Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDL-S, FFL**

Introduction
The words tenant and landlord in this decision have the same meaning as in the *Residential Tenancy Act, (the "Act")* and the singular of these words includes the plural.

This hearing dealt with an application filed by the landlord pursuant the *Residential Tenancy Act* (the "*Act*") for:

- A monetary order for damages caused by the tenant, their guests to the unit, site or property and authorization to withhold a security deposit pursuant to sections 67 and 38; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

The landlord attended the hearing and was represented by his daughter/agent, AP (the "landlord"). The tenants attended the hearing and were assisted by their son and daughter who acted as interpreters.

As both parties were present, service of documents was confirmed. The tenants confirmed they received the landlord's Notice of Dispute Resolution Proceedings package and stated they had no concerns with timely service of documents. The tenants did not provide any documentary evidence for this hearing.

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Rule 6.11 of the Residential Tenancy Branch Rules of Procedure ("Rules"). The parties were informed that if any recording was made without my authorization, the offending party would be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation and potential fine under the Act.

Each party was administered an oath to tell the truth and they both confirmed that they were not recording the hearing.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for damage to the rental unit?
Can the landlord retain the security deposit?
If not, should the security deposit be returned to the tenants?
Can the landlord recover the filing fee?

Background and Evidence

At the commencement of the hearing, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony pursuant to rule 7.4. In accordance with rules 3.6, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The landlord gave the following testimony. The rental unit is a single family detached house, approximately 40 years old. The tenants rented the entire house as a single rental unit. The tenancy began on March 1, 2013, with rent set at $2,300 per month payable on the first day of the month.

The landlord testified that the house had been newly renovated prior to the tenants moving in. No formal condition inspection report was done with the tenants at the commencement of the tenancy, although the parties walked through the house.

The tenants gave the landlord an oral notice to end the tenancy in mid-May 2021. Rent was paid until the end of June. The landlord testified that the tenants were evasive in agreeing to an inspection date due to the fact that they had sub-tenanted the basement of the house without the landlord's knowledge or permission. On May 22nd, the landlord came to view the house and noticed a temporary kitchen set up in the basement, in front of the laundry sink. There was an induction burner, a microwave and a toaster. The landlord was unable to take good photos of the temporary kitchen because the tenants were present. The landlord testified that a person of different ethnicity was once seen exiting the rental unit and submits that as proof of the tenants sub-tenanting the rental unit.

During the visit on May 22nd, the landlord brought a contractor who noted damage in the basement due to a water leak. The landlord testified that the upstairs bathroom shower handle was loose, leaked water to the downstairs bathroom causing damage. The landlord testified that throughout the tenancy, the tenants assured him that the house was fine, that nothing was amiss. The landlord testified that from the commencement of the tenancy in 2013 to the end of the tenancy, the landlord must have gone to the house 4 or 5 times, at the tenant's request to look at issues the tenants brought up. Minor things like dishwasher replacement and laundry leaks. There was no need to otherwise inspect because the parties had a good relationship, and the landlord trusted the tenants were taking good care of the house.

The tenant moved out of the rental unit on June 9, 2021, and dropped off the keys. When the landlord went to see the condition of the house, the carpets were dirty, and it was just as unkempt as it looked when the landlord saw it on May 22nd except the furniture was gone. The landlord contacted the tenants on June 11th to advise them that major work needed to be done on the house and that he would let them know how much of the tenants' security deposit would be kept by him. The repairs were completed by July 18, 2021. Between these dates, the landlord could not contact the tenants. The landlord was served with a Notice of Dispute Resolution Proceedings filed by the tenants on July 22, 2021. In this application, the tenants sought a return of their security deposit, however the application was dismissed by the adjudicator, according to the landlord. The file number for the other file is recorded on the cover page of this decision.

The landlord testified that the tenants have not provided their forwarding address to this date. The only means of obtaining it was the return address provided on the envelope when the Notice of Dispute Resolution Proceedings for the tenants' dispute was sent to them by mail.

The tenant GY gave testimony through his son, then his daughter, both acting as his interpreter. I must note here that the majority of the tenant's testimony was difficult to follow and frequently made no sense. Throughout the tenant's testimony I had to ask the tenant's son to repeat himself and explain the meaning of his words. Eventually, the tenant's daughter took over interpreting the tenant's evidence, however I found much of the testimony just as confusing and contradictory as when the tenant's son was interpreting.

The tenant's testimony goes as follows, as I understood it. The tenants had set up a temporary kitchen for the tenant's sister's mother in law and father and nephew. There

was no kitchen set up, it was simply a sink beside the washer, a table, microwave, and toaster. Then he testified there was no toaster, but an induction burner. Then he testified there was no kitchen.

Some time in the spring or summer of 2017, the black drain pipe leaked water into the basement ceiling. The landlord came in and took out the ceiling and cabinets and the floor. The landlord asked the tenant to take out the garbage which he did.

Because of the drain pipe leaking, the bathroom and temporary kitchen were ruined.

The tenant then testified (via his daughter interpreting) that the tenants told the landlord on May 1st they were moving out with an effective date of June 8th. The tenants gave the landlord rent until the end of June although they moved out on June 10th.

Since 2017, there has been damage to the house. The tenants told the landlord there were problems and the landlords did not repair it properly. The leaks kept coming. The tenants used a fan to dry out the house. Every month when paying rent, the tenants told the landlord of the problems verbally. Nothing was given to the landlord in writing.

The tenant then testified that they purchased a dishwasher and a washing machine from Costco for the house as well as a used dryer. The landlord compensated the tenants for purchases, however. The tenants were unable to tell me how this testimony related to the landlord's claim for damages.

Lastly, the tenants acknowledge that they never gave the landlord their forwarding address in writing. Their address is the one noted on the Notice of Dispute Resolution Proceedings, however.

Analysis – landlord's claim for damages

Rule 6.6 of the Residential Tenancy Rules of Procedure indicate the onus to prove their case is on the person making the claim, the landlord. The standard of proof is on a balance of probabilities. If the landlord is successful in proving it is more likely than not the facts occurred as claimed, 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 14 of the Residential Tenancy Regulations ("Regs") states:
the landlord and tenant must complete a condition inspection described in section 23 or 35 of the Act [condition inspections] when the rental unit is empty of the tenant's possessions, unless the parties agree on a different time.

Sections 17 and 18 of the Regs indicate it is the landlord's responsibility to schedule the inspections and provide a copy to the tenant.

Section 21 of the Regs state that 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.

Both the landlord and the tenant testified a condition inspection report was not completed, contrary to Section 14 of the Regs. Sections 17 and 18 of the Regs indicate that this is the landlord's responsibility. In order for the landlord to succeed in proving the tenants damaged the rental unit, the landlord must first prove to me the condition of the rental unit at the commencement of the tenancy, as prescribed in Section 21. Without a condition inspection report signed by the parties acknowledging the pre-existing conditions of the rental unit, the landlord has put herself in a position where she cannot prove, on a balance of probabilities, the existence of the damages caused by the tenants when the tenancy ended. Though her testimony bears some weight, she has not met the burden of proof to show me the difference in condition between move-in and move-out.

The tenants claim that there was a broken pipe in 2017 that the landlord attended to by tearing out the ceiling and cabinets that apparently sustained damage from the leak. The landlord did not rebut the tenant's testimony when given the opportunity to. While the landlord argues that the leak was caused by a loose shower handle, she did not provide any documentary evidence to corroborate this. The landlord did not draw my attention to any photograph of a loose shower handle during testimony.
Once again, the onus to prove the claim for damages falls to the applicant/landlord in this case before me.

On a balance of probabilities, I do not accept the landlord's argument that the tenants caused the damage of the "*rotted/molded structure behind the bathroom walls"* by

leaving a loose handle in the shower. Rather, I accept the tenant's version of events, that there was a broken pipe that the landlord knew about in 2017 that was not properly repaired by the landlord. Further, I find the landlord's action of bringing a contractor to an inspection of the rental unit on May 22nd questionable if the landlord had no prior knowledge of a potential structural issue requiring the contractor's expertise. Consequently, I find that the landlord has not provided sufficient evidence to satisfy me the damage as alleged in the landlord's application was caused by anything the tenants had done; or that the tenants may have known about the unit being damaged by water and they didn't inform the landlord.

Second, the landlord submits that the tenants had sub-tenanted the basement of the rental unit but provided very little substantial evidence to corroborate this. The landlord alleges that the ethnicity of a person seen exiting the unit is different from that of the tenants; however, I am not convinced that this means the tenants had sub-tenanted the rental unit. Even if this allegation were true, the landlord has failed to show how the sub-tenanting has led to a claim for damage to the rental unit.

I find that the landlord has not sufficiently proven the existence of a damage or loss caused by any breach of the Act, regulations or tenancy agreement by the tenants (points 1 and 2 of the 4-point test). As such, I dismiss the landlord's application without leave to reapply.

Analysis – landlord's claim against the tenant's security deposit

At the commencement of the tenancy, the landlord did not pursue a condition inspection of the suite with the tenant, as required by section 23 of the Act. Pursuant to section 24, the landlord's right to claim against the security deposit is extinguished if the landlord does not offer the tenant at least two opportunities for inspection or does not complete a condition inspection report and give a copy to the tenant.

Section 38(5) and (6) of the Act state that when the landlord's right to claim against the security deposit is extinguished, the landlord may not make a claim against it and must pay the tenant double the amount of the security deposit or pet damage deposit, or both, as applicable. This is further clarified in Residential Tenancy Branch Policy Guideline PG-17 which says, in part C-3:

Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit if the landlord has claimed against the deposit for damage

to the rental unit and the landlord's right to make such a claim has been extinguished under the Act;

In this case, section 38(6) requires that the tenant's security deposit of $1,150.00 be doubled to $2,500.00. As a result, the tenant is entitled to a monetary order of $2,500.00 and pursuant to sections 38, I order the landlord to pay the tenant this amount.

As the landlord's application was not successful, the landlord is not entitled to recover the $100.00 filing fee for the cost of this application.

Conclusion

I issue a monetary order in the tenants' favour in the amount of **$2,500.00.**

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 07, 2022

Residential Tenancy Branch