Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: **MNDL-S, FFL**

Tenant: **MNDCT, MNSD, FFT**

Introduction

This hearing was reconvened after the issuance of a January 31, 2022 interim decision. On that day, I granted the tenant's application to have the original hearing adjourned due to having Covid-19 at the time.

This reconvened hearing was scheduled to deal with applications filed by both the landlord and the tenant pursuant the Residential Tenancy Act (the "Act").

The landlord applied 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 tenant applied for:

- A monetary order for damages or compensation pursuant section 67;
- An order for the return of a security deposit or pet damage deposit pursuant to section 38; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

Both parties attended the reconvened hearing. Service of one another's applications for dispute resolution was confirmed at the previous hearing. Both parties were ready to have the merits of their respective applications heard.

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 small unit approximately 10 years old. Prior to this tenant moving in, the landlord had a previous tenant living in the unit for approximately 3 years. The fixed one-year tenancy with this tenant began on July 1, 2020 and ended at the end of the term on June 30, 2022. Rent was set at $1,530.00 per month with a reduction of $100.00 per month for the first 10 months. A security deposit of $765.00 was collected from the tenant which the landlord continues to hold.

On June 28th, the first day the tenant viewed the rental unit, the parties conducted a preliminary condition inspection report. Both parties took photos of the unit at the time. A second condition inspection report was done on July 1st when the tenant took possession of the unit.

When the parties did a condition inspection report at the end of the tenancy on June 30th, the landlord noted that the tenant was still in the process of cleaning the rental unit. The landlord acknowledged that the unit was cleaner than he expected it would be at the end of the tenancy. Despite this, the landlord testified that the tenant was unwilling to agree to acknowledge the condition of the unit as he reported on the condition inspection report on move out. The landlord states he brought the wrong condition inspection report on the day of the move-out, the preliminary condition inspection report, not the one created on the first day the tenant took possession of the unit. A copy of the condition inspection report done on move out was provided, and the landlord notes that the tenant signed in the wrong spot. When going through the condition inspection report, the tenant was getting excited and wouldn't leave when the landlord had contractors coming in to do painting and repairs.

When the tenant moved out, the landlord alleges there were chips in the entrance where the garbage was kept. A "feature wall" also had chips and there were wear

marks on the wall from where the tenant put up a “green screen” so she could broadcast from home. The landlord also points out that there are grease marks on the walls that are visible at certain angles that were hard to capture in the photos provided as evidence. The landlord testified that he paid a friend to paint the rental unit at a cost of $700.00. The landlord supplied an invoice from the friend as well as invoices for supplies he bought for cleaning and wall repairs.

As this was a fully furnished rental, the queen set of sheets was returned to the landlord missing a fitted sheet. Instead, the tenant returned two flat sheets. Although the next tenant wasn’t concerned about it, the landlord went out and purchased a new set of sheets for him.

The tenant gave the following testimony. There were 2 condition inspection reports done at the beginning of the tenancy, one on June 28th, another on June 30th. The parties agreed that as long as the tenant accepted the unit in the condition it was in on June 28th, there would be no deductions to the security deposit.

When she moved in, there were lots of scratches in the closet that the landlord was unwilling to note. The garbage box was provided by the landlord and the chips were caused by the garbage box. The tenant had no choice but to use it. The tenant questions how and why the landlord paid $700.00 to paint what the landlord acknowledges is a very small apartment. The tenant submits that the painter is the landlord’s friend, and the cost is exorbitant. At the move out, the tenant told her everything was all good, damage was noted on the condition inspection report after she signed it.

On the date of the move-out inspection, the landlord arrived late. After arrival, the landlord was in a rush to have it done quickly. The tenant argues that she distinctly remembers the date in questions as it was during the “heat dome” and she was trying to clean the rental unit in the heat and couldn’t find a fan anywhere. The tenant argues that she didn’t miss anything. She referred to the policy guideline that indicates what needed to be cleaned and how thorough the cleaning should be. The tenant adhered to those guidelines and points to the photos she took on move out day as proof. The tenant denies any damage to the walls as alleged but tenant attributes any perceived damage the landlord seeks to regular wear and tear to be expected in a rental unit.

The tenant testified that she never used the queen sheet set the landlord is referring to. She had her own bedding. She points to a receipt for a king-sized sheet set she

purchased as evidence that she had no interest in taking the queen fitted sheet belonging to the landlord.

The tenant seeks a doubling of the security deposit because the landlord did not sign the condition inspection report at the time of the move-out condition inspection report. The tenant alleges it was signed after she left and there were additional notations made on it that she did not consent to.

The tenant seeks aggravated damages from the landlord because the lease agreement she signed with the landlord has a clause that restricts overnight guests. This amounts to a breach of her quiet enjoyment. She was laughed at by her friends who made fun of her because they couldn't spend the night. Because of this, she was isolated from her friends. The tenant didn't question this clause in the tenancy agreement because she didn't know it was an unenforceable condition, being unconscionable. She relied on the landlord to operate in good faith, as the landlord was a realtor.

Lastly, the amenities promised in the tenancy agreement were not available to her during the pandemic and when they were made available, it was difficult to book a time to use them. The tenant provided a copy of the building notice that indicates restricted times and restricted occupancy limits in the gym that commenced October 7, 2020. The tenant did not provide testimony as to when the restrictions were lifted.

Analysis

Section 7 of the Act states: 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. Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. Rule 6.6 of the Residential Tenancy Rules of Procedure indicate the onus to prove their case is on the person making the claim and that the standard of proof is on a balance of probabilities.

Residential Tenancy Policy Guideline PG-16 [Compensation for Damage or Loss] states at Part C:

In order to determine whether compensation is due, the arbitrator may determine whether:

1. a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
2. loss or damage has resulted from this non-compliance;

3. the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
4. the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Turning first to the landlord's claim. The landlord withdrew his claim for a broom, as listed on his monetary order worksheet and I advised the landlord that buying lunch for the people hired to paint the rental unit was a choice made by the landlord that the tenant is not responsible for paying for. The landlord seeks $700.00 for repairing and painting the walls, plus an additional $7.24 for spackle and $16.77 for cleaning supplies.

Section 37(2) of the *Act* states that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

This notion is further elaborated in Residential Tenancy Branch Policy Guideline PG-1 which states:

> *the tenant must maintain "reasonable health, cleanliness and sanitary standards" throughout the rental unit or site, and property or park.* ***The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard.*** *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).* ***(emphasis added)***

…

> *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.*

I have reviewed the photographs provided by the landlord to corroborate the claim for cleaning. While the photographs show a suite that was left in a state that may not be described as "move-in ready", I find the unit was left reasonably clean and undamaged except for reasonable wear and tear. I decline to award the landlord a monetary award for cleaning.

PG-1 goes on to state:

> ***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.

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.*

Based on the same photographs, I find that the condition of the paint on the walls is commensurate with a tenancy of one year and is reasonable wear and tear. I do not find deliberate or negligent damage to the walls or an excessive number of nail holes. The landlord's claim for painting the walls is dismissed.

Lastly, the landlord seeks $106.39 for the new set of queen sheets. There is no indication on the tenancy agreement regarding sheets and nothing on the condition inspection report to indicate the condition of the bedding at the commencement of the tenancy or whether they would be supplied. If the landlord wanted to document each of the household goods he considered were of value for the furnished rental, the landlord ought to have included them in a schedule for inventory and condition inspection at the beginning and end of the tenancy. As it is the onus of the applicant to provide sufficient evidence to prove their claim, I find the landlord's evidence has fallen short. (point 1 of the 4 point test). I also find that the landlord chose to purchase a new set of sheets rather than simply purchasing a fitted sheet and failed to mitigate the damage. (point 4 of the 4 point test). For the reasons stated above, the landlord's claim for sheets is dismissed.

Next, the tenant seeks aggravated damages in the amount of $1,736.00 calculated as 10% of rent for the term of the one-year tenancy for loss of quiet enjoyment and loss of recreational amenities. The tenant attributes this to the landlord's "high-handed, overbearing attitude".

PG-16 [Compensation for Damage or Loss] defines aggravated damages as:

> *"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.*

Quiet Enjoyment is discussed in PG-6 [Entitlement to Quiet Enjoyment].

> *Under section 28 of the Residential Tenancy Act (RTA) and section 22 of the Manufactured Home Park Tenancy Act (MHPTA) a tenant is entitled to quiet enjoyment, including, but not limited to the rights to:*
> - *reasonable privacy;*
> - *freedom from unreasonable disturbance;*
> - *exclusive possession, subject to the landlord's right of entry under the Legislation; and*
> - *use of common areas for reasonable and lawful purposes, free from significant interference.*
>
> *…*
>
> *Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.*

In the matter before me, I do not find the landlord deprived the tenant of her right to quiet enjoyment of the rental unit. While it is reasonable to conclude that the tenant's feelings may have been hurt by the tone or demeanour of the landlord in their interactions, such behaviour is not a catalyst to being compensated financially for it. There is insufficient evidence supplied by the tenant to show the landlord frequently interfered with her quiet enjoyment of the rental unit or unreasonably disturbed her. I dismiss the tenant's claim for aggravated damages for the claim of denying her quiet enjoyment of the rental unit.

Further, the tenant claims that she felt socially isolated by the clause in the tenancy agreement that restricts overnight guests. The tenant is correct in describing this as an unconscionable term. Section 6(3)(b) of the Act states that a term of a tenancy

agreement is not enforceable if the term is unconscionable. The remedy for this is to advise the landlord that the term is unconscionable and advise the landlord that it would not be enforceable; not seek compensation from the landlord after the tenancy ended.

As part of the aggravated damages claim, the tenant seeks compensation for the gym amenity being reduced due to the covid-19 pandemic. I do not find the landlord had any involvement in whether the gym would be open for extended hours or reduced hours during a pandemic. The tenant was still able to use the gym but had to accommodate the hours and capacity limits as set by the Strata corporation, not the landlord. If the tenant felt that the value of the rental was diminished due to the reduced hours and capacity limits, the tenant could have sought a reduction in rent under section 65 of the Act by filing an application for dispute resolution during the tenancy. I find that the tenant has provided insufficient evidence to support a claim for aggravated damages for loss of the use of the gym amenity and I dismiss this portion of her claim.

The tenant lastly seeks a doubled security deposit because the landlord did not sign the condition inspection report at the end of the move-out inspection. I find that both parties participated in the move-out inspection. The landlord made notations regarding alleged damage to the unit and the tenant rejected the allegation of damages and signed it. I reject the tenant's argument that a condition inspection report was not done at the end of the tenancy, and I find the landlord in compliance with section 35 of the Act.

The tenant her forwarding address on the last day of the tenancy, June 30, 2021. The landlord filed his application for dispute resolution seeking to retain the security deposit on July 15, 2021, within 15 days after the tenancy ended and being served with the tenant's forwarding address in compliance with section 38 of the Act. Consequently, I order that the landlord return the tenant's security deposit in the amount of $765.00 (not doubled) to her pursuant to section 38 of the Act.

I find that neither the landlord nor the tenant was successful in their respective applications. Neither party will recover their filing fees.

Conclusion

The landlord is ordered to return the tenant's security deposit in the amount of $765.00 pursuant to section 38 of the Act.

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: April 29, 2022