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 landlords attended the hearing and the tenant HC attended the hearing with his counsel, MT. Counsel for the tenant HC acknowledged being served with the landlord's Notice of Dispute Resolution Proceedings package and evidence submitted with the application. The landlords submitted further evidence to the Residential Tenancy Branch on August 10th and stated they tried to serve the tenants with that evidence by registered mail on that date. The additional evidence is considered late evidence, not exchanged by the applicant 14 days prior to the hearing as required under rule 3.14 of the rules of procedure and will not be referred to in this decision.

The landlords acknowledged being served with the tenant's evidence on August 6th.

The landlords testified that they served the tenant JZ with the Notice of Dispute Resolution Proceedings package by registered mail on January 18, 2022 and provided a tracking number which is recorded on the cover page of this decision. The landlords testified that they also personally served JZ with another copy of the Notice of Dispute Resolution Proceedings package on January 18, 2022 at his new residence. The landlords testified that they were provided with the JZ's new residential address when

he sought their assistance in moving there. I am satisfied the tenant JZ was served with the Notice of Dispute Resolution Proceedings package on January 23, 2022, five days after being sent via registered mail, pursuant to sections 89 and 90 of the *Act*.

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, as alleged?
Can the landlord retain the tenants' security deposit?
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 allowed 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 tenancy began on October 18, 2021 with rent set at $1,800.00 per month plus hydro, payable on the first day of each month. A security deposit of $900.00 was collected from the tenants which the landlord continues to hold.

The landlord did not do a condition inspection report with the tenants at the commencement of the tenancy. The landlord explained that the tenants were recent immigrants from China (the same originating country as the landlords) and because the tenants were newly arrived, the tenants were required to quarantine. The landlord was

hesitant to be in the same building as the tenants and believed it would be best to comply with the government issued quarantine. Further, the landlord testified that the house was newly built and provided a certificate of occupancy issued September 24, 2021 as proof. The tenants moved in on October 18th. Although the landlord did not do a condition inspection report with the tenants, the landlord left her number for the tenants to contact her if they had any "concerns".

The landlord testified that the tenancy ended on December 31, 2021, but on January 4th, the landlord walked through the unit with both tenants present. The landlord testified that the tenant JZ agreed that he would compensate the landlord for any damage noted but it was only an oral statement. On January 4th, the landlord noted there was damage in the bathroom. The cabinet was wet and the floor was damp under the sink. The tile floor and bottom of the door was wet and sweating. Baseboards were wet and water stained. Outside the bathroom, in the kitchen, the laminate floors were wet and swelling. The rental unit is located above the garage, and the ceiling in the garage was wet and water stained. The landlord got a quote from a restoration company to repair the damage and their quote of $19,448.62 was presented as evidence.

In cross examination, the landlord confirmed that they understood they were required to do a condition inspection report with the tenants at the commencement of the tenancy, but justified not doing one because the tenants were in immediate quarantine; the house was brand new; and because the tenants were from their home country and they treated them "like family" and trusted them. During the tenancy that lasted approximately 2.5 months, the landlord recalls one time in November, 2021 where they came to inspect the unit and the floor was dry with no water issues.

Tenant's counsel gave the following submissions. The landlords were obligated under section 23 of the *Act* to inspect the condition of the rental unit with the tenants at the commencement of the tenancy. They did not do so. As such, the landlord has provided insufficient evidence to determine the condition of the rental unit at the start of the tenancy.

Tenant's counsel submits that there is no evidence the tenants caused any damage. The written statement provided by the tenants indicates they used the bathroom normally, showering every 2-3 days, mopping up any water after the shower. Normal usage. Further, counsel argues that there were no photos taken of the rental unit at the commencement of the tenancy to compare against the photos taken at the end of the tenancy.

The tenant HC testified that water inevitably fell on the floor from him showering. The landlord didn't tell him the bathroom was not waterproof. The landlord didn't notify him of damage to the sink until after he moved out.

Analysis

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, she 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.

Sections 23 and 35 of the *Act* require the landlord and tenant to participate in move-in and move-out condition inspections and document them in written reports. The landlord is responsible for scheduling the inspections and provide a copy to the tenant in accordance with sections 17 and 18 of the *Residential Tenancy Regulations* (the "*Regs*").

Section 14 of the *Regs* states that 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.

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 at the beginning or the end of the tenancy, contrary to the *Act* and Regulation.

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.

While I can accept that the rental unit was "new" when the tenants moved in, and that the landlord was hesitant to breach the tenants' quarantine, I find the landlord had alternate ways of conducting the condition inspection report while maintaining quarantine requirements. For example, the landlord could have completed the form immediately before leaving it for the tenants to sign off and give back. Photos or videos to corroborate the condition of the unit upon move in would have also been favourable to the landlord, however the landlord did not provide them for this hearing.

I find the landlord has not proven the existence of the damages caused by the tenant (part 1 of the 4 point test) and her claim for compensation for damages to the rental unit is dismissed.

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 at the commencement of the tenancy.

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 tenants' security deposit of $900.00 be doubled to $1,800.00 and returned to them.

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 award the tenants a monetary order in the amount of **$1,800.00.**

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: August 16, 2022

Residential Tenancy Branch