Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Tallman Construction Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **MNDCT, MNSD, FFT**

Introduction
This hearing dealt with an application filed by the tenant pursuant the *Residential Tenancy Act* (the "*Act*") for:

- A monetary order for damages or compensation pursuant section 67;
- An order for the return of a security deposit or pet damage deposit pursuant to section 38; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

The tenant attended the hearing with his daughter/agent, PK. The landlord was represented at the hearing by it's representative, YC. As both parties were present, service of documents was confirmed. The landlord acknowledged service of the tenant's Notice of Dispute Resolution Proceedings package and the tenant acknowledged service of the landlord's evidence. Neither party raised any issues with timely service of documents.

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Rule 6.11 of the Residential Tenancy Branch Rules of Procedure ("Rules"). The parties were informed that if any recording was made without my authorization, the offending party would be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation under the *Act*.

Issue(s) to be Decided
Is the tenant entitled to compensation from the landlord?
Can the tenant recover the filing fee?

Background and Evidence
At the commencement of the hearing, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony pursuant to rule 7.4. In accordance with rules 3.6, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The tenant's agent/daughter gave the following testimony. The tenancy began in a different unit, but the tenants wanted a bigger unit and moved units after 4 months. When the moved out of the first unit, the landlord presented the tenants with a "move out statement of account" which the tenant's agent signed for her parents. In this agreement, the tenants agreed that the landlord would retain $420.00 of the tenants' security deposit for carpet cleaning and suite cleaning.

The tenant GK testified that when he moved into the bigger unit, the landlord told him the carpets were already dirty and in bad shape and needed to be changed. The tenant testified that he told the landlord not to worry, don't change them, it's good enough. The landlord assured the tenant that the carpets would be changed later. This was an oral conversation, not in writing.

A condition inspection report was done when the tenants moved into the larger unit. I note that on move-in, the landlord notes the carpets in the second bedroom are stained.

The tenants ended the tenancy by giving the landlord one month's notice to end the tenancy in late November, 2020. The effective date of the notice was December 31, 2020. When the parties met for a condition inspection report on move-out on December 28, 2020, the tenant's advocate/daughter alleges the report indicates that none of the tenant's original $725.00 security deposit would be reduced. The tenant's advocate/daughter states she signed it with the amounts for suite cleaning, carpet cleaning and patching/painting left blank. The second document signed on that date, the "move out statement of account" was also completely blank, indicating there would be zero taken from the security deposit. The tenant's agent/daughter acknowledges signing this document, below the line which states, *"I/We agree to the above listed deductions from my/our security deposit".*

The tenant's agent/daughter testified that the landlord completed the spots where the landlord indicates how much of the tenants' security deposit would be retained after their agent/daughter signed it. The agent/daughter stated she should have known the

landlord would employ this tactic as the landlord had done it once previously when her parents moved from the smaller unit to the larger one.

The tenant's agent/daughter testified that she paid a professional cleaner to fully clean the unit before the tenants vacated it. The wear to the carpets was normal wear and tear and there was damage to it before the tenants moved in. Also, the landlord had told them that she planned on replacing the carpets at the end of the tenancy. Any painting and patching to the walls is once again normal wear and tear.

Lastly, the tenant's agent testified that BC Hydro charged the tenants for electricity up until January 15th, even though they vacated the unit on December 20th. The tenant's agent acknowledged they neglected to cancel the hydro effective December 20th as there had been a death in the family.

The landlord gave the following testimony. The "move out statement of account" was not blank when the tenant signed it agreeing to the deductions. The $130.00 for carpet cleaning, and the $100.00 for patch/paint was filled in, however the amount for suite cleaning ($420.00) was left blank as she didn't know how many hours it would take to fully clean the unit. The landlord testified that the tenant's agent/daughter signed the document after being advised that the suite cleaning portion would be filled in later.

After trying to clean the carpets, the landlord realized they were in such bad shape they had to be replaced. It takes on average 23.5 hours to clean a unit to make it "move-in ready" for the next tenant, and the outgoing tenant is expected to have the unit in that condition when they move out. When the tenants gave their notice, they were provided with the landlord's "Move out checklist" which states the suite shall be left as clean and ready for the next tenant to immediately move in. It also reminds the tenant to cancel all utilities. The landlord also points to clause 11 of the tenancy agreement which advises that utilities that are not included in the rent or are not paid to the landlord are the responsibility of the tenant who must apply for the hookup and maintain current payment of the utility account.

The carpets had stains that wouldn't come out, so they had to be removed and replaced. There was a burned out light bulb, a specialty bulb that was hard to replace, so the landlord charged the tenant $10.00 to replace it.

Lastly, the landlord testified she had photos of the unit taken when the tenants vacated it stored on her phone, however the phone didn't have enough memory and deleted her photos prior to this hearing.

Analysis

Section 7 of the *Act* states: 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.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

Rule 6.6 of the Residential Tenancy Rules of Procedure indicate the onus to prove their case is on the person making the claim. The standard of proof is on a balance of probabilities. If the applicant is successful in proving it is more likely than not the facts occurred as claimed, the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; and
4. Steps taken, if any, to mitigate the damage or loss.

First, the tenant seeks to recover from the landlord $128.59 charged to her from BC Hydro for electricity from the move out (December 20th) until January 14th, when the new tenants took over. The tenant acknowledges it was her oversight in failing to notify BC Hydro that the Hydro utility should be disconnected. In this case, I do not find the landlord violated the *Act*, regulations or the tenancy agreement in failing to cancel it on behalf of the tenants. (point 2 of the 4 point test) It was not the landlord's responsibility. Therefore, I find this portion of the tenant's claim has not been proven and I dismiss it without leave to reapply.

The parties disagree on whether the "move out statement of account" was filled in or blank when the tenant's agent/daughter signed it. The landlord clearly testified that it was mostly filled out, with only the "suite cleaning" portion left blank. The tenant's agent/daughter testified that it was completely blank.

I then turn to the condition inspection report signed the same day, December 28th. In this document, signed by both parties, the tenant's agent/daughter signed below the line where it states:

I agree with the amounts noted above and authorize deductions of the Balance Due Landlord from my security deposit and/or Pet Damage deposits. If the total owing to the landlord exceeds my deposit, I agree to pay the landlord the excess amount.

On this document, all deductions are noted, including suite cleaning, carpet cleaning, patching/painting and a light bulb fee. It matches the deductions noted on the "move out statement of account", signed by the tenant's agent/daughter below the line reading: *"I/we agree to the above-listed deductions from my/our security deposit".*

The tenant's agent/daughter testified and argues that the landlord repeatedly employs the tactic of having tenants sign these documents before filling them in. This had already happened to the tenants once when the landlord deducted cleaning and carpet cleaning fees from their previous security deposit when moving between units. The agent/daughter also testified it was she who signed the previous "move out statement of account" erroneously agreeing to the deduction back in 2018.

In light of this, I would expect the tenants, through their agent/daughter, to exercise caution in agreeing to deductions a second time when ending their tenancy. On the day of their condition inspection, the agent/daughter signed two separate forms, the condition inspection report and the "move out statement of account" specifically agreeing that the landlord could deduct various fees from the security deposit.

On a balance of probabilities, I believe the landlord's version of the events to be most accurate. I believe the tenant's agent/daughter agreed that the remainder of the fees, notably the "cleaning fee" would be determined at a later date and that the agent/daughter also agreed that the landlord was at liberty to take that fee from the security deposit. In signing the condition inspection report and the "move out statement of account", the tenant's agent/daughter allowed the landlord to charge a reasonable fee to have the unit cleaned to the degree the landlord wanted it. In other words, if the tenant's agent disagreed that fees should be deducted from the security deposit, she should have made those notations on the condition inspection report and the associated documents before signing them.

Section 38(4)(a) of the *Act* states that a landlord may retain an amount from a security deposit or a pet damage deposit if, at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant.

I find the tenant has not proven on a balance of probabilities, that the landlord has breached any portion of the *Act*, regulations or the tenancy agreement. I find that the tenant agreed in writing that the landlord may retain each of the items listed in the condition inspection report and "move out statement of account". I have evidence from both parties that the remainder of the tenant's security deposit, or $65.00 was already

returned to the tenant. As such, I dismiss the tenant's application seeking a return of the security deposit without leave to reapply.

As the tenant's application was not successful, the tenant is not entitled to recovery of the $100.00 filing fee for the cost of this application.

Conclusion

The application is dismissed without leave to reapply.

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: November 30, 2021

Residential Tenancy Branch