Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Arockiasamy Holdings Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for a monetary order of $400.00 for damages for the Landlord, retaining the security deposit to apply to the claim; and to recover the $100.00 cost of his Application filing fee.

The Tenants, E.T. and K.K., and an agent for the Landlord, V.A. ("Agent") appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about it. During the hearing the Tenants and the Agent were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

In reviewing the service of the Landlord's Notice of Hearing documents and evidentiary submissions, the Tenants said that he sent it to one of their old email addresses on September 18, 2021; therefore, they did not receive it close to when it was sent, but they confirmed that they received these documents, ultimately. The Tenants said they served the Landlord with their evidence by email. The Landlord said he received it, but did not review it extensively, because he was travelling. I find that the Parties were served with each other's documents pursuant to the Act.

Preliminary and Procedural Matters

The Landlord provided the Parties' email addresses in the Application and they confirmed these addresses in the hearing, and the Tenants updated their current email

address for service of the Decision. The Parties also confirmed their understanding that the Decision would be emailed to both, and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

Issue(s) to be Decided

- Is the Landlord entitled to a monetary order, and if so, in what amount?
- Is the Landlord entitled to recovery of the Application filing fee?

Background and Evidence

The Parties agreed that the fixed-term tenancy began on May 1, 2021, and ran to August 31, 2021, with a monthly rent of $2,000.00, due on the first day of each month. The Parties agreed that the Tenants paid the Landlord a security deposit of $1,000.00, and no pet damage deposit. They agreed that the Landlord returned $600.00 of the security deposit, but kept $400.00 to apply to this claim. The Parties agreed that the Tenants vacated the rental unit by September 1, 2021, at 12:30 p.m.

The Parties agreed that they did not conduct a move-in inspection of the condition of the rental unit at the start of the tenancy, nor did they do a move-out inspection at the end.

In the hearing, the Agent said:

> The three ladies occupied the unit as previously agreed from May 1 to August 31, 2021, and there were no issues. About a month before the end of the lease, I reminded them of their obligation to make sure it's cleaned and the sheets washed. I did not get any response from them. About 10 days before the end of tenancy, I said, 'Kindly make sure the unit is clean and ready for the next occupants.' I received a one-line response: 'Yes, will do.'
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> The key exchange was arranged, and one of them asked that the time needed to be changed, so my daughter had to go on behalf of me. When she arrived at the unit, only one of the three Tenants remained, in spite that they had agreed at a specific time. My daughter went into the unit to collect the keys. And then the

third tenant left immediately without reviewing anything. My daughter had stayed and inspected and found deficiencies in cleaning and damage. She took photos.

I went and confirmed that the damages were there. Damages to the wall by hanging pictures and attempts to cover the damages with the paint and fresh evidence of attempts to patch up those damage. Some of the pictures left at the beginning of tenancy were left in the closet perhaps in an attempt to clean up the walls.

The sheets had been used, but never washed. There were stains, hair, and other things on the sheets. We were told that they were never used, but they were quite soiled.

At the beginning of the tenancy, I pointed to a spot in the walls, but there were many other damages to the walls in the end. And the unit had not been cleaned at all. In essence, the damage to the wall, and the unclean unit, and sheets, and also the agreement said no use of marijuana, but it smelled of it. It was a challenge to get the smell out. A challenge to clean. But unfortunately, the wall damage could not be completed because the next set of tenants moved in right after, so no time to repair the damage, but it has brought down the value of the property.

The Tenant, E.T., commented on the Landlord's testimony, as follows:

In response to that, in the email from his evidence – they even mentioned that the sheets were wet, which contradicts the fact that they were never washed. They were not used by us. We had our own sheets.

We previously agreed on the time, but one of the other Tenants was leaving. I was the last girl left. I asked if it would be possible to move it 15 minutes ahead. But I said it was not problem.

In the text conversation evidence I provided, it was pre-planned for the daughter to pick up the keys, and for him to do the inspection. I asked if she wanted to do the inspection, but she said her father would do it later.

After that text messages . . . and no other opportunity to do an inspection, which is against section 35 (2). We had no opportunity to do an inspection.

> There were damages noted prior to moving in, but we never completed a move-in inspection report, so those damages that he's speaking of are not officially proven.
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> The marijuana smell. We personally did not use it in the unit. But since this is a student building, I would go on the balcony and smell marijuana. That wasn't us. If he did notice it, it was common to smell it on the balcony with the units around.
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> The Tenant, K.K., said: "I think [E.T.] provided all the evidence. I wasn't present for the key handover, because I was at work. In other tenancies, I've had a CIR [condition inspection report], but we didn't have that here."

The Tenants submitted a text exchange dated August 31, 2021, that they had with the Landlord, which included the following comment from the Landlord regarding the move-out inspection:

> My daughter will collect the keys and fobs from you. I will be in the unit around 6 to do the final inspection. I will return your deposits following this.

I asked the Agent how he calculated the $400.00 he is claiming in his Application, and he said:

> The sheets weren't washed. I didn't want to spend any money – the walls were not repaired yet. This is a ballpark or a guess. Three of us spent time to clean up the unit. It was an estimate of the potential cost to replace and the damage to the walls. It will take hours of a professional to fix it.

I asked the Agent to describe the holes in the walls, and he said:

> Probably nails. Some of there – someone had attempted to patch them. Clearly, a freshly used wall repair kit was in the unit. Someone had attempted to patch, but the colour was completely different from the wall paint. They are odd looking patches. Some of them were chips in the wall, because of nails. Certainly, one of the pictures had fallen down and was thrown into the closet, in an attempt to patch up the walls where the picture was hanging.
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> I have no proof, but I have held the unit for the past five years. And I have never had a chance … any tenancy there will be wear and tear in the unit, but what we found was quite different from our previous experience. We have had pictures for

the unit every season, and those are the only pictures we have. If there had been damages noted by the Tenants.

The Landlord submitted approximately 60 photographs of the rental unit after the tenancy ended. I reviewed a number of these photos, which included the following:

- Nail holes,
- Patched nail holes,
- A small stain on light coloured sheets,
- Small chips on a bathroom wall,
- A tear in bed linens.
- A non-shiny bath drain,
- A dirty microwave door,
- Wall art left in the closet, and
- A hair on bed linens.

The Tenants submitted a photograph of the rental unit at the start of the tenancy, including one of the bathroom wall, which matched those noted by the Landlord at the end of the tenancy.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Before the Parties testified, I advised them of how I analyze the evidence presented to me. I told them that a party who applies for compensation against another party has the burden of proving their claim on a balance of probabilities. Policy Guideline #16 ("PG #16") sets out a four-part test that an applicant must prove in establishing a monetary claim. In this case, the Landlord must prove:

1. That the Tenants violated the Act, regulations, or tenancy agreement;
2. That the violation caused the Landlord to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the Landlord did what was reasonable to minimize the damage or loss.

("Test")

Section 32 of the Act requires a tenant to make repairs for damage that is caused by the action or neglect of the tenant, other persons the tenant permits on the property or the tenant's pets. Section 37 requires a tenant to leave the rental unit undamaged. However, sections 32 and 37 also provide that reasonable wear and tear is not damage and that a tenant may not be held responsible for repairing or replacing items that have suffered reasonable wear and tear.

Policy Guideline #1 helps interpret these sections of the Act:

> The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises), or for cleaning to bring the premises to a higher standard than that set out in the *Residential Tenancy Act* or *Manufactured Home Park Tenancy Act* (the Legislation).
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> Reasonable wear and tear refer 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. An arbitrator may also determine whether or not the condition of premises meets reasonable health, cleanliness and sanitary standards, which are not necessarily the standards of the arbitrator, the landlord or the tenant.

As set out in Policy Guideline #16 ("PG #16"), "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 claiming compensation to provide evidence to establish that compensation is due."

Based on the Landlord's photographic evidence, I find that any damage in the residential property was no more than reasonable wear and tear. Further, and pursuant to sections 23, and 35 of the Act, a landlord must complete a CIR at both the start and the end of a tenancy, in order to establish that the damage occurred as a result of the tenancy. Section 35 (2) of the Act states that a landlord must offer the tenant at least two opportunities for the inspections. Further, a landlord is required by section 24 (2) (c) to complete a CIR and give the tenant a copy in accordance with the regulations.

If the landlord fails to complete a move-in or move-out inspection and CIR, they

extinguish their right to claim against either the security or pet damage deposit for damage to the rental unit, in accordance with sections 24 and 36 of the Act.

I find from the evidence before me, overall, that the Agent failed to comply with sections 23 and 35 of the Act by not providing the Tenants with an opportunity to inspect the condition of the rental unit at the start and at the end of the tenancy. I find from the Agent's text message to the Tenants (above) dated August 31, 2021, that the Agent intended to do the inspection himself after the Tenants had left. This conflicts with his testimony that his daughter was going to do the inspection with the Tenants who remained at the end of the tenancy. This inconsistency raises questions in my mind about the reliability of the Agent's testimony.

Without having done a CIR at the start of the tenancy, the Agent did not have proof of the starting condition of the rental unit to compare to that at the end of the tenancy. Accordingly, I find that the Landlord has failed prove on a balance of probabilities that the Tenant's damaged the rental unit beyond reasonable wear and tear.

Further, failing to comply with sections 23 and 35 of the Act, the Landlord has extinguished his right to claim against the security deposit for alleged damage to the rental unit.

Given these findings, I dismiss the Landlord's Application without leave to reapply, pursuant to sections 24, 36, and 62 of the Act. The Landlord is ordered to return the Tenant's remaining **$400.00** security deposit to them immediately. The Tenants are awarded a monetary order in this amount to serve on the Landlord, if necessary, if he does not return the $400.00 to them promptly.

Conclusion

The Landlord is unsuccessful in his Application, as he failed to prove on a balance of probabilities that there was damage beyond mere wear and tear to the rental unit. Accordingly, the Application is dismissed without leave to reapply, pursuant to section 62 of the Act.

The Landlord is Ordered to return the Tenants' outstanding security deposit of $400.00 to them as soon as possible. I grant the Tenants a Monetary Order under section 67 of the Act from the Landlord in the amount of **$400.00**.

This Order must be served on the Landlord by the Tenants and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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 23, 2022

Residential Tenancy Branch