Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL

Introduction

This hearing was convened in response to an application made November 14, 2020 by the Landlord pursuant to the *Residential Tenancy Act* (the "Act") for Orders as follows:

1. A Monetary Order for damages to the unit - Section 67;
2. An Order to retain the security deposit - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Preliminary Matters

The Landlord's application sets out a claim of $347.72 for an unpaid water bill. The Landlord states that the utility bill was received by the Landlord on October 28, 2020. The Landlord agrees with the Tenant that the Tenant has always made timely payments on utility bills. The Landlord agrees with the Tenant that the bill was sent to the Tenant for payment on November 14, 2020, the same day as the Landlord's application, with the Tenant's payment made November 16, 2020.

Nothing in the tenancy agreement sets out any terms for the payment of utility bills to the Landlord. Nonetheless, given the Landlord's evidence that the Tenant paid its bills in a timely manner it would be reasonable to conclude that some time was given to the Tenant for the required payment. As there is no evidence to support that the utility bill became payable on the date that it was given and based on the undisputed evidence

that the Tenant was given the bill on November 14, 2020, I find on a balance of probabilities that payment was due after that date. For this reason, I find that the claim made for the utility bill contained in the Landlord's same day application was made prematurely.

Section 62(4 of the Act provides that the director may dismiss all or part of an application for dispute resolution if there are no reasonable grounds for the application or part. Prematurely made claims are generally dismissed with leave to reapply. However, given the undisputed evidence that the utility bill was paid two days after it was given to the Tenant, I find that there are no longer any reasonable grounds for this claim, and I dismiss it without leave to reapply. In these circumstances the Landlord's application may only be considered as being a claim for damages to the unit.

The Landlord's total monetary claim is for $1,250.00. Deducting the amount claimed for the dismissed utility claim leaves $902.28 as the total claimed about for the removal of debris and for damages to the walls and floors. The Landlord did not provide a monetary order worksheet setting out the details of its total monetary claimed amount and the Landlord submitted copies of repair invoices to the walls and floors that greatly exceeded the total claim. The Landlord provided no invoice for the debris claim. The Landlord did not make an amendment to increase its total claimed amount.

Rule 2.2 of the Rules of Procedure provides that the claim is limited to what is stated on the application. As the Landlord's application was not amended to increase its monetary claims and as the claim for the utility bill was dismissed, I found that the Landlord was limited to a total remaining claim of $902.28. At the hearing and with the Tenant's consent the Landlord was given the opportunity to provide the original monetary breakdown and resulting allocations to the costs for the debris removal and other damages to the unit. The Landlord confirmed its original claim for the debris removal was to be approximately $200.00. The Landlord allocated the remaining $702.28 to the claim for floor repairs. The Landlord withdraws it claim for debris

removal and wall repairs. Given the Landlord's provision of costs being claimed and the Tenant's consent for the allocation of those costs at the hearing I find that the remaining claim for costs is $702.28 for floor damages.

Issue(s) to be Decided

Is the Landlord entitled to costs for repairing the flooring?
Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The following are agreed facts: The tenancy under written agreement started on November 1, 2018 and ended on October 31, 2020. Rent of $2,500.00 was payable on the first day of each month and did not include the utilities. At the outset of the tenancy the Landlord collected $1,250.00 as a security deposit. The Landlord received the Tenant's forwarding address on November 4, 2020. The Parties mutually conducted a move-in inspection with a completed inspection report copied to the Tenant.

The Landlord states that it made a first offer for a move-out inspection on November 4, 2020 and that no other offer was made. The Landlord states that no other offer was made as the Tenants had moved out of area. The Landlord states that it conducted the move-out inspection without the Tenant on November 1, 2020 and completed the move-out report. The Landlord states that a second move-put inspection was conducted with the owner on November 6, 2020.

The Landlord states that the parquet flooring at the main entrance was left with either a large stain or burn. The Landlord states that the hardwood flooring in the two bedrooms had a scrapes and scratches. The Landlord states that one spot was damaged on the hardwood florin. The Landlord states that the age of the flooring is unknown and that when it was purchased in 2018 it was not new. The Landlord claims $702.28 as the cost of refinishing the floors. The Tenant states that the building was originally built in 2000 and that the floors were new then. The Tenant states that the neighbour informed

them of the age of the unit and that the date of the unit is also set out in the BC Assessment. The Tenant states that it does not know how the spot on the parquet was caused as they had no oils or burning materials in that area. The Tenant states that it never saw any significant damage to the flooring and that the marks left are from wear and tear. The Tenant states that a year into the tenancy the Landlord conducted an inspection and noted the floors to have only wear and tear. The Tenant states that after this inspection they used carpets.

Analysis

Section 37 of the Act provides that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. Policy Guideline #40 sets out the useful life of hardwood and parquet flooring at 20 years. Given the Tenant's evidence of the age of the building and as the Landlord's evidence is that it does not know the age of the flooring, I find on a balance of probabilities that the flooring was at the end of its useful life of 20 years by the end of the tenancy. Further, given this age, I consider that the marks on the flooring are only reasonable wear and tear. As the Tenant is not responsible for wear and tear and as the flooring was at the end of its life, I find that the Landlord has not substantiated that the Tenant is liable for the costs of refinishing the floors. I dismiss this claim. As the Landlord's claims have not met with success, I dismiss the Landlord's claim for recovery of the filing fee and in effect the Landlord's application is dismissed in its entirety.

Section 35(2) of the Act provides that the landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection. Section 17 of the Regulations provides the following:

> (1)A landlord must offer to a tenant a first opportunity to schedule the condition inspection by proposing one or more dates and times.
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> (2)If the tenant is not available at a time offered under subsection (1),
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> > (a)the tenant may propose an alternative time to the landlord, who must consider this time prior to acting under paragraph (b), and

(b)the landlord must propose a second opportunity, different from the opportunity described in subsection (1), to the tenant by providing the tenant with a notice in the approved form.

(3)When providing each other with an opportunity to schedule a condition inspection, the landlord and tenant must consider any reasonable time limitations of the other party that are known and that affect that party's availability to attend the inspection.

Section 36(2)(a) of the Act provides that the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if, inter alia, the landlord does not comply with section 35 (2) *[2 opportunities for inspection]*. Based on the Landlord's evidence that no second opportunity was proposed to the Tenant I find that the Landlord's right to claim against the security deposit for damages to the unit was extinguished at move-out.

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. Policy Guideline #17 provides that return of double the deposit will be ordered if the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act. As the Landlord's right to claim against the security deposit for damage to the unit was extinguished at move-out I find that the only option remaining for the Landlord at the end of the tenancy was to return the security deposit. The Landlord was still at liberty to make its claim for damages to the unit. Given the undisputed evidence that the security deposit was not returned I find that the Landlord must now pay the Tenant double the security deposit plus zero interest of **$2,500.00**.

Conclusion

The Landlord's application is dismissed.

I grant the Tenant an order under Section 67 of the Act for **$2,500.00**. If necessary, this order may be filed in the Small Claims 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 Act.

Dated: March 22, 2021

Residential Tenancy Branch