Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HOMAX REAL ESTATE SERVICES and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S, MNDCL-S, FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("*Act*") for:

- a monetary order for damage to the rental unit and for compensation under the *Act, Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenants' security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The "female tenant" did not attend this hearing, which lasted approximately 31 minutes. The landlord's agent ("landlord") and the male tenant ("tenant") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The hearing began at 1:30 p.m. with me and the tenant present. The landlord called in late at 1:33 p.m. I did not discuss any evidence with the tenant in the absence of the landlord. The hearing ended at 2:01 p.m.

The landlord confirmed that she had permission to represent the landlord company named in this application. She said that the landlord company manages the rental unit for the owner. She stated that she had permission to represent the owner. She confirmed her name, spelling, her email address, and the rental unit address during this hearing. The tenant confirmed his name, spelling, his email address, and that he had permission to represent the female tenant at this hearing (collectively "tenants").

At the outset of this hearing, I informed both parties that they were not permitted to record this hearing, as per Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure ("Rules")*. The landlord and the tenant both separately affirmed, under oath, that they would not record this hearing.

I explained the hearing and settlement processes, as well as the possible consequences and outcomes, to both parties. Both parties had an opportunity to ask questions. Neither party made any adjournment or accommodation requests. Both parties confirmed that they were ready to proceed with this hearing, they wanted me to make a decision, and they did not want to settle this application.

The tenant confirmed receipt of the landlord's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that both tenants were duly served with the landlord's application.

The tenant confirmed that the tenants did not submit any documentary or digital evidence for this hearing.

Issues to be Decided

Is the landlord entitled to a monetary order for damage to the rental unit and for compensation under the *Act, Regulation* or tenancy agreement?

Is the landlord entitled to retain the tenants' security deposit?

Is the landlord entitled to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to the landlord's documentary and digital evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on August 1, 2018 and ended on November 30, 2020. Monthly rent in the amount of $2,255.00 was payable on the first day of each month. A security deposit of $1,100.00 was paid by the tenants and the landlord continues to retain this deposit in full. A written tenancy agreement was signed by both parties. Move-in and move-out condition inspection reports were

completed for this tenancy. The landlord did not have written permission to retain any amount from the tenants' security deposit. The tenants provided a temporary written forwarding address to the landlord on December 1, 2020, by way of the move-out condition inspection report. The landlord's application to retain the tenants' security deposit was filed on May 9, 2021. The landlord filed a previous application to retain the tenants' security deposit at the RTB on December 12, 2020. That application was dismissed with leave to reapply, pursuant to a decision, dated April 20, 2021, issued by me, since the landlord was unable to prove service of its application to the tenants. The file number for that hearing appears on the front page of this decision.

As per the online application details, the landlord seeks a monetary order of $4,338.80 plus the $100.00 application filing fee. The landlord's online application states that the landlord is seeking damages of $4,288.80, a missing visitor's parking pass of $50.00, and to retain the tenants' security deposit of $1,100.00. The tenants dispute the landlord's application.

The landlord testified regarding the following facts. A move-out condition inspection report was completed. There were holes and damage in all rooms of the house. There was one door missing and one parking pass missing. A new door had to be installed in the closet. The landlord provided invoices and an RTB-37 form to claim for damages. The landlord submitted photographs of the house that was fully damaged. The landlord already submitted all the evidence for the hearing.

The tenant testified regarding the following facts. The tenants cleaned all of the walls and there were only minor scuffs on the walls, which is wear and tear. The tenants moved into the rental unit in 2018, they lived there for over two years, and there was no painting done by the landlord during that time. The rental unit probably does need some paint but that is for the landlord to do, not the tenants. The tenants patched up the small holes that were caused by picture frames that they put up, as the tenants are not required to paint. Regarding the missing door at the rental unit, there was a flood after the washer leaked, so there were damages to the floor, and the owner looked at it. There was damage to the closet door from the flood, which was rotting wood, so the tenants took the door out and disposed of it.

The tenant stated the following facts. Regarding the parking pass, the tenants returned this to the person who conducted the move-out condition inspection report on behalf of the landlord. The landlord did not show up herself to conduct the move-out condition inspection or report. The landlord claimed that this person was her agent, but this person did not identify himself to the tenants. This person might be a relative of the

landlord. The landlord did not call this person as a witness at this hearing regarding the move-out condition inspection report or the parking pass. This person could have provided more information regarding the above, and the tenant could have cross-examined him, but did not have a chance to do so. This person conducted the move-out condition inspection and report, but he did not go through the entire rental unit properly and he filled out the report himself.

The landlord stated the following in response to the tenant's submissions. The damage to the walls was not wear and tear. The door was far from the laundry room and was not damaged by the flood, since the flood only damaged the laundry room. The tenant is lying and did not give the parking pass back to the landlord's agent.

Analysis

Rules and Legislation

At the outset of this hearing, I repeatedly informed the landlord that as the applicant, the landlord had the burden of proof to present its claims on a balance of probabilities. The landlord affirmed her understanding of same and did not have any questions.

The following Residential Tenancy Branch ("RTB") *Rules* are applicable and state the following, in part:

> *7.4 Evidence must be presented*
> *Evidence must be presented by the party who submitted it, or by the party's agent…*
> …
> *7.17 Presentation of evidence*
> *Each party will be given an opportunity to present evidence related to the claim. The arbitrator has the authority to determine the relevance, necessity and appropriateness of evidence…*
>
> *7.18 Order of presentation*
> *The applicant will present their case and evidence first unless the arbitrator decides otherwise, or when the respondent bears the onus of proof…*

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove a loss, the landlord must satisfy the following four elements on a balance of probabilities:

1) Proof that the damage or loss exists;
2) Proof that the damage or loss occurred due to the actions or neglect of the tenants in violation of the *Act*, *Regulation* or tenancy agreement;
3) Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4) Proof that the landlord followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Findings

On a balance of probabilities and for the reasons stated below, I dismiss the landlord's application of $4,338.80 without leave to reapply.

I find that the landlord did not properly present the landlord's evidence, as required by Rule 7.4 of the RTB *Rules of Procedure*, despite having the opportunity to do so during this hearing, as per Rules 7.17 and 7.18 of the RTB *Rules of Procedure.*

This hearing lasted 31 minutes, so the landlord had ample opportunity to present the landlord's application and respond to the tenant's claims. During this hearing, I repeatedly asked the landlord if she had any other information to present and gave her multiple opportunities for same.

The landlord did not provide any monetary amounts or review the monetary order worksheet for the landlord's claims during this hearing. The landlord did not review the landlord's documents in any detail during this hearing. The landlord supplied many photographs as evidence but did not go through any of them, during this hearing. I find that the landlord failed the above four-part test.

The landlord did not review any invoices, estimates, quotes, or receipts during this hearing, to show that the landlord paid to replace the missing parking pass or to repair any damages at the rental unit. The landlord simply indicated that she submitted all the evidence for this application but did not review any of her documents at all during this hearing.

The landlord did not review the move-in or move-out condition inspection reports at all during this hearing. She did not call her agent as a witness at this hearing to provide evidence regarding the damages he observed and noted in the move-out condition inspection report and whether the parking pass was returned to him by the tenants. The landlord was not personally present during the move-out condition inspection, nor was she involved in the parking pass issue.

I find that the landlord failed to prove damages beyond reasonable wear and tear, caused by the tenants, as required by Residential Tenancy Policy Guideline 1.

I accept the tenant's affirmed testimony that the tenants patched the nail holes in the walls, which was reasonable wear and tear. Tenants are not required to paint unless there is excessive nail hole damage, caused either wilfully or negligently, as per Residential Tenancy Policy Guideline 1, which I find was not the case here. The landlord did not indicate how old the paint was in the rental unit. Painting may be required in any event, as per Residential Tenancy Policy Guideline 40, which states the useful life of indoor paint is four years. I accept the tenant's affirmed testimony that no painting was done by the landlord during the tenants' tenancy, which was over two years in length from August 1, 2018 to November 30, 2020.

I accept the tenant's affirmed testimony that the door was rotted and damaged from the flood in the laundry room, which the owner was aware of, so the tenants disposed of it. The landlord failed to show that the tenants caused the flood in the laundry room. I accept the tenant's affirmed testimony that the tenants returned the parking pass to the landlord's agent at the end of this tenancy.

Accordingly, as per its online application, the landlord's claim for damages of $4,288.80, a missing visitor's parking pass of $50.00, and to retain the tenants' security deposit of $1,100.00, is dismissed without leave to reapply.

As the landlord was unsuccessful in this application, I find that it is not entitled to recover the $100.00 filing fee from the tenants.

Tenants' Security Deposit

Section 38 of the *Act* requires the landlord to either return the tenants' security deposit or file for dispute resolution for authorization to retain the security deposit, within 15 days after the later of the end of a tenancy and the tenants' provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary

award, pursuant to section 38(6)(b) of the *Act,* equivalent to double the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenants' written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenants to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

I make the following findings on a balance of probabilities and based on the testimony of both parties. This tenancy ended on November 30, 2020. The landlord did not have written permission to retain any amount from the tenants' security deposit. The tenants provided a written forwarding address to the landlord on December 1, 2020, by way of the move-out condition inspection report.

The landlord applied to retain the tenants' security deposit on May 9, 2021, which is beyond the 15-day deadline from December 1, 2020, the later date that the landlord received the written forwarding address from the tenants. However, the landlord filed its first application to retain the tenants' security deposit on December 12, 2020, which was dismissed with leave to reapply in my decision from April 20, 2021, due to a service issue only, not on the merits of the application. Therefore, I find that the landlord's first application was within the 15-day deadline, and the tenants are not entitled to double the value of their security deposit.

The landlord continues to hold the tenant's security deposit of $1,100.00. Over the period of this tenancy, no interest is payable on the deposit. In accordance with section 38 of the *Act* and Residential Tenancy Policy Guideline 17, I find that the tenants are entitled to the regular return of their security deposit of $1,100.00, from the landlord.

Conclusion

The landlord's entire application is dismissed without leave to reapply.

I issue a monetary order in the tenants' favour in the amount of $1,100.00 against the landlord. 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: November 08, 2021

Residential Tenancy Branch