Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlord: **FFL, MNDCL-S, MNDL**
for the tenant: **MNSDS-DR, FFT**

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 applications filed by both the landlord and the tenant pursuant the Act.

The landlord applied for:

- Authorization to recover the filing fee from the other party pursuant to section 72
- An order to be compensated for a monetary loss or other money owed and authorization to withhold a security deposit pursuant to sections 67 and 38; and
- A monetary order for damage to the rental unit pursuant to section 67.

The tenant applied for:

- An order for the return of a security deposit that the landlord is holding without cause, pursuant to section 38; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

Both the landlords attended the hearing and were represented by their daughter/agent DS (the “landlord”). The tenant attended the hearing alone. As all parties were present, service of documents was confirmed. Each party acknowledged service of the other’s Notice of Dispute Resolution Proceedings package and stated they had no concerns with timely service of documents.

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") and 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?
Is the landlord entitled to a monetary order for unpaid utilities?
Should the tenant's security deposit be returned?
Should the security deposit be doubled?

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 parties agree on the following facts. The rental unit is located in a single family home containing three separate units. The tenant occupied one of the two lower units while the upper unit was occupied by either the landlord or another tenant. The parties disagree on this point.

The tenancy began on December 28, 2013 with rent set at $800.00 per month plus 25% of the utilities. On the tenancy agreement, clause 9 indicates there are no pets allowed. The parties agree that the landlord did not do a condition inspection report with the tenant at the commencement of the tenancy in 2013.

In the landlord's application, the landlord seeks compensation of $1,768.29, stating "*We had to buy a new shower because of water damages from human hair and dog hair (also no pet allowed on tenant agreement lease) plugging up the drain. We also had to pay a painter to paint the walls from damages and paint the floor to the bathroom from damage.*"

The landlord gave the following testimony. The house is an old-timer, over 100 years old. It has been remodelled many times over the years. The house was last renovated approximately 6 months before the tenancy began in 2013. At the time, a new shower had been installed in the tenant's unit.

The landlord testified that on October 5, 2021, they accepted a pet damage deposit from the tenant's neighbour because they initially agreed to the tenant taking possession of the neighbour's dog. The landlord DS then testified that the following day, she changed her mind about the dog after seeing damage in the shower from the tenant bathing the dog in the shower. DS testified there was mold on the floor and red stains on the floor.

At this point in the hearing, I had difficulty following the testimony of DS who advised me that the tenant pays 25% of the hydro bills and she never paid them. The tenant gave cheques to her husband and made DS upset. After the tenant bathed the dog, she brushed the dogs hair and got hair everywhere. DS wants none in the drain and when she went to clean it, she complained to the tenant saying she will not clean the dog's hair. The landlord changed her mind about allowing the dog when she went into the tenant's unit for an inspection, saw mold and damaged paint.

The landlord acknowledges signing a new tenancy agreement with the tenant on October 5, 2021 when agreeing to the dog and accepting the pet damage deposit. The landlords deny signing a condition inspection report on October 5th, alleging that someone forged their signatures on it. The landlords suspect the forger is the tenant's neighbour, however I advised the parties that I do not have the expertise to determine whether a person's signature is forged and I would not rule on this allegation.

The landlord testified that they installed a new shower instead of de-clogging the drain from dog and human hair because the plumber told them it would cost too much money. The landlord did not provide a plumber's written estimate to de-clog the drain for the hearing. Nor did the landlord provide any report from a plumber indicating that installing a new shower would be more cost effective than de-clogging the existing shower drain.

The landlord referred me to bills they paid for the new shower and an invoice from a painter for $892.00. The landlord testified that the unit had to be painted after the tenant vacated the rental unit.

The landlords acknowledge receiving the tenant's forwarding address in writing on November 29, 2021 and that the tenancy ended on December 1, 2021. The landlords filed their application for dispute resolution seeking to use the tenant's security deposit for damages on January 18, 2022.

The tenant gave the following testimony. No condition inspection report was done with her when the tenancy began in 2013. She acknowledges that the original tenancy agreement disallowed pets but over 6 to 7 years, she became friendly with the neighbour's dog and they decided to share custody of the dog. The landlord was aware of the arrangement.

In September 2021, the landlord told her that she is paying well below market value for her rental unit. The landlord wanted a 22% increase, but the tenant agreed to an 8% increase as long as the landlord signed a new tenancy agreement allowing the dog. This is the one signed on October 5, 2021. The pet damage deposit was paid in cash and the tenant submitted a photo of the landlords perusing the new tenancy agreement with the condition inspection report and cash on the table, taken on October 5th as evidence.

The tenant testified the shower was not new when the tenancy began in 2013. Her unit is a below ground basement bachelor suite and in 2015 or 2016 there was a perimeter drain issue. Water constantly started saturating up from the cement and pooling under the linoleum causing mold to grow between the bathroom and kitchen. The landlord remediated the perimeter drain issue and installed a new shower.

The tenant testified that the was never an issue with a clog in the shower drain. The mold all around the shower was caused by the perimeter drain overflow issue from 2015 or 2016. Regarding compensation for painting that the landlord seeks, the tenant argues that it is reasonable wear and tear for a tenancy from 2013.

The tenant testified that the landlord did not do a formal condition inspection report with her at the end of the tenancy. The landlord did a "walkthrough" and the tenant recorded the walkthrough and provided an audio recording of it as evidence. The tenant accepts the outstanding hydro bill of $56.69 and agrees that she is responsible for paying it.

Analysis

- tenant's claim

I turn first to the tenant's application seeking a return of the security deposit. The landlord acknowledged that she received the tenant's forwarding address on November 29, 2021 and that the tenancy ended on December 1, 2021.

Section 38 of the Act states:

Return of security deposit and pet damage deposit

38 (1)Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a)the date the tenancy ends, and

(b)the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c)repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d)make an application for dispute resolution claiming against the security deposit or pet damage deposit.

(6)If a landlord does not comply with subsection (1), the landlord

(a)may not make a claim against the security deposit or any pet damage deposit, and

(b)must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

The landlord filed an application for dispute resolution seeking to retain the tenant's security deposit on January 18, 2022, more than 15 days after the date the tenancy ended and the date the landlord received the tenant's forwarding address in writing. Section 38(6) is clear and unequivocal. The landlord did not comply with section 38(1) by making an application for dispute resolution within the 15-day period and as such, the landlord must pay the tenant double the amount of the security deposit. [$400.00 x 2 = $800.00]. The tenant is entitled to compensation in that amount.

The tenant's application was successful, and she is entitled to recover the $100.00 filing fee. [$800.00 + $100.00 = $900.00]

The tenant acknowledges she is responsible for paying 25% of the hydro utility in the amount of $56.69. The tenant's monetary order is reduced by this amount [$900.00 – 56.69 = $843.31]. I grant the tenant a monetary order in the amount of **$843.31.**

- Landlord's claim

The landlord seeks compensation of $1,768.29 for a new shower and painting the unit. 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. The standard of proof is on a balance of probabilities. If the applicant is successful in proving it is more likely than not the facts occurred as claimed, 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.

The onus is on the landlords to satisfy me that the tenant caused damage beyond reasonable wear and tear to the rental unit. Residential Tenancy Branch Policy Guideline PG-1 [Landlord & Tenant – Responsibility for Residential Premises] states:

> *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. 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.*
>
> ***...***
> ***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.*

I find the tenant left the rental unit reasonably clean except for reasonable wear and tear to be expected for a tenancy lasting almost 9 years. The landlord did not specifically allege the mold on the walls to be caused by any breaches of the Act done by the tenant and I find it reasonable that there would be signs of mold in the basement of a 100 plus year old house. On a balance of probabilities, I find that the pink marks in the linoleum was caused by the perimeter drain issue from 2015 or 2016. I find that the marks were caused by "pink mold" caused when water is left pooling between the concrete and the linoleum as alleged by the tenant. I do not find the marks were due to any breaches of the Act, regulations or tenancy agreement by the tenant. The landlord seeks to recover the cost to paint the unit at $892.50. In accordance with PG-1, I agree that the landlord is responsible for painting the rental unit at reasonable intervals and I dismiss the landlord's claim seeking that the tenant pay for it.

The landlord alleges that the shower had to be replaced with a new one "*because of water damages from human hair and dog hair (also no pet allowed on tenant agreement lease) plugging up the drain".* First, I find that the landlords accepted that the tenant would have pets when they signed the second tenancy agreement on October 5th, took the pet damage deposit and raised the tenant's rent. Though the landlords may have regretted the decision to allow the pet the following day, the fact remains that they signed a binding contract agreeing to it on October 5th. Any damage to the rental unit caused by the pet is a risk that the landlord accepts when signing the binding contract.

Despite this, the landlord did not provide any expert opinions from a certified plumber or photographic evidence of the damage they allege was caused by the tenant, namely that she or her dog clogged the drain to the shower. The tenant denies that there was any issue with drainage in the shower. As it is the onus of the applicant to prove their claim for damages, I find the landlord has provided insufficient evidence that there ever was a clogged drain necessitating a brand-new shower to be installed. [point 1 of the 4-point test].

Second, the landlord was unable to provide a reason as to why they went out and purchased a new shower instead of trying to unclog the shower either by themselves or by hiring a plumber to do it for them. It would be reasonable that it would cost less to pull hair out of a drain than purchase and install a new shower. I find that the landlords failed to mitigate their losses by choosing to take the more expensive route of purchasing and installing a new shower [point 4 of the 4-point test].

For these reasons, the landlord's claim to recover the cost of the new shower is dismissed.

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 tenant's favour in the amount of **$843.31.**

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 22, 2022

Residential Tenancy Branch