Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Oakwood Property Management Ltd. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes For the tenant: CNR, OLC, MNDCT, RP, LRE, PSF
For the landlord: OPC, MNDL-S, FFL

Introduction

This hearing dealt with a cross application. The tenant's application pursuant to the Residential Tenancy Act (the Act) is for:

- cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, pursuant to section 46;
- an order for the landlord to comply with the Act, the Residential Tenancy Regulation (the Regulation) and/or tenancy agreement, pursuant to section 62;
- a monetary order for compensation for damage or loss under the Act, the Regulation or tenancy agreement, pursuant to section 67;
- an order requiring the landlord to carry out repairs, pursuant to section 32;
- an order to restrict or suspend the landlord's right of entry, under section 70; and
- an order requiring the landlord to provide services or facilities as required by the tenancy agreement or the Act, pursuant to section 62.

The landlord's application pursuant to the Act is for:

- an order of possession under a One Month Notice to End Tenancy for Cause, pursuant to sections 47 and 55;
- a monetary order for loss under the Act, the regulation or tenancy agreement, pursuant to section 67;
- an authorization to retain the tenant's security deposit (the deposit), under section 38; and
- an authorization to recover the filing fee for this application, under section 72.

I left the teleconference connection open until 9:45 A.M. to enable the tenant to call into this teleconference hearing scheduled for 9:30 A.M. The tenant did not attend the hearing. The landlord, represented by property manager CD (the landlord), attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers

and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

At the outset of the hearing the landlord affirmed she understands it is prohibited to record this hearing.

I accept the landlord's testimony that the tenant was served with the application and evidence (the materials) by registered mail on March 08, 2021, in accordance with section 89(2)(b) of the Act (the tracking number is recorded on the cover of this decision).

Section 90 of the Act provides that a document served in accordance with Section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail the tenant is deemed to have received the materials March 13, 2021, in accordance with section 90 (a) of the Act.

Rule of Procedure 7.3 allows a hearing to continue in the absence of the respondent.

Preliminary Issue - Tenant's application dismissed

Rules 7.1 and 7.3 of the Rules of Procedure provide as follows:

> **Rule 7 – During the hearing**
> **7.1 Commencement of the dispute resolution hearing**
> The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator.
> **7.3 Consequences of not attending the hearing**
> If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

Accordingly, in the absence of any attendance at this hearing by the tenant, I order the tenant's application dismissed without leave to reapply.

Preliminary Issue – Vacant Rental Unit

At the outset of the hearing the landlord stated the tenant's neighbour informed her the tenant removed her belongings on March 29, 2021. On April 03, 2021 the landlord inspected the rental unit and the tenant was not at the rental unit. On or around April 20, 2021 the landlord inspected the rental unit again, confirmed it was vacant and changed the lock.

The application for an order of possession is moot since the tenant abandoned the rental unit.

Section 62(4)(b) of the Act states an application should be dismissed if the application or part of an application for dispute resolution does not disclose a dispute that may be determined under the Act. I exercise my authority under section 62(4)(b) of the Act to dismiss the application for an order of possession.

Preliminary Issue – Amendment

The landlord applied for a monetary order for loss in the amount of $4,972.79. The landlord stated that after she submitted the application she received an extra invoice related to the same repairs and she served the materials including an updated monetary order worksheet increasing the amount of her monetary application to $5,175.25.

Pursuant to Rule of Procedure 4.1 I amend the landlord's monetary claim for loss to $5,175.25.

At the hearing the landlord sought to amend the monetary application to include the unpaid rent and utilities of March and April 2021.

Residential Tenancy Branch Rules of Procedure Rule 4.2 provides

> In circumstances that can reasonably be anticipated, **such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made**, the application may be amended at the hearing. If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served."
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> **(emphasis added**)

In this matter, the Notice of Dispute Resolution served by the landlord only requested a monetary order for compensation for loss under the Act. The Notice of Dispute Resolution does not state that the landlord is seeking compensation for unpaid rent and utilities. I do not find the tenant could reasonably have anticipated that the landlord would amend the application at the hearing to include a claim for compensation for unpaid rent. As such, I deny this request.

Issues to be Decided

Is the landlord entitled to:

1. a monetary order for loss?
2. an authorization to retain the tenant's deposit?

3. an authorization to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending party, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below. I explained rule 7.4 to the attending party; it is the landlord's obligation to present the evidence to substantiate the application.

The landlord affirmed the parties entered into a fixed-term tenancy from August 10, 2020 to July 31, 2021. Monthly rent of $1,550.00 was due on the first day of the month. At the outset of the tenancy a security deposit of $775.00 was collected and the landlord holds it in trust. The tenancy agreement was submitted into evidence. The tenant did not provide her forwarding address to the landlord.

The landlord stated the parties conducted a move-in inspection on August 10, 2020 at noon and agreed the rental unit was in perfect condition when the tenancy started. The rental unit is a second floor, 650 square feet 2-bedroom apartment. On the first floor there is another rental unit with a similar layout.

The landlord testified the tenant's rental unit had plumbing issues since the beginning of the tenancy and a new toilet was installed in September 2020. On October 16, 2020 the lower unit tenant informed the landlord there was an excess of water in her rental unit and the light fixture was overflowing. The landlord immediately inspected the tenant's rental unit and observed water damage in the bathroom and the hallway. The tenant informed the landlord that her child plugged the shower tub or the sink.

The landlord hired an emergency repair service due to the water damage in the tenant's rental unit and the lower unit. The service in both units included lifting the carpet, installing fans to dry the carpet, replacing the underpad and removing the furniture.

The November 30, 2020 emergency repair invoice in the amount of $4,857.28 was submitted into evidence. The landlord sent the invoice to the tenant on December 04, 2020 by mail. The letter states:

> As you recall there was a water escape from your unit on Saturday October 16, 2020. You confirmed that the water did, in fact, originate in your bathroom.
> […]
> Please make arrangement to pay this invoice, in its entirety by no later than January 15, 2021.

On December 22, 2020 a plumber attended the rental unit because of a toilet blockage and found a toy in the toilet. The February 24, 2021 invoice in the amount of $202.46

states: “blocked toilet, used toilet snake but couldn’t get through toilet bowl, isolated and removed toilet, put on its back and found kids toys in bowl”.

On February 22, 2021 a plumber attended the rental unit again because of a toilet blockage. The February 22, 2021 invoice in the amount of $115.51 states: “clear blockage in toilet with 6’ toilet snake”.

Analysis

Section 7 of the Act states:

> Liability for not complying with this Act or a tenancy agreement
> 7 (1)If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
> (2)A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Residential Tenancy Branch Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

> The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:
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> - a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
> - loss or damage has resulted from this non-compliance;
> - the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
> - the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove the case is on the person making the claim.

Section 32(3) of the Act states: "A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant."

Based on the coherent undisputed testimony provided by the landlord, the November 30, 2020 invoice in the amount of $4,857.28, the December 04, 2020 letter, and the February 22, 2021 ($115.51) and February 24, 2021 ($202.46) invoices, I find the tenant breached section 32(3) of the Act by damaging and not repairing the toilet on October 16, December 22, 2020 and February 22, 2021 and the landlord suffered a loss in the total amount of $5,175.25.

Thus, I award the landlord $5,175.25 for this loss.

Section 38(1) of the Act requires the landlord to either return the tenant's deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing. As the forwarding address was not provided to the landlord, I find the landlord applied before the deadline of section 38(1) of the Act.

As explained in section D.2 of Policy Guideline #17, the monetary amount or cost awarded to a landlord may be deducted from the deposit held by the landlord. I order the landlord to retain the $775.00 deposit in partial satisfaction of the total monetary award.

As the landlord was successful in this application, the landlord is entitled to recover the $100.00 filing fee.

In summary:

Item	**Amount $**
Plumbing damage	5,175.25
Filing fee	100.00
Subtotal	5,275.25
Deposit (subtract)	775.00
Total	**4,500.25**

Conclusion

Pursuant to sections 38, 67 and 72 of the Act, I authorize the landlord to retain the $775.00 deposit and grant the landlord a monetary order in the amount of $4,500.25.

The landlord is provided with this order in the above terms and the tenant must be served with this order. Should the tenant 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: May 04, 2021

Residential Tenancy Branch