a pressed material with a photo finish laminated on top of it, and susceptible to damage from liquids, I find an average useful life for laminate flooring is approximately 10 years, as with carpeting.

The landlord seeks $5670.00 which is the cost to replace all of the laminate flooring with new laminate. I find this request fails to take into account depreciation of the existing flooring during the 16 months for which the tenant has paid rent or is liable to pay rent. As such, I find a more reasonable award would be the depreciated value of the laminate remaining at the end of October 2020, assuming a 10 year (120 month) life span, which I calculate as being: $5670.00 x 104/120 months = $4914.00.

Also of consideration, is that the landlord was able to re-rent the unit without replacing the flooring, but at a lower monthly rent of $2280.00, which is a reduction of $195.00 per month. Were the landlord to leave the damaged flooring in place for the rest of the laminate floor's original expected life and accept a lesser rent of $195.00 per month, the landlords' loss would be over $20,000.00 (104 months x $195.00) which gives me further assurance that an award of $4914.00 is reasonable.

It is unknown whether replacing just the damaged areas and creating a mismatched appearance would result in a lesser rental amount but, considering this unit is newer, I accept that the expectation is that the flooring match.

All of the above considered, I grant the landlord an award of $4914.00 for flooring damage.

Filing fee, deposits, and Monetary Order

The landlord was largely successful in its claims against the tenant and I further award the landlord recovery o the $100.00 filing fee.

I authorize the landlord to retain the tenant's security deposit and pet damage deposit in partial satisfaction of the amounts awarded to the landlord in this decision.

In keeping with all of my findings and awards above, I provide the landlord with a Monetary Order in the net amount calculated as follows, to serve and enforce upon the tenant:

Unpaid and/or loss of rent for October 2020	$2475.00
Cleaning and wall/baseboard damage	336.00
Missing visitor pass	100.00
By-law fines	Nil
Flooring damage	4914.00
Filing fee	100.00
Less: security deposit and pet damage deposit	(2475.00)
Monetary Order	$5450.00

Conclusion

The landlord is authorized to retain the tenant's security deposit and pet damage deposit. The landlord is provided a Monetary Order for the balance owing of $5450.00 to serve and enforce upon 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 *Residential Tenancy Act*.

Dated: March 26, 2021

Residential Tenancy Branch