Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Wynn Real Estate Ltd.
and [tenant name suppressed to protect privacy

DECISION

Dispute Codes MNRL-S, FFL
MNDCT, MNSD, FFT

Introduction

This hearing was convened by way of conference call concerning applications made by the landlord and by the tenants which have been joined to be heard together. The landlord has applied for a monetary order for unpaid rent or utilities, an order permitting the landlord to keep all or part of the pet damage deposit or security deposit, and to recover the filing fee from the tenants for the cost of the application. The tenants have applied for a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act,* regulation or tenancy agreement; a monetary order for return of all or part of the pet damage deposit or security deposit; and to recover the filing fee from the landlord.

The landlord was represented at the hearing by an agent, who gave affirmed testimony. Both tenants also attended, one of whom gave affirmed testimony. The parties were given the opportunity to question each other and to give submissions.

At the commencement of the hearing, the tenant advised that the tenants had applied for an order permitting substitutional service on the landlord by email, but the application was dismissed. The landlord served all of the landlord's evidence to the tenants by email, none of which was received on time. The tenants received the landlord's Notice of Dispute Resolution and other documents by email on July 29, 201 and the evidence on January 16, 2022 by email, then evidence in response to the tenants' claim on January 24, 2022. The tenant submits that the landlord deliberately waited until the last day possible, but still not on time for email service.

The landlord's agent advised that it was not intentional to send the documents to the tenants at the last minute.

Where a party wishes to rely on evidentiary material, the parties must comply with the *Residential Tenancy Act* and Rules of Procedure. An applicant is required to serve a Notice of Dispute Resolution to the respondent(s) within 3 days of making the Application and receiving the Notice of Dispute Resolution Proceeding from the Residential Tenancy Branch. In this case, the landlord made the Application for Dispute Resolution on July 15, 2021 and on July 28, 2021 was provided with a notice to serve to the tenants.

Further all evidence of an applicant must be received by the respondent(s) and the Residential Tenancy Branch at least 14 days prior to the hearing. A respondent is required to provide all evidence to the applicant at least 7 days prior to the hearing. A party may only serve an opposing party by email if the opposing party has provided an email address for the purpose of serving documents.

I am not satisfied that the landlord has complied with the Rules or Procedure, and I disallowed the landlord's evidentiary material.

No issues with respect to the tenants' evidentiary material were raised, and all evidence of the tenants has been reviewed and is considered in this Decision.

A great deal of time during the allotted hearing time was spent mediating the claims, however the claims did not settle. The tenants agree that the facts provided by the landlord's agent during the mediation can be used as part of the testimony, without the necessity of giving the facts again under affirmation.

Issue(s) to be Decided

- Has the landlord established a monetary claim as against the tenants for unpaid rent?
- Should the landlord be permitted to keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?
- Have the tenants established a monetary claim as against the landlord for all or part or double the amount of the pet damage deposit or security deposit?
- Have the tenants established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement, and more specifically for the landlord's failure to make repairs, loss of facilities and aggravated damages?

Background and Evidence

The landlord's agent testified that this fixed-term tenancy began on March 1, 2021 and reverted to a month-to-month tenancy after May 31, 2021, which ultimately ended on June 30, 2021. Rent in the amount of $2,000.00 was payable on the 1st day of each month. On February 10, 2021 the landlord collected a security deposit from the tenants in the amount of $1,000.00 as well as a pet damage deposit in the amount of $1,000.00, both of which are still held in trust by the landlord. The rental unit is a condominium apartment, and a copy of the tenancy agreement has been provided by the tenants for this hearing. The tenancy was supposed to take over an existing tenancy, which is why the fixed term was only for 3 months.

The tenants failed to pay rent for the last month of the tenancy, and the landlord is owed $2,000.00. The tenants wanted the fixed term extended but the owner wanted to keep the tenancy agreement as a month-to-month tenancy.

The parties participated in a move-in condition inspection at the commencement of the tenancy, and a move-out condition inspection report was completed at the end of the tenancy, on June 30, 2021. The tenants provided a forwarding address on the move-out portion on June 30, 2021.

With respect to the tenants' claims, the landlord's agent testified that:

- No residents have access to stairwell keys; it is an emergency exit and for security reasons the strata cannot provide keys.
- The washer and dryer at move-in was loud and later the tenants said that it wasn't cleaning properly. The landlord had new ones installed in or around May, 2021 and the tenants said it still wasn't working, but moved out shortly after. New tenants have moved in and have no problems with the appliances.
- The tenants wanted new blinds and said they would install them and the landlord agreed. Nothing is noted on the move-in condition inspection report. It wasn't until the tenants wanted to move out that they complained about blinds, and the landlord did not replace them.
- The tenants decided to move out of the rental unit and gave the landlord a notice to end the tenancy. The landlord's agent disputes that the landlord should pay the tenants for moving expenses.
- The tenants also claimed that the landlord's agents entered the rental unit, but notice was given to show it for new tenants.

- Providing storage for the rental unit was a clerical error on the tenancy agreement.

During cross examination, the landlord's agent testified that the tenants' notice said that the tenants were moving out on June 10, and that if the landlord wanted to end the tenancy earlier than June 30, 2021 the tenants wanted to move out earlier, and wanted the landlord to pro-rate the last month of rent, but the landlord refused. The tenancy was to end on June 30, 2021 and the tenants said that they may be in and out of the rental unit.

The landlord's agent contacted the other tenant's place of employment during the last month of the tenancy in an effort to reach the tenants for the unpaid rent. The tenant's workplace information had been provided as a reference, but the landlord's calls to the tenants were being ignored. Both tenants were emailed by the landlord's agent. The landlord's agent attempted to find a way to get ahold of the tenant through the tenant's employer.

The landlord's agent testified that the tenants and another agent of the landlord discussed the storage locker, close to the beginning of the tenancy, which was sorted out and agreed upon.

The move-in condition inspection report contained a notation that the washer had a loud noise, and someone looked at it. After a few visits it was decided that new washer and dryer would be in order, which were installed. The tenant advised the landlord's agent that the new appliances were not functioning as they should, but the landlord's agent doesn't deal with that.

The blinds were not included in the tenancy agreement, so that was a non-issue. The tenant brought it up with the landlord's agent, and the parties discussed it. The tenants said he would install their own, then it became an issue again after the tenants gave notice to end the tenancy. That conversation was also close to the beginning of the tenancy with another agent of the landlord. A lot of the tenants' claims were raised over the phone, with the other agent of the landlord, including stairwell keys.

The landlord's agent is aware that 24 hours notice is required to enter a rental unit, and that posting such a notice requires additional time, so that was done.

However, the landlord's agent was not aware that a landlord may only claim a pet damage deposit for damages caused by the tenants' pet.

The landlord's agent believes that the rental unit was re-rented for August 1, 2021.

The tenant testified that the tenants did not pay rent for the month of June, 2021, and were not aware that tenants are required to pay rent even if the landlord fails to comply with the *Residential Tenancy Act* or the tenancy agreement.

The tenants have provided a Monetary Order Worksheet setting out the following claims, totaling $23,830.00:

- $1,496.00 for a storage locker;
- $200.00 for stairwell keys;
- $2,567.32 for damages for no washer and dryer;
- $3,200.00 for a reduction of rent for no blinds;
- $2,034.25 for moving expenses;
- $333.33 for early possession by the landlord and illegal entry;
- $2,000.00 for return of double the pet damage deposit;
- $2,000.00 for return of double the security deposit; and
- $10,000.00 for aggravated damages.

With respect to the storage locker, the brother of the landlord's agent is also an employee of the landlord. It does not make sense that storage was a clerical error, and no one mentioned that to the tenants until after the move-in condition inspection report was completed. The tenancy agreement was signed in February, 2021 and on February 27, 2021 the parties completed the inspection report. The first page includes storage. The tenants have provided copies of emails wherein the tenants kept asking about storage, and the tenants did not agree that the landlord could remove it without an alternative or compensation. The tenants didn't incur any expenses, but kept all of their storage items in the living room. There were no storage lockers available within walking distance. It was also during peak of COVID-19 and the tenant's wife was going to undergo heart surgery and didn't want to risk leaving the rental unit except when necessary. The tenants did not receive a clear answer from the landlord about it. A storage locker equivalent in size at the closest distance to the rental unit costs $174.00 per month, and for 4 month is $696.00. The claim is for that loss as well as loss of precious space in the rental unit. Ten percent of the monthly rent is part of the claim due to the unusable balcony and the 2nd bedroom.

The tenants believe that keys were part of the lease because that area was part of the common area. On 2 occasions the elevator was out of service due to a fire alarm. The landlord's testimony is untrue; multiple people used keys, who were seen by the

tenants. It makes no sense that a building would not have keys for security when the key itself is the security measure. The tenants claim $50.00 per month for 4 months.

The tenants were planning on starting a family, and sent an email to the landlord's agent indicating that the washer and dryer were a material term of the tenancy agreement After a couple of months the appliances were replaced but still didn't work. The tenant gave the landlord a video, but no one replied. The tenants seek $400.00 per month for 4 months from March to June, 2021. The tenants' claim includes damages for the inconvenience, and the tenants have provided an advertisement for laundry service which includes a price listing.

The tenants were not able to use the master bedroom, and wanting to start a family, and during the pandemic, the tenants would rest about 12 hours per day. The master bedroom is about 30% of the apartment, and the tenants claim 30% of the rent for 4 months. The tenants did not replace the blinds, however 3 days after moving in, the tenant sent a text message to the brother of the landlord's agent letting him know that the blinds wouldn't turn and were held together by a make-shift wire. During move-in the tenants were told to let the landlord know if anything was found. Constantly from March 2, to April 29, 2021 the tenants asked that the blinds be replaced. The tenant was called by the brother of the landlord's agent saying that he knew the blinds didn't work but he wasn't going to do anything about it. The tenants could replace them but had to return them to the condition at the beginning of the tenancy. On April 29, 2021 the landlord's email says that the landlord responded several times, but that is completely untrue. The tenants stopped speaking with the landlord's agents because they lied too many times in emails to make it look like they were looking after things, and that the parties had spoken about it verbally, but that is not what happened.

With respect to the claim for moving expenses, the tenant testified that the strata move-in move-out fees are $150.00 each. Receipts have been provided for this hearing, being $735.00 to move in and $630.00 to move out. The move-out was less expensive because the tenants sold some personal belongings before moving out. The claim includes loss of wages for the tenant's spouse. The tenant testified that the tenants had no option but to move out considering several things that were not provided as agreed.

The tenants served the landlord with notice to end the tenancy which was effective June 11, 2021 and contained a forwarding address of the tenants. Further the landlord had the tenants' phone numbers, but put a notice on the door to show the rental unit, knowing the tenants were not living there. The tenants claim 5 days of rent reduction because the notice to access started on June 25 to June 30, 2021. That constitutes the

landlord taking possession. It was a deliberate action to put the notice to access on the door knowing the tenants were not in the rental unit. The landlord's agent says that he knew the tenants weren't there as of June 11, 2021, and it was still the tenant's lease.

The tenants provided a forwarding address in writing on June 10, 2021 by email and again on the move-out condition inspection report completed on June 30, 2021, and claim double the amount of the $1,000.00 pet damage deposit and double the amount of the $1,000.00 security deposit.

With respect to aggravated damages, the tenants both experienced severe levels of anxiety and stress living there due to numerous violations by the landlord, who ignored all calls for help, ignored the tenancy agreement, and ignored the Policy Guideline when the tenants provided it saying it's the law. All of the landlord's decisions were deliberate resulting in damages and loss for the tenants. The tenants had no idea it would be a living hell. The other tenant was extremely humiliated after the landlord's agent called the place of employment. The landlord's agent says that he emailed the tenants, but never did so about the unpaid rent. It was a deliberate move to embarrass the tenant's spouse. The landlord's agents constantly lied to the tenants, humiliated them, making it seem that the tenants are out to get the landlord because no new lease was negotiated. However, a 3 month lease made no sense and the tenants wanted a year. All evidence shows that the tenants believed it was a year, but when the landlord's agent sent the tenancy agreement, it was only for March through June. In a telephone conversation the landlord's agent said he'd talk to the landlord and after move-in a new lease would be signed for a fixed term of 1 year, then the landlord's agent said that the term would not be extended.

SUBMISSIONS OF THE LANDLORD'S AGENT:

The landlord's agent never promised to sign another fixed term tenancy agreement, and told the tenant that the landlord was overseas. The landlord's agent said that he would talk to the landlord and promised that the landlord had no intention to end the tenancy, and no plans to ask the tenants to leave the unit. The tenants knew it was a 4 month term. The tenants prior to this tenancy were on a fixed term to the end of June and located these tenants to take over that tenancy. The landlord's agent needed the owner's consent to extend the tenancy.

The master bedroom is not 30% of the apartment, which is exaggerated in the tenants' claim. It is a 830 sq ft condominium and there is no way it would be 30%, but maybe 100 sq ft or abit larger.

With respect to stairwell keys, the landlord's agent manages hundreds of properties and strata corporations do not allow stairwell keys to be issued to people. If an owner loses a key, it's a security issue. The strata would not authorize that. The building manager in the building has a master key to allow people into the stairwell.

SUBMISSIONS OF THE TENANTS:
The submission of the landlord's agent about the stairwells is factually untrue. It's an older high-rise. The tenant saw people going into the stairwell.

The tenant also submits that the master bedroom is larger than the living room, but agrees that the rental unit was 830 sq. ft.

After the tenants moved out an advertisement was located on Craigslist for the rental unit for rent in the amount of $2,200.00 per month with a 1 year lease. The tenants were never told that they were taking over someone else's lease. The tenants signed the tenancy agreement because they had to give notice to end a previous tenancy and this rental unit was a good location and price range.

Analysis

Firstly, the *Residential Tenancy Act* specifies that a tenant must pay rent even if the landlord fails to comply with the *Act* or the tenancy agreement. Also, in a month-to-month tenancy, a tenant is required to give notice to end the tenancy the day before the day rent is payable under the tenancy agreement, and such notice must be effective on the last day of the rental period. In this case, rent was due on the 1st day of each month.

The tenants gave notice to end the tenancy to the landlord's agent by email on June 10, 2021 effective on June 11, 2021, but such a notice could not take effect until July 31, 2021, and the tenants did not pay rent for June or July, 2021.

A landlord may claim for the additional month however, the landlord must establish mitigation by advertising the rental unit within a reasonable time after notice that the tenants are vacating, and for the same amount of rent. I have reviewed the Craigslist advertisement, which is dated July 12, 2021 advertising the rental unit for 2 different amounts; $2,200.00, $200.00 higher per month than the tenants had been paying, and in the same posting $2,000.00 available July 1, 2021. I accept that there may have been a change in the advertisement, but there is no other indication of when the advertisement may have been posted, and the headline states that rent is $2,200.00.

Therefore, I find that the landlord has established a claim of $2,000.00 for unpaid rent for June but did not mitigate any loss of rental revenue for July, 2021.

With respect to the security deposit, the parties agree that the landlord received the tenants' forwarding address in writing on June 10, 2021 in the tenants' email notice to end the tenancy. The parties also agree that the landlord received the forwarding address on June 30, 2021 on the move-out condition inspection report, and I find that the tenancy effectively ended on June 30, 2021.

A landlord is required to return a security deposit and/or pet damage deposit within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenants' forwarding address in writing, or must make an Application for Dispute Resolution claiming against the security deposit within that 15 day period. If the landlord fails to do either, the landlord must repay double the amount.

Further, the *Act* specifies that a landlord may only claim against a pet damage deposit for damages caused by the tenants' pet.

In this case, I find that the landlord had the obligation of claiming against the deposits or returning them to the tenants by July 15, 2021. The landlord filed the Application for Dispute Resolution on July 15, 2021, which is within the 15 day requirement. However, the landlord has not made a claim for damages caused by a pet and therefore ought to have returned the $1,000.00 pet damage deposit to the tenants. Therefore, I find that the tenants are entitled to recovery of double the amount of the pet damage deposit, or $2,000.00, and the $1,000.00 security deposit shall be applied to the outstanding rent.

With respect to the balance of the tenants' application, in order to be successful in a claim for damage or loss, including aggravated damages, the onus is on the tenants to satisfy the 4-part test:

1. that damages or a loss exists;
2. that the damage or loss suffered was a result of the landlord's failure to comply with the *Residential Tenancy Act* or the tenancy agreement;
3. the amount of such damage or loss; and
4. what efforts the tenants made to mitigate the damage or loss suffered.

I have reviewed all of the evidentiary material of the tenants including the text messages and emails, and whether or not it was a clerical error, the parties entered into a tenancy agreement which included washer and dryer and storage. The tenancy lasted less than 4 months.

With respect to the tenants' claim of $1,496.00 for a storage locker, the tenant testified that the amount includes 10% of the monthly rent for loss of space of the balcony and second bedroom. The tenants have provided a price list for storage units and sizes, and testified that the storage unit size the tenants would have required is $174.00 per month and during the 4 month tenancy amounts to $696.00. Whether or not it was a "clerical error" to include storage in the tenancy agreement, I accept the undisputed testimony of the tenant that it was not mentioned to the tenants that storage would not be included until after the move-in condition inspection report had been completed and the tenants had moved in. I find that storage was an included facility. A landlord may not remove or restrict a facility unless the landlord gives the tenant 30 days notice and reduces rent accordingly. To determine what reduction is reasonable, I consider the agreed testimony that the apartment is 830 sq. ft. I also accept the undisputed testimony of the tenant of the cost associated with renting space, but the tenants have not suffered that loss. The tenants did, however suffer a loss of space in the rental unit as a result of having no storage. Since the tenants vacated the rental unit on June 11, 2021, I find that the tenants have established a claim of 10% of the rental amount for 3.5 months, or **$700.00.**

With respect to the tenants' $200.00 claim for stairwell keys, the tenants have not established that it was inconvenient, or any promise by the landlord that the tenants would have keys to the stairwell. Therefore, I find that the tenants have failed to satisfy any of the elements in the test for damages.

With respect to the tenants' $2,567.32 claim for damages for no washer and dryer, I find that the landlord was negligent knowing that the appliances needed repair at the beginning of the tenancy, but did not replace them for some time. The tenant testified that the new appliances didn't work properly either, which is disputed by the landlord. The tenants seek $400.00 per month for 4 months and $967.32 for damages and inconvenience. The tenants didn't live in the rental unit for 4 months. The total claim of $2,567.32 divided by the 3.5 months that the tenants resided in the rental unit is $733.52 per month. I find that the tenants have established nominal damages of $50.00 per week for 15 weeks, or **$750.00.**

With respect to the tenants' $3,200.00 claim as a reduction of rent for no blinds, the tenant testified that the tenants are trying to start a family, and the blinds in the rental unit did not function properly. The tenant also testified that the tenants couldn't use the master bedroom much, which is 30% of the apartment, and that is disputed by the landlord's agent. The tenant also testified that the brother of the landlord's agent said that the tenants could replace the blinds, but the tenants didn't do so. At the most, I find

that the landlord was negligent with required repairs, but I am not satisfied that the tenants have established a claim of $3,200.00.

With respect to the $2,034.25 claim for moving expenses, the parties agreed that the tenants wanted a longer fixed-term. However, if there was insufficient space due to loss of the storage facility, I am not satisfied that the tenants have established that the tenants were justified in ending the tenancy and the landlord should be required to pay for moving expenses.

The tenants have not established that the tenants suffered any damages as a result of the landlord entering the rental unit, either with or without proper notice to the tenants, given that the entry was after the tenants had physically vacated.

With respect to the $10,000.00 claim for aggravated damages, the tenants have provided a copy of Residential Tenancy Policy Guideline 16 – Compensation for Damage or Loss, which states, in part:

“Aggravated damages” are for intangible damage or loss. Aggravated damages may be awarded in situations where the wronged party cannot be fully compensated by an award for damage or loss with respect to property, money or services. Aggravated damages may be awarded in situations where significant damage or loss has been caused either deliberately or through negligence. Aggravated damages are rarely awarded and must specifically be asked for in the application.

I have reviewed all of the emails and communications between the parties. I accept that the blinds didn’t function properly in the master bedroom and the landlord was made aware of that. The tenant’s email to the landlord dated June 10, 2021 mentions loss of quiet enjoyment due to the state of the blinds and seeks $800.00, being $200.00 per month from March 1, 2021 for a total of $800.00. That’s a far cry from the $10,000.00 claim.

Aggravated damages are for significant damage or loss, and I am not satisfied that the blinds or the lack of stairwell keys or the loss of storage or the laundry appliances, or the aggregate of those issues are significant enough to warrant aggravated damages, particularly where those very issues have separate claims. In the circumstances, I am satisfied that the tenants were disappointed and angry about the landlord’s failure to respond, but I am not satisfied that the tenants have established aggravated damages.

Having found that the landlord is entitled to recovery of rent for the month of June, 2021 in the amount of $2,000.00 and the tenants have established claims of $2,000.00 for

double the pet damage deposit; $700.00 for loss of the storage facility; and $750.00 for loss of the washer and dryer for a total of $3,450.00 and the landlord holds a security deposit in the amount of $1,000.00, I set off those amounts, and I grant a monetary order in favour of the tenants for the difference in the amount of $2,450.00.

Amount due to the landlord: $2,000.00 – unpaid rent, less
-1,000.00 – security deposit
$1,000.00

Amount due to the tenants: $2,000.00 – pet damage deposit;
700.00 – loss of storage facility
750.00 – loss of laundry appliances
$3,450.00, less
-1,000.00 landlord's claim
$2,450.00

Since both parties have been partially successful with the applications, I decline to order that either party recover the filing fees from the other.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenants in the amount of $2,450.00.

This order is final and binding and may be enforced.

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 07, 2022

Residential Tenancy Branch