Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regardinast Property Rental Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL-S, MNDL-S, MNDCL-S, FFL

Introduction

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

- a monetary order for compensation for unpaid rent, money owed, or monetary loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Although the hearing was set for an hour, the hearing set for 1:30 p.m. was extended to 3:07 p.m. to ensure both parties were heard. Both parties were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing. Both parties confirmed that they understood.

The tenants confirmed receipt of the landlord's application ('Application'). In accordance with section 89 of the *Act*, I find that the tenants duly served with the Application. All parties confirmed receipt of each other's evidentiary materials, and the hearing proceeded.

Preliminary Issue: Are SAM and AA "tenants" or "sublease tenants" in this dispute?

Both SK, agent for the landlord, and all the named respondents in this dispute appeared for the scheduled hearing.

The landlord named SAM as a respondent in this dispute despite the fact that SAM moved out on March 1, 2021, before the other tenants. Upon moving out, AA moved into SAM's room after signing a "Sublease Agreement" naming the other tenants as the "Sublease Landlord" and AA as the "Sublease Tenant". AA's rent was set at $899.00

per month, payable on the first of the month. A copy of the original tenancy agreement was submitted in evidence, as well as the “sublease agreement”. The landlord had knowledge and had given permission for this agreement.

Residential Tenancy Policy Guideline #13 clarifies the rights and responsibilities relating to multiple tenants renting premises under one tenancy agreement.

“A tenant is the person who has signed a tenancy agreement to rent residential premises. If there is no written agreement, the person who made an oral agreement to rent the premises and pay the rent is the tenant. Co-tenants are two or more tenants who rent the same property under the same tenancy agreement. Co-tenants are jointly responsible for meeting the terms of the tenancy agreement. Co-tenants also have equal rights under the tenancy agreement.

Co-tenants are jointly and severally liable for any debts or damages relating to the tenancy. This means that the landlord can recover the full amount of rent, utilities or any damages from all or any one of the tenants. The responsibility falls to the tenants to apportion among themselves the amount owing to the landlord.”

“If a tenant remains in the rental unit and continues paying rent after the date the notice took effect, the landlord and tenant may have implicitly entered into a new tenancy agreement. The tenant who moved out is not responsible for this new agreement.”

In the case of the original tenancy agreement, I find that the tenants originally named in the tenancy agreement, which included SAM, were all co-tenants. I find that when SAM moved out, the landlord and remaining co-tenants implicitly entered into a new tenancy agreement under the same terms. As clearly stated in Policy Guideline #13 above, “the responsibility falls to the tenants to apportion amongst themselves the amount owing to the landlord”. The responsibility falls on the co-tenants to ensure that rent and utilities are paid in accordance with the *Act* and tenancy agreement. I find that SAM was no longer a tenant as of March 1, 2021, and is not responsible for any debts recovered as part of this application.

AA is also named in this dispute as a respondent, and whom is named as a “sublease tenant” by the landlord .

RTB Policy Guideline #19 states the following about sublets and roommates:

“C. SUBLETTING
Sublets as contemplated by the Residential Tenancy Act

When a rental unit is sublet, the original tenancy agreement remains in place between the original tenant and the landlord, and the original tenant and the sub-tenant enter into a new agreement (referred to as a sublease agreement). Under a sublease agreement, the original tenant transfers their rights under the tenancy agreement to a subtenant. This must be for a period shorter than the term of the original tenant's tenancy agreement and the subtenant must agree to vacate the rental unit on a specific date at the end of sublease agreement term, allowing the original tenant to move back into the rental unit. The original tenant remains the tenant of the original landlord, and, upon moving out of the rental unit granting exclusive occupancy to the sub-tenant, becomes the "landlord" of the sub-tenant. As discussed in more detail in this document, there is no contractual relationship between the original landlord and the sub-tenant. The original tenant remains responsible to the original landlord under the terms of their tenancy agreement for the duration of the sublease agreement."

"Unlike assignment, a sublet is temporary. In order for a sublease to exist, the original tenant must retain an interest in the tenancy. While the sublease can be very similar to the original tenancy agreement, the sublease must be for a shorter period of time than the original fixed-term tenancy agreement – even just one day shorter."

The definition of assignment as contemplated by the Residential Tenancy Act

"Assignment is the act of permanently transferring a tenant's rights under a tenancy agreement to a third party, who becomes the new tenant of the original landlord."

Although the term "sublet" is used by the landlord in this dispute, I must note that RTB Policy Guideline #19 clearly provides the definition of a "sublet" versus a "roommate" situation, which states:

"Disputes between tenants and landlords regarding the issue of subletting may arise when the tenant has allowed a roommate to live with them in the rental unit. The tenant, who has a tenancy agreement with the landlord, remains in the rental unit, and rents out a room or space within the rental unit to a third party. However, unless the tenant is acting as agent on behalf of the landlord, if the tenant remains in the rental unit, the definition of landlord in the Act does not support a landlord/tenant relationship between the tenant and the third party. The third party would be considered an occupant/roommate, with no rights or responsibilities under the Residential Tenancy Act."

By the above definitions I find that AA, despite any terms used in a written agreement, is a roommate and not a "sublease tenant", as the remaining co-tenants remained in the rental unit after SAM had moved out. I also do not find that an assignment had taken

place as AA did not assume SAM's role as a co-tenant under the new agreement. As noted above, occupants and roommates have no rights or responsibilities under the Residential Tenancy Act, and accordingly, any monetary awards granted to the landlord in this decision do not apply to AA. Both AA and SAM's names will be removed from any subsequent Orders arising from this Decision.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation as requested for losses or money owed?

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

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This fixed term tenancy originally began on September 1, 2020 with six co-tenants. Monthly rent was set at $4,895.00, payable on the first of the month. As noted above, the tenant SAM moved out on March 1, 2021, and the landlord gave permission for the remaining co-tenants to rent out SAM's vacant room to AA for $899.00 per month. This tenancy ended on August 28, 2021 when all tenants and occupants moved out. The tenants testified that the landlord had collected from all tenants at the beginning of the tenancy an amount equal to their portion of the rent, half of which was applied to the security deposit, and half of which was applied to the last month's rent. The landlord testified that they still held the tenants' security deposit in the amount of $2,429.50, while tenants testified that the landlord held the equivalent of half a month's rent. The tenants submitted a copy of an email from JH to the landlord providing a forwarding address, and requesting the return of their security deposit in the amount of $2,259.50, which included a deduction of $200.00 for carpet cleaning.

The landlord confirmed the items listed in their monetary order worksheet during the hearing, and confirmed that they were seeking a total of $4,321.00 plus the filing fee. The landlord testified that items 1,3, and 4 were estimates, while a plus sign was used to request the actual amounts. The landlord also noted that they had already taken in consideration useful life of the items claimed, and made the calculations accordingly. The landlord is seeking the following monetary amounts listed below:

Item	Amount
Hardwood flooring damage	$735.00
Handyman service-drain snaking	140.00
Handyman service, disposal of desk and cabinet	125.00
General Cleaning	840.00
Rekeying	120.00
Wall prep	550.00
Painting (total $1,260.00 with 50% depreciation)	630.00
Carpet cleaning	200.00
Unpaid utilities	916.00
Unpaid rent	65.00
Recovery of Filing Fee	100.00
Total Monetary Order Requested	**$4,421.00**

The landlord testified that subsequent to the written agreement between the parties which stated that the "cost of all utilities for the premises shall be the sole responsibility of the tenant….there is a $300/month charge for gas, electricity and water due at the same time rent is due", the landlord and tenants had entered into a verbal agreement for the hydro bill to be placed under JH's name where the landlord reimbursed JH 60% of the bills. The landlord testified that the tenants were responsible for paying 40% of the remaining gas and water bills. The landlord testified that the tenants failed to pay the outstanding utilities at the end of the tenancy amounting to $916.00, and outstanding rent in the amount of $65.00. The landlord provided copies of the final gas and water bills, along with a calculations of the utilities paid and owed. The landlord argued that the tenants were responsible for $300.00 per month for total utilities for 12 months, for a total of $3,600.00 less $2,684.08 actually paid for a total monetary order of $916.00. Alternatively, the landlord is seeking $333.67 in outstanding utilities based on the calculation of the tenants' share on a percentage basis.

The tenants argued that the utilities were in JH's name, and fully paid. The tenants submitted copies of past payments made as well as utilities bills and emails they have received. The tenants dispute that any rent should be outstanding as the landlord had collected half of the last month's rent at the beginning of the tenancy from each tenant.

The landlord is also seeking reimbursement of losses associated with the tenants' failure to leave the home in reasonably clean and undamaged condition. The landlord testified that the hardwood floors were approximately 80 to 90 years sold, but that they

were last refinished in 2017, approximately 3 years before the beginning of this tenancy. The landlord testified that the hardwood floors were in good condition. The landlord submitted a copy of the move-in and move-out inspection report as well as photos, estimates, and invoices in support of this claim. The landlord pointed out that the move-out inspection report notes the deductions discussed and agreed upon by all parties under the section “END OF TENANCY. Damage to rental unit or residential property for which the tenant is responsible” which noted the following items: “general cleaning, floor coating/repair, carpet cleaning $200.00, painting, disposal of 1 desk, 1 shelf, lock, rekey 5 new keys, owing utilities”. The landlord argued that the move-out inspection noted that the rental unit was dirty, dusty, and that the sinks were “draining a bit slow”. In addition to the inspection report, the landlord also submitted photos in support of their claims.

The landlord testified that the drains required snaking and the plumber had found a lot of hair causing a plug in the sink. The landlord testified that the plug was so bad that using a wet dry vacuum did not work, and the plumber required a snake.

The tenants testified that the home was old as it was built in 1925. The tenants testified that the damage referenced by the landlord was regular wear and tear. The tenants testified that there were four bathrooms, and that the bathroom with the slow drain was used by MB who had short hair. The tenants also questioned why they could not locate the company named in the landlord’s evidence. The landlord testified that due to the urgency of the matter they had found a company online who was ready and willing to perform the task. The landlord argued that they had the invoice to prove that they did indeed pay for the referenced services.

The landlord is also seeking reimbursement for the disposal of items left behind by the tenants. The tenants responded that the home contained a lot of items upon move-in, and that they had removed their own personal belongings.

The landlord submitted a claim for repainting the rental unit ,and testified that they had taken in account that the rental unit was partially repainted a year prior to the beginning of the tenancy. The landlord testified the remaining 50% of the rental unit was last repainted approximately 5 years ago.

The tenants argued that there was previous drywall damage as the home was old. The tenants noted that the move-in inspection report noted that the paint was 2 years old in

some areas. The tenants also noted that the move-in inspection reports notes marks on the walls.

Analysis

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. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove, on a balance of probabilities, that the tenants had caused damage and losses in the amounts claimed in this application.

Section 37(2)(a) of the *Act* stipulates 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.

As the tenants did not dispute the landlord's claim for carpet cleaning, I allow the landlord a monetary order for carpet cleaning in the amount of $200.00. I will now consider the remainder of the claims.

The landlord is seeking reimbursement for the cost of repairing the hardwood floors. Section 40 of the *Residential Tenancy Policy Guideline* speaks to the useful life of an item. As per this policy, the useful life of hardwood flooring is 20 years. Although I accept the landlord's testimony that they had extended the life of the flooring by regular refinishing, with the last refinishing completed in 2017, I find that the hardwood flooring has exceeded its useful life of 20 years. Furthermore, although the photos submitted by the landlord show scratches to the hardwood flooring, I am not satisfied that the scratches would be considered damage beyond regular wear and tear. Accordingly, I dismiss the landlord's claim for repairs to the hardwood flooring without leave to reapply

As per the Policy Guideline, the useful life of interior paint is four years, while the useful life of drywall is 20. I note that the age of the building far exceeds 20 years, with the tenants residing there for a little over a year. The landlord's testimony is that a portion of the rental unit was last repainted approximately 5 years ago, while the remainder was painted a year prior to the tenants moving in.

As noted above, and in Policy Guideline #40, the onus is on the landlord to support the age and maintenance of an item, especially when the item has exceeded its useful life. In this case, I find that the some of the paint had exceeded its useful life. Although I am satisfied that the walls show signs of damage and although the landlord had applied a calculation to take in account that half of the walls were not recently repainted, I am unable to ascertain how much of, and which portions of the damage can be attributed to wear and tear and the general age of the item rather than the neglectful or intentional actions of the tenants. As the onus is on the landlord to support their claims, I find that the landlord has not met their burden of proof to support their claims for repainting and damage to the walls were due to the tenants' actions. Accordingly, I dismiss these portions of the landlord's claim without leave to reapply.

The landlord also made a claim for drain snaking. In consideration of the disputed evidence before me, I am not satisfied that the clog was caused by the tenants' deliberate or negligent actions. On this basis, I dismiss the landlord's claim for drain snaking without leave to reapply.

I find that despite the tenants' claims that they have removed all their personal belongings, a desk and cabinet were left behind. I find that these items were noted on the move-out inspection report, and as a result the landlord had to pay for the disposal of these items. Accordingly, I allow the landlord's monetary claim for disposal of these items.

Although the tenants may have attempted to clean the rental unit, I find that the landlord had provided sufficient evidence to support that the rental unit was not left in reasonably clean condition. I find that this was noted on the move-out inspection report, as well as demonstrated by the photos submitted in evidence. Accordingly, I allow the landlord's monetary claim for cleaning.

The landlord is seeking reimbursement for the cost of rekeying due to the tenants' failure to return all the keys.

Section 25(1) of the *Act* addresses the issue of new locks.

Rekeying locks for new tenants

> **25** (1) At the request of a tenant at the start of a new tenancy, the landlord must

(a) rekey or otherwise alter the locks so that keys or other means of access given to the previous tenant do not give access to the rental unit, and

(b) pay all costs associated with the changes under paragraph (a).

(2) If the landlord already complied with subsection (1) (a) and (b) at the end of the previous tenancy, the landlord need not do so again.

The landlord applied for the cost of a new lock, as they did receive not all the keys from the tenants. The tenants dispute not having returned all the keys for the rental unit. As stated in section 25(1) of the *Act*, the responsibility of providing a new lock at the start of the new tenancy falls on the landlord, and therefore the cost of rekeying is the obligation of the landlord, and not the previous tenants. On this basis, I dismiss the landlord's application for compensation for the rekeying without leave to reapply.

Lastly, I have considered the landlord's claim for unpaid rent and utilities. I find that despite the fact that the original agreement was for the tenants to be responsible for $300.00 per month in utilities, the parties had entered into a subsequent agreement that the tenants would be responsible for a percentage instead. I find that the latter should apply as the amendment was agreed on by all parties.

In support of their claims, the landlord provided various calculations as well as invoices. The tenants dispute the landlord's claims, providing their own evidence to show that they had made regular payments throughout the tenancy to ensure that all outstanding rent and utilities were paid in full. In light of evidence before me, I find that the gas bills show a credit rather than an outstanding balance. The gas bills state that "payment is not required". As the onus is on the applicant to support their claims, I find that the landlord has failed to demonstrate that the tenants owe outstanding utilities in the amounts claimed for the gas bill. Accordingly, I dismiss the landlord's claim for the unpaid gas bill.

I have reviewed the evidence in support of the outstanding water bill. I note that the landlord did provide a water bill showing an outstanding balance of $651.23 for the period of June 1, 2021 through to September 30, 2021. I find that the billing date was on November 5, 2021, and therefore this bill remained unpaid by the tenants as the tenancy had ended on August 28, 2021. I am not satisfied that the tenants had paid their portion of this bill, which is $651.23/126 days*89 days*.40 for a total of $184.00. I order that the tenants reimburse the landlord for this amount. I am not satisfied that the

landlord had supported any additional claims for unpaid utilities, and any additional claims for utilities are dismissed without leave to reapply.

Lastly, in light of the disputed evidence before me, I find that the tenants have demonstrated that they had always paid their monthly rent in full. I am not satisfied that the landlord's evidence supports that the tenants owe any unpaid rent. Accordingly, I dismiss the landlord's claim for unpaid rent without leave to reapply.

As the landlord's application had merit, I allow the landlord to recover the filing fee for this application.

In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain a portion of the tenants' security deposit in satisfaction of the monetary claim. The remainder shall be returned to the tenants.

Conclusion

I allow the landlord a monetary order totalling $1,449.00 as set out in the table below. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain a portion of the tenants' security deposit in satisfaction of the monetary claim. The remainder shall be returned to the tenants.

Item	**Amount**
Handyman service, disposal of desk and cabinet	$125.00
General Cleaning	840.00
Carpet cleaning	200.00
Unpaid utilities	184.00
Recovery of Filing Fee	100.00
Security Deposit retained by the landlord	-2,429.50
Total Monetary Order to Tenants	**$980.50**

I issue a Monetary Order in the amount of $980.50 in the tenants' favour for the return of the remaining portion of their security deposit. 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.

The remainder of the application is dismissed without leave to reapply.

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 24, 2022

Residential Tenancy Branch