Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: MNDL-S, FFL
Tenants: MNSD, FFT

Introduction

This hearing was originally scheduled for the landlord's Application for Dispute Resolution seeking a monetary order. The hearing was conducted via teleconference and was attended by the landlord and one of the tenants.

Neither party raised any issues with the service of evidence for either Application.

At the outset of the hearing the parties identified that they had another hearing scheduled for February 14, 2022 for the tenant's Application for Dispute Resolution seeking a monetary order. The tenant's Application was for return of double the amount of the security deposit.

The parties agreed to have me hear both claims at this hearing. As such, this decision is in response to both the landlord's and the tenant's respective Applications.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for the cost of repairs; for all or part of the security deposit and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 32, 38, 55, 67, and 72 of the *Residential Tenancy Act (Act).*

It must also be decided if the tenant is entitled to a monetary order for return of double the amount of the security deposit and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Act.*

Background and Evidence

The landlord submitted into evidence the following relevant documents:

- A copy of a tenancy agreement signed by the parties on September 28, 2019 for a one year and one day fixed-term tenancy starting on October 15, 2019 for a monthly rent of $2,400.00 due on the 15th of each month with a security deposit of $1,200.00 paid; and
- A copy of a tenancy agreement signed by the parties on September 10, 2020 for a one year and one day fixed-term tenancy starting on October 15, 2020 for a monthly rent of $2,150.00 due on the 15th of each month.

The parties agreed the tenancy ended on December 14, 2021 and the tenants provided their forwarding address to the landlord at the move out inspection. The tenant has submitted into evidence a cop of the Condition Inspection Report that confirms the condition of the rental unit at the start and end of the tenancy and agreement by the tenant that the landlord may deduct $40.00 to replace some window handles.

This agreement also includes a statement acknowledging that the issue of mould is disputed and subject to the "RTB" proceeding. I note the landlord had submitted his Application seeking compensation on the issue of mould and retention of the security deposit on July 19, 2021.

The landlord seeks compensation from the tenant in the amount of $6,279.00 for the costs to repair damage caused to the rental unit due to mould in the master bedroom. Specifically, the landlord seeks:

Description	Amount
Carpet Replacement	$1,100.00
Paint entire wall and ceiling	$3.100.00
Replace all vertical blinds	$1,400.00
Clean up all mould (window frame or more	$380.00
5% Taxes	$299.00
Total	$6,279.00

The landlord provided that to the date of the hearing they have had the carpet replaced; the walls and ceiling painted and the mould cleaned up but have not yet replaced the vertical blinds. The landlord submitted that he has paid for the completed repairs in the amount of $4,494.00 and he was still planning to replace the vertical blinds.

The landlord submitted that from the start of the tenancy the tenant had informed the landlord of water infiltration issues in the ceiling of the second bedroom and regarding condensation on the windows within the unit. However, the landlord submits the tenant never once mentioned any issues with mould until February 18, 2021. The landlord submits that upon this report he was shocked as it “came with no warning whatsoever”.

The tenant submits that within 6 weeks of the start of the tenancy they informed the landlord of issues of excessive condensation on the master bedroom. The tenant submits also that after the initial report to the landlord they had numerous communications regarding these issues, including mould over the course of the tenancy.

In support of this position the tenants provided copies of text messages between themselves and the landlord. Some of the series of text messages includes discussions around the use of dehumidifiers that the landlord had purchased. The dehumidifiers are first mentioned on February 16, 2020 where the landlord advises the tenant he will be bringing them over once they arrive.

In subsequent text messages the landlord seeks updates from the tenant on the use of the dehumidifiers – to see if they are catching any moisture. The tenant informs the landlord of significant amounts of water being collected in the machines. In one of his messages the landlord asks “How is the spread of mold?”. The tenant responded by stating he did not think it was spreading.

The tenant also has submitted other correspondence between the landlord and strata agents and engineers discuss issues related to moisture and mold that has “been going on for almost 2 years now.”

The landlord acknowledges that there was an issue with a booster fan not working that would draw out moisture from the laundry dryer that was fixed in 2021 after consultations with the strata and similar problems that had been identified in other units. The landlord also testified that he had not attended the property during 2020 due to the restrictions in place resulting to Covid 19 ministerial orders and that it wasn’t until the spring of 2021 that he actually attended the property.

During the hearing the landlord confirmed the carpet and blinds were original to the rental unit in 2008 and the unit had last been painted in 2013.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act,* regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 32(1) of the *Act* states a landlord must provide and maintain residential property in a state of decoration and repair that

> (a)complies with the health, safety and housing standards required by law, and
> (b)having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Section 32(2) goes on to say that a tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit. Section 32(3) further states the tenant 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 property by the tenant.

As such, if a tenant has neglected to inform the landlord or issues in the rental unit that have caused damage or could lead to further damage if left unreported the tenant may be held responsible for the repairs required.

In the case before me, I prefer the tenant's submissions that the landlord was aware informed of the issue of mould in the rental unit, prior to the text communications dated in late February and early March of 2020, as it was discussed at that time. I am not convinced that the landlord was "shocked" or that the discussion in February 2021 "came with no warning whatsoever."

Even if I were to find that the landlord was not aware of a mould specific problem, he was aware of the condensation issue and the amounts of moisture that were being collected after he provided dehumidifiers to the tenant.

I find that it would be reasonable for a landlord to consider the possibility of mould issues, in such circumstances, and he therefore had an obligation to follow up on his

own to determine if there were any subsequent damages to the property as a result of the condensation issue, including, but not limited to mould issues.

On March 30, 2020 the Minister of Public Safety and Solicitor General issued Ministerial Order 89 that prohibited, among other things, landlords from entering into a rental unit unless it was related to a Covid-19 emergency. However, on June 24, 2020 the Minister issued Ministerial Order 195 that rescinded the above noted prohibition on access to rental units by landlords.

As such, I find the landlord had the ability and obligation to attend the property and conduct his own inspection either before Ministerial Order 89 was imposed or after it was rescinded. To be specific, the landlord had the right and obligation to either attend, himself, or have an agent attend, on his behalf, to inspect the entire property to see any additional damages.

I find the fact that the landlord did not attend the property at any time while there were no prohibitions in place, was a choice made by the landlord. I also find that he made that choice knowing, for over 6 months that there was an issue that could lead to damages causes by high moisture and/or water infiltration, including mould.

Based on these findings, I find the landlord has failed to establish that the tenant should be held responsible for the charges claimed in the landlord's Application. I dismiss the landlord's claim for compensation and recovery of the filing fee for his Application.

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

I accept that the tenancy ended, and the tenant provided their forwarding address to the landlord, on December 14, 2021. I also accept that landlord had already had an Application seeking to claim against the deposit prior to the end of the tenancy, which was not amended by the landlord after the end of the tenancy for any other compensation.

As a result, I find it would be redundant for the landlord to submit a new Application to retain the security deposit just because the tenancy had ended. I make this finding in part, because a landlord cannot submit an Application to retain the security deposit

without a claim for some form of compensation. Since the landlord's original Application was not amended, I find the landlord had no additional claims that required him to submit a new application.

Based on this, I find that by filing his Application in July 2021, which included retention of the security deposit, the landlord has fulfilled the requirements set out in Section 38 of the *Act*. Therefore, I find that, while the tenant is now entitled to return of the deposit, as I have dismissed the landlord's Application, less the amount of $40.00 previously agreed to, the tenant is not entitled to double the amount of the security deposit.

Conclusion

I find the tenant is entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **$1,260.00** comprised of $1,160.00 security deposit owed and the $100.00 fee paid by the tenant for this application.

This order must be served on the landlord. If the landlord fails to comply with this order the tenant may file the order in the Provincial Court (Small Claims) and be 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: March 2, 2022

Residential Tenancy Branch