Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNDCL-S, FFL

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The landlords applied for:

- a monetary order for loss under the Act, the regulation or tenancy agreement, pursuant to section 67;
- an authorization to retain the security deposit (the deposit), under section 38; and
- an authorization to recover the filing fee for this application, under section 72.

Tenant ZL (the tenant) and landlords HF (the landlord) and NF attended the hearing. Tenant SP was represented by tenant ZL. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing the attending parties affirmed they understand it is prohibited to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to $5,000.00 if they record this hearing: “A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than $5 000.”

As both parties were present service was confirmed. The parties each confirmed receipt of the application and evidence (the materials). Based on the testimonies I find that each party was served with the respective materials in accordance with sections 88 and 89 of the Act.

Preliminary Issue – Partial Withdrawal of the Application

At the outset of the hearing the landlord affirmed he already returned the deposit, and the tenant paid the cleaning expenses in the amount of $295.93. The landlord is not seeking for an authorization to retain the deposit and for a monetary order for the cleaning expenses.

Therefore, pursuant to my authority under section 64(3)(c) of the Act, I amended the application to withdraw the claim for an authorization to retain the deposit and for a monetary order for cleaning expenses.

Issues to be Decided

Are the landlord entitled to:

1. a monetary order for loss?
2. an authorization to recover the filing fee?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlords' claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is the landlords' obligation to present the evidence to substantiate the application.

Both parties agreed the tenancy started on April 01, 2019 and ended on February 28, 2021. Monthly rent was $1,800.00, due on the first day of the month. At the outset of the tenancy a security deposit of $900.00 and a key deposit of $200.00 were collected and the landlords returned it. The tenancy agreement was submitted into evidence.

The landlord affirmed the monthly rent included the electricity, sewer, water, the strata monthly fee and the property taxes.

The landlord affirmed the 521 square feet rental unit was brand new when the tenancy started.

The landlord affirmed he completed the condition inspection report (the report) and signed it with the tenant. The landlord affirmed the tenant was not engaged in the move out inspection and was using his phone during the inspection. The landlord did not make any changes to the report after it was signed.

A copy of the report was submitted into evidence. It says:

> Z. Damage to the rental unit or residential property for which the tenant is responsible: ~~Normal wear and tear~~ / some dings & marks on walls /~~ some [not legible] along ceiling/~~ Damage to the refrigerator seal/needs to be replaced / ~~near a/c vents~~

The tenant affirmed the landlord changed the report after he signed it and that some of the information on section Z was crossed in front of the tenant. The tenant does not recall the information about damage to the refrigerator seal when he signed the report. The tenant affirmed he emailed the landlord inquiring about the changes in the report after he signed it.

The landlord affirmed he did not receive any email or inquiry from the tenants about changes in the report.

The landlords are claiming refrigerator repair expenses in the amount of $879.84, as the tenants damaged the seal of the refrigerator door. The report states: “seal needs to be replaced due to a fish liquid spill [not legible] causing door to stick + damaging the seal”. The landlord submitted into evidence photographs showing the seal damage. The landlord affirmed the rental unit had a strong fish odour on the move out date originating from the refrigerator. The landlord affirmed the tenant spilled food in the refrigerator and did not clean it. The food spilled damaged the door seal.

The tenant affirmed he is responsible for a food spillage in the refrigerator. The food spillage caused the strong odour, but this should not damage the door seal. The door seal was faulty, and the tenant did not notice damages to the refrigerator during the tenancy. The tenant affirmed the refrigerator had normal wear and tear.

The landlord contacted the seller of the refrigerator on March 01, 2021 to repair the damaged door. The repair invoice states:

> Date ordered: March 05, 2021.
> Date finished: March 30, 2021.
> Assessment: Found sticky stuff was spilled previously inside the fresh food compartment and was not cleaned. Door gasket became stuck to it and broken now. Door gasket damaged not due to normal use. March 29, 2021 replaced the fresh food door gasket.
> Amount paid: $879.84.

The landlords are claiming painting expenses in the amount of $100.00, as the tenants caused holes in the wall. The report states: “marks on wall / dents”. The landlord submitted into evidence a receipt in the amount claimed and photographs.

The tenant affirmed the damages are small chips and they are regular wear and tear.

The landlords are claiming compensation for replacing drawer liners in the amount of $16.79. The landlord affirmed the kitchen and bathroom drawers had liners and the tenants damaged them. The report says: “rubberized drawer liners (1 missing)(stained)”. The landlord affirmed some of the liners were burned. The landlord submitted into evidence a printout of a website showing a drawer liner costing the amount claimed and photographs of the liners.

The tenant affirmed the drawer liners had regular wear and tear.

The landlords are claiming compensation for their time coordinating the refrigerator repair, cleaning and painting the rental unit. The landlord affirmed they worked 20.75 hours at the hourly rate of $50.00. The landlords are claiming the amount of $1,037.50. The landlord submitted into evidence a document detailing the time claimed. The time detailing document lists that when the landlord sent emails or made phone calls, they worked for 0.25 hour (15 minutes).

The tenant affirmed the landlords are exaggerating the time claimed. The tenant affirmed that sending emails or making phone calls does not require at least 15 minutes of work.

The landlords are claiming for loss of rental income for the month of March and April 2021 in the amount of $1,800.00 per month, as the landlord could not re-rent the unit because the refrigerator was damaged. The landlord affirmed he contacted the refrigerator technician on March 01, the order for the repair was received on March 05, the parts needed for the repair were shipped expedited and the repair was only completed on March 30, 2021 and the landlord was only able to re-rent the unit in May 2021.

The landlord affirmed he advertised the rental unit in mid-March 2021, asking for the same amount of rent.

The landlords are claiming for strata fee payments for March and April 2021 in the amount of $327.97 per month, sewer and water in the total amount of $108.98, property insurance in the total amount of $213.67, electricity in the total amount of $30.46 and the property tax in the total amount of $270.42.

The tenant affirmed the landlords did not minimize their losses, they did not advertise the rental unit in March 2021, the rental unit was habitable despite the refrigerator and wall paint damages.

I inquired the landlords why they are claiming for strata fee payments, sewer and water, property insurance, electricity and property tax, as these expenses are included in rent, and the landlords are claiming for loss of rental income. The landlord affirmed that they did not receive rent and incurred these expenses.

The landlords submitted into evidence a monetary worksheet indicating a claim in the total amount of $7,309.53.

Analysis

Section 7 of the Act states:

> Liability for not complying with this Act or a tenancy agreement
> (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.

Residential Tenancy Branch Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

> The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. 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.

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 the case is on the person making the claim.

Report

Regulation 21 provides:

> Evidentiary weight of a condition inspection report
> 21 In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

I find the landlord's testimony about the report was more convincing than the tenant's testimony. The tenant did not submit into evidence the email about changes in the report. I find the landlords did not change the report after the parties signed it.

Refrigerator repair

Section 32(3) of the Act states: "A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant."

I find the landlord's testimony about the reasons why the refrigerator was damaged was more convincing than the tenant's testimony.

Based on the landlord's more convincing testimony, the report, the invoice and the photographs, I find, on a balance of probabilities, that the refrigerator was damaged because of the tenant's neglect in cleaning up spilled food during the tenancy.

Based on the landlord's more convincing testimony, the report, the invoice and the photographs, I find the tenants breached section 32(3) of the Act by failing to repair the damaged refrigerator and the landlords incurred a loss of $879.84.

I award the landlords $879.84 for refrigerator repair.

Painting expenses

Section 37(2) of the Act states:

> Leaving the rental unit at the end of a tenancy
> 37(2) When a tenant vacates a rental unit, the tenant must
> (a)leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear

Residential Tenancy Branch Policy Guideline 1 states:

> Nail Holes:
> 1. Most tenants will put up pictures in their unit. The landlord may set rules as to how this can be done e.g. no adhesive hangers or only picture hook nails may be used. If the tenant follows the landlord's reasonable instructions for hanging and removing pictures/mirrors/wall hangings/ceiling hooks, it is not considered damage and he or she is not responsible for filling the holes or the cost of filling the holes.
> **2. The tenant must pay for repairing walls where there are an excessive number of nail holes, or large nails, or screws or tape have been used and left wall damage.**
> **3. The tenant is responsible for all deliberate or negligent damage to the walls.**
> PAINTING
> The landlord is responsible for painting the interior of the rental unit at reasonable intervals. The tenant cannot be required as a condition of tenancy to paint the premises.
> **The tenant may only be required to paint or repair where the work is necessary because of damages for which the tenant is responsible.**
>
> (emphasis added)

Based on the tenant's convincing testimony and the photographs submitted, I find the tenants are responsible for a small number of chips in the walls and that these chips are not excessive and are regular wear and tear.

I find the landlords failed to prove, on a balance of probabilities, that the tenants breached section 37(2)(a) of the Act by failing to paint the walls.

I dismiss the landlord's claim for compensation for painting expenses.

Drawer Liners

Section 32(4) of the Act states: "A tenant is not required to make repairs for reasonable wear and tear."

Residential tenancy Branch Policy Guideline 1 states:

> The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises.
> Reasonable wear and tear refers to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. An arbitrator may determine whether or not repairs or maintenance are required due to reasonable wear and tear or due to deliberate damage or neglect by the tenant.

Based on the photographs submitted into evidence, I find the drawer liners had reasonable wear and tear after the 23-month tenancy. Per section 32(4) of the Act, the tenants are not responsible to compensate the landlords for replacing the drawer liners.

I dismiss the landlord's claim for compensation for replacing the drawer liners.

Time for coordinating repairs

The tenant is not responsible for expenses related to painting, as previously decided.

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

I find the landlords failed to prove, on a balance of probabilities, why they worked for 15 minutes to make phone calls or to send emails regarding the refrigerator repairs. The tenant rebutted the landlords' claims about the time for coordinating repairs and the landlords did not present documentary evidence to support their claim for time for coordinating repairs, per Rule of Procedure 7.4.

I dismiss the landlord's claim for compensation for time for coordinating repairs.

Loss of rental income

Based on the landlord's convincing testimony, I find the landlord was only able to re-rent the rental unit in May 2021 because of the damaged refrigerator. Thus, I find the landlord suffered a loss of rental income in March and April 2021.

Residential Tenancy Branch Policy Guideline 3 sets conditions for loss of rental income claims. It states:

> If the landlord elects to end the tenancy and sue the tenant for loss of rent over the balance of the term of the tenancy, the tenant must be put on notice that the landlord intends to make such a claim. Ideally this should be done at the time the notice to end the

> tenancy agreement is given to the tenant. The filing of a claim for damages for loss of rent and service of the claim upon the tenant while the tenant remains in possession of the premises is sufficient notice. Filing of a claim and service upon the tenant after the tenant has vacated may or may not be found to be sufficient notice, depending on the circumstances. Factors which the arbitrator may consider include, but are not limited to, the length of time since the end of the tenancy, whether or not the tenant's whereabouts was known to the landlord and whether there had been any prejudice to the tenant as a result of the passage of time. The landlord may also put the tenant on notice of the intent to make a claim of that nature by way of a term in the tenancy agreement.
> […]
> The damages awarded are an amount sufficient to put the landlord in the same position as if the tenant had not breached the agreement.

Further to that, Policy Guideline 5 states:

> **When a tenant ends a tenancy before the end date of the tenancy agreement or in contravention of the RTA or MHPTA, the landlord has a duty to minimize loss of rental income. This means a landlord must try to:**
> 1. re-rent the rental unit at a rent that is reasonable for the unit or site; and
> **2. re-rent the unit as soon as possible.**
> For example, if on September 30, a tenant gives notice to a landlord they are ending a fixed term tenancy agreement early due to unforeseen circumstances (such as taking a new job out of town) and will be vacating the rental unit on October 31, it would be reasonable to expect the landlord to try and rent the rental unit for the month of November. Reasonable effort may include advertising the rental unit for rent at a rent that the market will bear.
> If the landlord waited until April to try and rent the rental unit out because that is when seasonal demand for rental housing peaks and higher rent or better terms can be secured, a claim for lost rent for the period of November to April may be reduced or denied.
>
> **(emphasis added)**

I find the landlords did not take the mandatory steps to mitigate their damages, as the landlords could have installed a temporary refrigerator when they were waiting for the repair of the original refrigerator. Furthermore, the tenant affirmed the rental unit was habitable when the tenancy ended. The landlords did not state that the refrigerator did not operate because of the damaged door seal.

Thus, I dismiss the landlords' claim for compensation for loss of rental income.

As the landlords did not mitigate their losses and did not obtain a monetary compensation for loss of rental income, the claims for strata fee payments, electricity, sewer and water, property insurance, and property tax are also not recoverable.

Filing fee and summary

As the landlords were partially successful in this application, I find the landlords are entitled to recover the $100.00 filing fee.

In summary, the landlords are entitled to $979.84.

Conclusion

Pursuant to sections 67 and 72 of the Act, I grant the landlords a monetary order in the amount of $979.84.

The landlords are provided with this order in the above terms and the tenants must be served with this order. Should the tenants 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 14, 2022

Residential Tenancy Branch