Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Centurion Property Associates Inc
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MNDL-S, FFL

Introduction

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

- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72

KB, counsel for the landlord, attended the hearing with the landlords' agents SP and AB. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Both parties were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing. Both parties confirmed that they understood.

The tenants confirmed receipt of the landlords' dispute resolution application ('Application'). In accordance with section 89 of the *Act*, I find that the tenants duly served with the Application. All parties confirmed receipt of each other's evidentiary materials and that they were ready to proceed.

At the outset of the hearing, the landlords' monetary claims were clarified. As there was a discrepancy between the amount of their total claim on their online application and the amount on their monetary order worksheet, the landlords confirmed that they wished to proceed with the claims as listed on their monetary order worksheet. Accordingly, the hearing proceeded with consideration of the claims as listed on the monetary order worksheet.

Issue(s) to be Decided

Are the landlords entitled to a Monetary Order for damage to the unit, site, or property, money owed or compensation for loss under the *Act*, regulation or tenancy agreement?

Are the landlords entitled to recover the cost of the filing fee for this application?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This fixed-term tenancy began on October 1, 2020, and ended on June 30, 2021. Monthly rent was set at $1,773.00, payable on the first of the month. The landlords had collected a security and pet damage deposit in the amounts of $867.50 each deposit. The landlords are still in possession of both deposits, and filed their application for dispute resolution on July 14, 2021 after the tenants had moved out.

The landlords filed an application for monetary compensation as follows:

Item	**Amount**
Oven Cleaning	$30.00
Cleaning of Bio Hazard	180.00
Replacement of counter	428.34
Replacement/Repair of Floor	225.00
Total Monetary Order Requested	**$863.34**

The tenants confirmed that they are not disputing the landlords' first two claims for the cleaning. The tenants are disputing the remainder of the claims as the landlord did not perform a move-in inspection with the tenants when they were assigned the tenancy on October 1, 2020 from the previous tenant who had been residing there since July of 2019. The tenants attribute the damage to regular wear and tear, and damage that was present from the previous tenant. The tenants dispute that they had agreed to the landlords' claims other than the cleaning.

The landlords testified that they had taken into account wear and tear, and have adjusted the claims to reflect that. The landlords testified that they were only claiming a portion of the damages for the tenancy. The landlords do not dispute that the did not perform a move-in inspection when the tenants had moved in on October 1, 2020, but

testified that the countertops were only two years old, and that a move-in inspection was done on July 1, 2019 with the original tenant. The landlords testified that they were only claiming for 5 of the 18 damaged floorboards. The landlords submitted photos as well as a move-out inspection, and quotes in support of their claims.

Analysis

Under the *Act*, a party claiming a loss bears the burden of proof. In this matter the landlord must satisfy each component of the following test for loss established by **Section 7** of the Act, which 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.*

The test established by Section 7 is as follows,

1. Proof the loss exists,
2. Proof the loss was the result, *solely, of the actions of the other party (the landlord)* in violation of the *Act* or Tenancy Agreement
3. Verification of the actual amount required to compensate for the claimed loss.
4. Proof the claimant (tenant) followed section 7(2) of the *Act* by taking *reasonable steps to mitigate or minimize the loss*.

Therefore, in this matter, the landlords bear the burden of establishing their claims on the balance of probabilities. The landlords must prove the existence of the loss, and that it stemmed directly from a violation of the tenancy agreement or a contravention of the *Act* on the part of the other party. Once established, the landlords must then provide evidence that can verify the actual monetary amount of the loss. Finally, the landlords must show that reasonable steps were taken to address the situation to *mitigate or minimize* the loss incurred.

Section 37(2)(a) of the *Act* stipulates 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.

As the tenants do not dispute the landlords' claims for cleaning, I allow the landlord a monetary order for these claims. I will now consider the landlords' remaining claims for damage to the countertop and flooring.

RTB Policy Guideline #19 states the following about assignment of tenancy agreements.

B. ASSIGNMENT
Assignment is the act of permanently transferring a tenant's rights under a tenancy agreement to a third party, who becomes the new tenant of the original landlord. When either a manufactured home park tenancy or a residential tenancy is assigned, the new tenant takes on the obligations of the original tenancy agreement, and is usually not responsible for actions or failure of the original tenant to act prior to the assignment. It is possible that the original tenant may be liable to the landlord under the original agreement.

I am satisfied that in this case, an assignment did take place where the new tenants took over this tenancy as of October 1, 2020. I am also satisfied that when this took place, the landlords did not perform a move-out or move-in inspection.

Section 23(1) of the *Act* requires that both parties must perform a move-in inspection on the day that the tenant is entitled to possession of the rental unit, or on another day that both parties had mutually agreed on. Based on the evidence and testimony before me, I find that the landlords neglected to perform a move-in inspection on or around October 1, 2020 when the new tenants took possession of the rental unit from the previous tenant.

As noted in Residential Policy Guideline #17:

The right of a landlord to obtain the tenant's consent to retain or file a claim against a security deposit for damage to the rental unit is extinguished if:

• the landlord does not offer the tenant at least two opportunities for inspection as required (the landlord must use Notice of Final Opportunity to Schedule a Condition Inspection (form RTB-22) to propose a second opportunity); and/or
• having made an inspection does not complete the condition inspection report.

I must note, however, that the above does not exclude the landlords from being able to file a monetary claim for damages as noted in the policy guideline:

A landlord who has lost the right to claim against the security deposit for damage to the rental unit, as set out in paragraph 7, retains the following rights:

• to obtain the tenant's consent to deduct from the deposit any monies owing for other than damage to the rental unit;
• to file a claim against the deposit for any monies owing for other than damage to the rental unit;
• to deduct from the deposit an arbitrator's order outstanding at the end of the tenancy; and
• to file a monetary claim for damages arising out of the tenancy, including damage to the rental unit.

Accordingly, I will consider the landlords' monetary claims for damage. The tenant disputes each of the claims, stating that much of the "damage" could be attributed to wear and tear, or pre-existing damage from the previous tenant.

As noted above, the burden of proof is on the applicants to support their claims. In this case, I find that the landlords fall short. In light of the disputed claims and evidence, and in light of the fact that a move-in inspection was not completed when the tenants took possession on October 1, 2020, I do not find that the landlords had provided sufficient evidence to support that the damage was caused by the tenants during this tenancy.

As noted in Rule 6.6 of the Residential Tenancy Branch *Rules of Procedure*:

> *6.6 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 their case is on the person making the claim. In most circumstances this is the person making the application.*

I find that the landlords failed to meet the standards of proof required to support their claims. Accordingly, the landlords' claims for damage are dismissed without leave to reapply.

I allow the landlords to recover half of the filing fee for this application.

As the landlords are still in possession of the tenants' security deposit and pet damage deposit, I order that the landlord retain a portion of the deposits in partial satisfaction of the monetary awards. I order that the landlords return the remaining portion of these deposits to the tenants.

Conclusion

I allow the landlords a monetary order for the following.

Item	Amount
Oven Cleaning	$30.00
Cleaning of Bio Hazard	180.00
Half of Filing Fee	50.00
Less deposits held	-1,735.00
Deposits to be Returned to Tenants	**$1,475.00**

The remainder of the landlords' application is dismissed without leave to reapply.

I issue a Monetary Order in the amount of $1,475.00 in the tenants' favour for the return of the remainder of their deposits. The tenants are provided with this Order in the above terms and the landlord(s) must be served with a copy of this Order as soon as possible Should the landlords 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: February 15, 2022

Residential Tenancy Branch