Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNDCL-S, FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("*Act*"), for:

- a monetary order for damage to the rental unit and for compensation for damage or loss under the *Act, Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenants' security and pet damage deposits (collectively "deposits"), pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

"Tenant JT" did not attend this hearing, which lasted approximately 52 minutes. The landlord, "tenant KP," and "tenant LW" attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

This hearing began at 1:30 p.m. with me, the landlord, and tenant LW present. Tenant KP called in late at 1:36 p.m., stating that her access code to call in was not working. Tenant KP exited the hearing from 1:48 p.m. to 1:53 p.m., stating that her call suddenly dropped. I informed tenant KP that I had to continue the hearing in her absences, and she confirmed her agreement that tenant LW could speak on her behalf in her absences. This hearing ended at 2:22 p.m.

The landlord provided her name and spelling. She stated that she owns the rental unit and provided the rental unit address. She provided her email address for me to send this decision to her after the hearing. She said that she was calling from her car in a parking lot, during this hearing. She claimed that she was able to speak and fully participate in this hearing, despite calling from her car. She confirmed that she did not

advise her witness to attend prior to this hearing, so she would not call any witnesses at this hearing.

Tenant KP provided her name and spelling. She provided her email address for me to send this decision to her after the hearing. She stated that she did not have permission to represent tenant JT at this hearing.

Tenant LW provided her name and spelling. She provided her email address for me to send this decision to her after the hearing. She stated that she did not have permission to represent tenant JT at this hearing.

Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* ("*Rules")* does not permit recording of this hearing by anyone. At the outset of this hearing, the landlord, tenant KP, and tenant LW all separately affirmed, under oath, that they would not record this hearing.

At the outset of this hearing, I explained the hearing and settlement processes to both parties. Both parties had an opportunity to ask questions, which I answered. Both parties confirmed that they were ready to proceed with this hearing, they did not want to settle this application, and they wanted me to make a decision. Neither party made any adjournment or accommodation requests.

At the outset of this hearing, I cautioned both parties to speak one at a time, to minimize any background noise, not to interrupt each other or myself, and not to argue or be hostile. I informed them that I needed to be able to hear properly, in order to make a decision. I notified them that I may be required to mute their teleconference lines or exclude them from this hearing and continue in their absence, if they did not comply with the above directions. The above is in accordance with Rule 6.10 of the RTB *Rules*. Both parties confirmed their understanding of same.

Preliminary Issue – Service of Documents

Tenant KP and tenant LW both confirmed receipt of the landlord's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that both tenant KP and tenant LW were duly served with the landlord's application.

During this hearing, the landlord did not provide any testimony regarding service of the landlord's application to tenant JT.

Tenant LW confirmed that she did not serve her documentary evidence to the landlord, she only uploaded it to the RTB website. She said that her evidence included text messages and a photograph. I received one photograph of a carpet and three photographs of text messages between the tenant and the landlord, submitted by tenant LW for this hearing. The landlord stated that she did not receive any evidence from tenant LW. I informed tenant LW that I could not consider her evidence at this hearing or in my decision because she did not serve it to the landlord, as required. This is in accordance with Rule 3.1 of the RTB *Rules*. The tenant confirmed her understanding of same.

Tenant KP confirmed that she did not provide any documentary evidence for this hearing.

Tenant JT, tenant KP, and tenant LW are collectively referred to as "tenants" in this decision and the accompanying monetary order.

Preliminary Issue – Amendments to Landlord's Application

Pursuant to section 64(3)(c) of the Act, I amend the landlord's application to correct the spelling of tenant's LW's surname and tenant KP's first name. The landlord, tenant LW, and tenant KP consented to the above amendments during this hearing.

At the outset of this hearing, the landlord stated that she wanted to reduce her monetary claim from $1,800.00 to $1,302.00. She said that the tenants paid their utilities, so she was not pursuing this claim against them any longer. She claimed that she received a work order for $1,302.00 for replacement of carpet, so this is the only claim that she was pursuing at this hearing. As the landlord reduced, rather than increased, her monetary claim at this hearing, I permitted her to proceed with the amended reduced amount of $1,302.00, against the tenants, as per section 64(3)(c) of the *Act*. I find no prejudice to the tenants in allowing this amendment. Accordingly, the landlord's remaining monetary claim for $498.00, is dismissed without leave to reapply.

Issues to be Decided

Is the landlord entitled to a monetary order for damage to the rental unit and for compensation for damage or loss under the *Act, Regulation* or tenancy agreement?

Is the landlord entitled to retain the tenants' deposits?

Is the landlord entitled to recover the filing fee paid for this application?

Background and Evidence

While I have turned my mind to the landlord's documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

Both parties agreed to the following facts. Two other tenants, that are not named in this application, began their tenancy with the landlord, pursuant to a written tenancy agreement, in August 2020. The tenants named in this application joined the above two other tenants as roommates. Tenant LW's tenancy began in October 2020 and tenant KP's tenancy began in December 2020. The landlord signed a written tenancy agreement with the tenants named in this application, for a tenancy starting on January 1, 2021. Tenant JT and tenant KP ended their tenancy on August 30, 2021. Monthly rent in the amount of $2,100.00 was payable on the first day of each month. A security deposit of $1,050.00 and a pet damage deposit of $1,050.00 were paid by the tenants and the landlord continues to retain both deposits in full. A move-in condition inspection report was completed in January 2021 with a property management company and the tenants. A move-out condition inspection report was completed on August 30, 2021, with only tenant JT and tenant KP present, not tenant LW. The tenants did not provide written permission for the landlord to keep any amount from their deposits. The landlord's application to retain the tenants' deposits was filed on September 24, 2021.

Tenant LW and the landlord both agreed that tenant LW moved out of the rental unit on June 1, 2021. Tenant LW said that she was removed from the lease by the landlord on June 1, 2021, and that her tenancy ended on that date. The landlord said that she did not remove tenant LW from the lease on June 1, 2021, and that her tenancy ended on August 30, 2021, with the other two tenants, tenant JT and tenant KP.

The landlord stated that she sent a text message to tenant LW on August 10, 2021, to attend a move-out condition inspection on August 30, 2021. She said that she did not provide a copy of this text message as evidence for this hearing. I informed the landlord that I could not accept evidence after this hearing, since the tenants would not have a chance to respond. I informed the landlord that she had ample time to provide this text message, since she filed this application on September 24, 2021, which is more than 7 months prior to this hearing on May 3, 2022. The landlord said that she did not provide

an approved RTB form for a final opportunity to complete a move-out inspection to tenant LW, because she does not know what this form is.

Tenant LW stated that she received a text message from the landlord about a move-out condition inspection, but she was only provided with a date of August 31, 2021, not a time or any other information, in order for her to attend. She said that she was told by the landlord that her name had been removed from the lease and her tenancy ended in June 2021, so an inspection should have occurred when she moved out in June 2021.

Tenant LW stated that she provided a written forwarding address to the landlord on September 11, 2021, by way of email. Tenant KP said that she provided a written forwarding address to the landlord on September 12, 2021, by way of email and text message. The landlord said that she received written forwarding addresses from both tenant LW and tenant KP on September 12, 2021, both by way of email. The landlord stated that she received tenant JT's forwarding address on September 22, 2021, by way of text message.

The landlord stated that she seeks a monetary order of $1,302.00 plus the $100.00 application filing fee.

The landlord testified regarding the following facts. The master bedroom carpet is stained, and the stain will not go away, so the landlord is required to replace the carpet. All of the carpets were professionally cleaned but the stain could not be removed. EOTR, the "carpet company," said that all three carpets need to be replaced. The furniture ripped through the carpet in tenant LW's room. The corner of the carpet was ripped by the cat in tenant KP's room. The landlord provided a copy of a work order from the carpet company for $1,302.00, but it has not been paid because she has not replaced the carpets yet. She did not have the work done because she could not just use the tenants' deposits towards this cost. She intends to do the work as soon as this decision is made. Three "new tenants" moved into the rental unit on September 1, 2021, after the tenants moved out. The new tenants currently pay a rent of $2,100.00 per month, which is the same rent that the tenants were paying during their tenancy at the rental unit. The new tenants are living at the rental unit with the damaged carpet. The landlord told them that there was a stain, and she would look after replacing the carpet. The new tenants did not tell the landlord about any issues with the carpet or say that they wanted it replaced because of the stain. However, the landlord advised the new tenants that she would be replacing the carpet and they were agreeable to same. The carpet at the rental unit has been there since 2018. However, the carpet in the master bedroom was changed in 2020. The landlord used the same carpet company

when she changed the carpet in the master bedroom in 2020. The landlord did not provide proof of this change of carpet in 2020, but she can do so after this hearing. Tenant LW testified regarding the following facts. She disputes the landlord's entire application. The landlord is not entitled to any damages for the carpet. Tenant JT talked to her friend, who works for the carpet company, who said that they could repair the carpet in the two small bedrooms. Because tenant LW refused to pay the landlord, the landlord decided that she wants to replace the carpet, instead. The carpet in tenant LW's bedroom had a pulled string and made a track in the carpet, while she was vacuuming. She believes this is normal wear and tear. The same issue occurred in tenant JT's room. The landlord wants a full carpet replacement but there is only a minor issue with the one track in the carpet in tenant LW's room. The landlord did not provide copies of the move-in or move-out condition inspection reports to tenant LW.

Tenant KP testified regarding the following facts. She disputes the landlord's entire application. The landlord is not entitled to carpet replacement. Tenant KP never received the move-in or move-out condition inspection reports from the landlord. She has nothing to compare from the beginning or end of tenancy. She was not given proper notice to complete the move-out condition inspection, but she still attended it. A move-in condition inspection was done but tenant KP got a cat after that date. The landlord did not complete a move-in condition inspection after tenant KP got her cat at the rental unit.

The landlord stating the following facts in response to submissions from tenant LW and tenant KP. The move-in and move-out condition inspection reports would have been sent from the property manager to the landlord and then the tenants. Everything would be noted in the move-in condition report, and nothing was wrong with the carpets. Tenant JT had a friend working at the carpet company, who was an employee. That employee initially said that the carpet could be fixed, but when she saw it in person, she said that it required replacement. The landlord did not receive any written information from the carpet company, stating that a replacement, rather than a repair, was needed for the carpets. The carpet company told the landlord verbally that a replacement was required.

Analysis

Rules, Legislation, and Burden of Proof

The following RTB *Rules of Procedure* state, in part:

7.4 Evidence must be presented
Evidence must be presented by the party who submitted it, or by the party's agent…
…
7.17 Presentation of evidence
Each party will be given an opportunity to present evidence related to the claim. The arbitrator has the authority to determine the relevance, necessity and appropriateness of evidence…

7.18 Order of presentation
The applicant will present their case and evidence first unless the arbitrator decides otherwise, or when the respondent bears the onus of proof…

I find that the landlord did not properly present her evidence, as required by Rule 7.4 of the RTB *Rules of Procedure*, despite having multiple opportunities to do so, during this hearing, as per Rules 7.17 and 7.18 of the RTB *Rules of Procedure.* During this hearing, the landlord failed to properly go through her claim and the documents submitted in support of her application.

The landlord mentioned the existence of move-in and move-out condition inspection reports and a work order, but she did not go through these documents in any detail or reference me to page numbers for same. This hearing lasted 52 minutes, so the landlord had ample opportunity to present her application. I repeatedly asked the landlord if she had any other information to present or to respond to the tenants' submissions.

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove a loss, the landlord must satisfy the following four elements on a balance of probabilities:

1) Proof that the damage or loss exists;
2) Proof that the damage or loss occurred due to the actions or neglect of the tenants in violation of the *Act*, *Regulation* or tenancy agreement;
3) Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4) Proof that the landlord followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Findings

On a balance of probabilities and for the reasons stated below, I make the following findings based on the testimony of both parties and the landlord's documentary evidence.

I dismiss the landlord's application for carpet replacement of $1,302.00, without leave to reapply. I find that the landlord did not provide documentary evidence, such as an invoice or receipt, to show that the carpets at the rental unit were replaced, when it was done, who completed it, how many people completed it, what amount was paid by the landlord, when it was paid, or other such information. The landlord provided a copy of a work order, which has not been completed, because the landlord has not replaced the carpets at the rental unit.

The work order is dated September 23, 2021, almost a month after the tenants' tenancy ended on August 30, 2021, and new tenants moved into the rental unit on September 1, 2021. The landlord did not explain the above information during this hearing, as she did not reference her work order in any specific detail. Therefore, it is unclear whether an inspection of the carpet at the rental unit by the carpet company was completed after the new tenants moved in and damage may have been caused by them. The landlord testified that the carpet company came to look at the carpet in person and told her verbally that it had to be replaced, not repaired. However, the landlord failed to provide documentary or witness evidence from the carpet company, that replacement, rather than repairs, was required for the carpet.

The order date for the carpet on the work order is August 2, 2019, prior to the tenants' tenancy beginning in October 2020 and December 2020, and prior to the move-in condition inspection report being completed in January 2021. Therefore, it appears that the landlord ordered the carpet over one year prior to the beginning of the tenancy for tenant KP and tenant LW, and prior to the first two tenants who signed a written tenancy agreement with the landlord in August 2020. Again, it is unclear who may have caused damages to the carpet, if other tenants were previous residing at the rental unit, prior to these tenants named in this application. The landlord did not explain the above information during this hearing, as she did not reference her work order in any specific detail.

I find that any carpet damage that may have been caused by the tenants, is reasonable wear and tear. I find that the photographs of the carpet, provided by the landlord as evidence for this hearing, show minor damages. There is a photograph of one small

track in the carpet, where it may have been pulled. There is a photograph of a few small faint stains in the carpet. There are photographs of the carpet in two different areas where it has been pulled and is missing some small areas.

The landlord found three new tenants to rent the rental unit at the same rent amount that the tenants were paying of $2,100.00, so the landlord has not suffered a loss in rent, due to the carpets. The new tenants are living at the rental unit with the damaged carpets, without issue.

As the landlord was unsuccessful in this application, I find that she is not entitled to recover the $100.00 application filing fee from the tenants.

Security and Pet Damage Deposits

The landlord continues to hold the tenants' security deposit of $1,050.00 and pet damage deposit of $1,050.00, totalling $2,100.00. No interest is payable on both deposits during this tenancy.

This tenancy ended on August 30, 2021. The landlord did not have written permission to retain any amount from the tenants' deposits. Tenant LW and tenant KP provided written forwarding addresses by email to the landlord, which the landlord said she received both on September 12, 2021. Email is permitted by section 88 of the *Act* and section 43 of the *Regulation*. Tenant JT provided her written forwarding address by text message, which the landlord said she received on September 22, 2021. While text message is not an approved method under section 88 of the *Act*, I find that the landlord was sufficiently served with tenant JT's forwarding address by text message, as per section 71(2)(c) of the *Act*. The landlord confirmed receipt of the tenants' forwarding addresses and indicated three different addresses for the tenants, in this application. The landlord filed this application on September 24, 2021, within 15 days of receiving the forwarding addresses on September 12 and 22, 2021.

I find that tenant LW did not extinguish her right to the return of her deposits because she was not present when the landlord completed a move-out condition inspection report, as per section 36 of the *Act*. I find that the landlord failed to provide the approved RTB form to tenant LW, for a final opportunity to complete a move-out inspection, as required by section 36 of the *Act* and section 17 of the Regulation. I find that tenant LW was ready to complete a move-out inspection with the landlord, but the landlord failed to provide a time to complete the move-out inspection, when she sent a text message to tenant LW about the inspection.

The landlord's right to claim against the tenants' deposits for damages was extinguished for failure to provide copies of the move-in and move-out condition inspection reports to the tenants and provide two opportunities with one using the approved RTB form, as per sections 24 and 36 of the *Act* and section 17 of the *Regulation*. During this hearing, the landlord stated that the move-in and move-out inspection reports "would have" been sent from the property management company to the landlord and then to the tenants, but the landlord failed to provide dates or details regarding same. Tenant KP and tenant LW both testified that they did not receive copies of these reports from the landlord. However, the landlord applied for unpaid utilities in this application, which is not damages, and she only withdrew it at this hearing, because she said the tenants paid it. Therefore, I find that the tenants are not entitled to double the value of their deposits from the landlord.

I order the landlord to return the tenants' deposits, totalling $2,100.00, to the tenants. The tenants are provided with a monetary order for same. Although the tenants did not apply for the return of their deposits, I am required to consider it on the landlord's application to retain them, as per Residential Tenancy Policy Guideline 17.

Tenant JT did not attend this hearing to provide testimony or evidence. The landlord failed to show if or how she served this application to tenant JT. However, the landlord testified about tenant JT's tenancy, stating that she was a tenant living in the rental unit with tenant KP and tenant LW, the tenants paid deposits to the landlord, the landlord continues to hold the tenants' deposits, and the damages caused to the carpet by the tenants. I find that the landlord failed to sufficiently prove her claim for damages to the carpet, against all tenants, as noted above, including tenant JT. For the above reasons, the monetary order for the return of the deposits is made jointly and severally in the names of all three tenants named in this application.

Conclusion

The landlord's entire application is dismissed without leave to reapply.

I issue a monetary order in the tenants' favour in the amount of $2,100.00 against the landlord. The landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and 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: May 05, 2022

Residential Tenancy Branch