Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding OAKWYN PROPERTY MANAGEMENT LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenants on June 05, 2021 (the "Application"). The Tenants apply as follows:

- For compensation for monetary loss or other money owed
- To recover the filing fee

The Tenant appeared at the hearing. Nobody appeared at the hearing for the Landlord. I explained the hearing process to the Tenant who did not have questions when asked. I told the Tenant they were not allowed to record the hearing pursuant to the Rules of Procedure (the "Rules"). The Tenant provided affirmed testimony.

The Tenants submitted evidence prior to the hearing. The Landlord did not submit evidence. I addressed service of the hearing package and Tenants' evidence.

The Tenant testified that the hearing package and Tenants' evidence were sent to the Landlord on June 21, 2021 by email at an address commonly used by the parties to communicate during the tenancy. The Tenants submitted a copy of the email. The Tenants also submitted emails between them and the Landlord showing the parties communicated by email during the tenancy using the same email address that the hearing package and Tenants' evidence were sent to.

Based on the undisputed testimony of the Tenant as well as the documentary evidence referred to above, I am satisfied pursuant to section 71(2)(c) of the *Residential Tenancy Act* (the "*Act*") that the hearing package and evidence were sufficiently served on the Landlord. In coming to this decision, I have considered sections 88(j) and 89(1)(f) of the

Act as well as sections 43(1) and (2) of the *Residential Tenancy Regulation* (the "*Regulations*"). I am satisfied the Tenants were permitted to serve the Landlord by email because I accept the undisputed testimony of the Tenant that the parties communicated by email regularly during the tenancy and find this is supported by the documentary evidence referred to above.

I am satisfied based on the undisputed testimony of the Tenant as well as the documentary evidence referred to above that the hearing package and Tenants' evidence were served June 21, 2021. I find pursuant to section 71(2)(b) of the *Act* that the Landlord received the hearing package and evidence on June 24, 2021. In coming to this decision, I have considered section 44 of the *Regulations*. I find the Tenants complied with rule 3.1 of the Rules in relation to the timing of service.

As I was satisfied of service, I proceeded with the hearing in the absence of the Landlord. The Tenant was given an opportunity to present relevant evidence and make relevant submissions. I have considered all documentary evidence and oral testimony of the Tenant. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Are the Tenants entitled to compensation for monetary loss or other money owed?

2. Are the Tenants entitled to recover the filing fee?

Background and Evidence

A written tenancy agreement was submitted. The tenancy started June 23, 2018 and was for a fixed term ending December 31, 2018. The tenancy then became a month-to-month tenancy. The Tenant testified that rent was $2,052.00 per month at the end of the tenancy. Rent was due on the first day of each month. The Tenants paid a $1,000.00 security deposit. The Tenant testified that the Tenants paid a $1,000.00 pet damage deposit.

The Tenant testified that the tenancy ended December 31, 2020.

The Tenants are seeking $479.85 for an invoice issued by a handyman for repairing the walls of the rental unit at the end of the tenancy.

The Tenant testified as follows.

A move-in inspection was done with M.G., an agent for the Landlord. There were a number of nails in the walls at the start of the tenancy from previous tenants. M.G. did not note the nails on the Condition Inspection Report (the "CIR") because M.G. did not think nails were an issue and were simply reasonable wear and tear and easy to touch up. The Tenants confirmed with M.G. that they could hang pictures on the walls.

The Tenants hung a reasonable number of pictures, mirrors and diplomas on the walls of the rental unit during the tenancy.

During the tenancy, M.G. referred the Tenants to a specific handyman when there were issues in the rental unit that required repair. The handyman would attend the rental unit and deal with the issues and the Landlord would pay the handyman for this.

At the end of the tenancy, M.G. sent the Tenants a link to a website that stated that nails are not the Tenants' responsibility to repair or pay for because they are reasonable wear and tear. The Tenant contacted M.G. and asked if the Landlord planned to paint or patch up holes in the rental unit. M.G. told the Tenant to go ahead and coordinate repairs with the handyman previously used. The Tenants were never given a quote for the repairs. The Tenants were not given any indication that they would be responsible for paying for the repairs.

The handyman attended and repaired holes in the walls at the end of November or start of December. The handyman repaired all holes, including ones that were there at the start of the tenancy. The Tenants did a move-out inspection with another agent of the Landlord and completed the CIR. The Tenants received their security and pet damage deposits back.

In late January, the handyman contacted the Tenant about paying the invoice for the repairs to the walls that they had done at the end of the tenancy. The Tenant told the handyman the Landlord is responsible for paying the invoice and the handyman sent the invoice to the Landlord. Three months later, M.G. sent the Tenant an email stating that the Tenants are responsible for paying for the repairs to the walls at the end of the tenancy, the Landlord never agreed to pay for this and never got a quote from the handyman prior to the work being done.

The Tenants did not get a chance to repair the walls themselves or obtain their own quote for repairs because of how this issue proceeded. The Tenants have not paid the invoice issued by the handyman.

The Tenants submitted the following documentary evidence:

- Emails
- Invoices
- Receipts
- The CIR
- Text messages
- The tenancy agreement
- Pet damage deposit documents

Analysis

Section 7 of the *Act* states:

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

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

> 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.

(emphasis added)

I am not satisfied the Tenants are entitled to compensation for the invoice for $479.85 issued by the handyman because the Tenant testified that the Tenants had not yet paid the invoice at the time of the hearing. Given the damage repaired was to the Landlord's property, the rental unit, and the Tenants have not yet paid the handyman's invoice, the Tenants have not yet suffered loss. I find that I do not have the authority to award compensation for future loss pursuant to section 7 of the *Act* and Policy Guideline 16. In the circumstances, the Application is dismissed without leave to re-apply because the Tenants have failed to prove that they have suffered loss as a result of the non-compliance of the Landlord alleged.

Given the Tenants were not successful in the Application, they are not entitled to recover the $100.00 filing fee.

Conclusion

The Application is dismissed without leave to re-apply.

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: December 06, 2021

Residential Tenancy Branch