Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL, MNDCL, FFL

Introduction

The Landlord filed an Application for Dispute Resolution on December 10, 2021 seeking compensation for damages to the rental unit, and other money owed. Additionally, they seek reimbursement of the Application filing fee. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the "*Act*") on July 19, 2022.

Both parties attended the conference call hearing. I explained the process and both parties had the opportunity to ask questions and present oral testimony during the hearing.

The Tenant provided their notification of this hearing to the Tenant, along with prepared evidence. At the start of the hearing the Tenant stated they received this evidence, and I verified details with individual document titles and contents. Based on this review I am satisfied that the Tenant received evidence from the Landlord. The Landlord stated they provided pages directly to the Residential Tenancy Branch, labelled "for Residential Tenancy Branch use only" – I instructed the Landlord I would not consider or review this information because it was not disclosed to the Tenant. It would be prejudicial to the Tenant for me to consider these pieces separately without their knowledge.

The Tenant set out that they provided their prepared documents to the Landlord. The Landlord verified this, and on this basis, I proceeded with the hearing.

Issues to be Decided

Is the Landlord entitled to compensation for damages to the rental unit, and/or other money owed, pursuant to s. 67 of the *Act*?

Is the Landlord entitled to reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

Background and Evidence

Regarding the initial agreement between the parties on this tenancy, the Landlord provided that they conducted an initial inspection on October 25, 2019. The Tenant paid $1,000 on October 25, 2019, with the remaining $400 paid on November 3rd. Additionally, there was a half-month rent payment of $1,400 for the initial month of November when the Tenant took up residency in the rental unit in mid-November. On December 1st, the Tenant would pay the rent in full.

The Landlord presented that they requested a completed tenancy agreement with the Tenant RDS; however, the Tenant RDS would present to the Landlord that they were always busy with miscellaneous tasks. On January 31, 2020 the Landlord told the Tenant RDS to leave; however, the Tenant RDS then asked to stay. The Landlord via email was demanding the completion of the agreement, and a review of everything else that was happening with that Tenant at that time. By mid-February, the Landlord filled out a completed agreement for the Tenant RDS to sign, based on their knowledge that the Tenant RDS themself did not move into the rental unit. According to the Landlord, this was when "things started going the opposite way."

The Landlord confirmed the rent starting amount was $2,800 for the whole rental unit property. On March 1, 2020 the Landlord reduced the rental unit only to the upper floor of the house, thus reducing the rent to $2,200. The Tenant took occupancy of the upper floor only, and the agreement was for the $2,200 per month.

The Tenant RDS confirmed they completed a walkthrough and paid a $1,400 deposit in pieces. They also confirmed they paid the half-month rent for November 2019. They spoke to the Landlord and explained that their child would move in with their child's own acquaintance. According to the Tenant, the Landlord agreed to this. On April 1, 2020 the Tenant's child (LK) and their acquaintance had an agreement in place with the Landlord. The Tenant submits "I was no longer part of that, it was between the Landlord and [the Tenant's Child] LK." The Tenant RDS reiterated in the hearing that they were not part of the agreement, and the Landlord knew this. The Tenant RDS was living in their own home from spring 2020 onwards, and not in the rental unit.

The Tenant RDS stated “technically, as of April 1, 2020, this agreement was between [the Landlord] and [The Tenant’s child LK]” (hereinafter, the “Tenant LK”).

The second Tenant LK named as a Respondent [the Tenant RDS’ child] presented that they had a copy of the signed residential tenancy agreement, though this was not presented in their evidence. The rent indicated was $2,200, and the paid security deposit carried over to this arrangement. The other Tenant RDS stated their name was not on the tenancy agreement.

The Landlord maintains that the Tenant RDS was “always in” the rental unit. Regarding the Tenant LK’s agreement, the Landlord provided that they visited the Tenant RDS in their home with the Tenant LK. They ordered the Tenant RDS to be the “primary renter” by a provisional agreement. The Tenant RDS looked through these papers then stopped and stated they were busy and could not complete the paperwork at that time. The Landlord waited until April 1, 2020, and upon another visit to the Tenant, the Tenant RDS handed an incomplete paper to the Landlord, with no signature on the provisional agreement the Landlord demanded from the Tenant RDS. The Landlord presented that “this is why the residential tenancy agreement is not signed by me.”

In the Landlord’s evidence is an agreement signed by the Tenant LK on April 1, 2020. This agreement does not bear the Landlord’s signature. The agreement provides for a rent amount of $2,200 on the 1st of each month. A blank agreement between the Landlord, name not written, and “_____ mother who will not be residing at the property but will be reassuring the payments of the Property rental for [their child] _____ and others residing at the place only” also appears in the Landlord’s evidence, not completed, and not signed. This provides for the same rent amount, with “the additional rental for downstairs is $600 total of $2800”. And: “If for any reason of the downstairs being a problem, or the landlord might be in need of the area The $600 will be deducted from the $2800.”

The Landlord on their Application indicated that the tenancy ended on May 31, 2020. The Landlord listed the Tenant RDS on the final Condition Inspection Report. In the hearing the Landlord stated the Tenant LK advised they wished to end the tenancy on May 31, 2020, via email and on the telephone on May 1, 2020. A copy of this email was in the Landlord’s evidence.

The Tenant recalled notifying the Landlord of their desire to end the tenancy on the phone. They recall that they gave the Landlord one month notice. The Tenant LK and

the named Tenant RDS stated they did a walkthrough inspection with the Landlord and the Landlord's witness who attended in the hearing.

The Landlord's witness in the hearing described completing the document, on which was noted the inspection date of May 31, 2020. This witness was aware of the friction between the parties and was asked by the Landlord to complete the inspection as a more neutral third party. This witness did the walkthrough with both the Landlord and the Tenant. This was a room-by-room inspection with the document in hand. The witness noted "the place was cleaned out pretty well" with "some minor wear and tear", such as damages with the blinds. They noted the rental unit was "in very good condition" with the only odd thing was the garage door misaligned. The Tenant LK signed the document. The document does not bear the Tenant RDS' signature, nor does it bear the Landlord's signature. The witness stated they were not clear on who the tenant was.

The document only bears detail on the end of the tenancy, though it does provide for a move-in inspection date that was October 25, 2019. That date was completed by the witness at the time of the move-out inspection.

In general, on the condition of the rental unit, and more specifically to the inspection meeting, the Tenant RDS noted that the carpet was just cut and placed on the floorspace, not installed. The Tenant RDS had the carpet washed and that is why it was noted as "lifted". They noted the witness specifically tried all faucets, with none broken at that time.

The Tenant noted the only other item was a closet door that they removed from the track and placed downstairs in a storage room.

The Tenant also recalled uninstalling security bars on a downstairs window which would pose a barrier to escape in the event of an emergency. These were not broken, rather only uninstalled.

The Tenant emphasized that there was no other damage, and the house was in "mint condition". They paid for cleaning on their own prior to their move out. In their evidence they presented a carpet cleaning receipt dated May 31, 2020 for $214, and an invoice dated May 28, 2020 for 4 hours of cleaning at $40 for $160.

The Landlord described what happened after the Tenant moved out. The Landlord started audio recording all of their discussions with the Tenant regarding all aspects of the tenancy.

The Landlord on their own visited the rental unit on the day after the inspection date. They noted a strong odour, this time unmasked, unlike in the inspection meeting. There was extra details that they noted not present in the inspection report completed by the witness.

Regarding the condition of the rental unit, they noted the twisted/removed blinds, also nails through the door to facilitate entry into either of the units of the house. They noted the removal of the closet door, questioning how it got placed into the storage room. In the upstairs bathroom, the roll holder was removed, the vanity was detached. They also noted damage to the security bars that the Tenant removed.

In the hearing, the Landlord clarified that they notified their insurer about damage in the rental unit. The insurer instructed the Landlord to call a restoration company for inspection. A Property Restoration firm entered the unit on June 3 after the Landlord called them. The Landlord in the hearing stated that the reason for the call was for strong impression left by the odour. In the Landlord's documents, they wrote specifically the own description of the issue: "House Rental Insurance approve claim for damages caused by tenants, guests, or pets in upper property of house with June 3 2020 estimation by [Property Restoration firm]."

The estimate completed by the Property Restoration firm was for "General Repairs Estimate", this with the date of June 9 as specified by the Landlord in the hearing. They provided an initial estimate, with work starting on August 20, 2020. The Landlord presented an email dated June 26 from the Property Restoration firm giving their estimate based on their visit into the rental unit on June 3. This listed installation of an air scrubber for the smell, a "complete structure clean", repainting a bedroom, replacement of all carpet, and new vinyl flooring installed over top of the old. This estimate -- for what the Landlord noted was $13,323.24 – has the firm's note that this was "based on site unseen by my trades" and clarified "No water damage issues, just the demo/cleaning/repairs."

The Landlord clarified that their insurer paid for $12,582.26 with the balance of the Landlord's work unpaid by the insurer, for $11,579.58 that the Landlord had to pay for themself. The firm returned on August 31, 2020, to inspect the unit at the end of their restoration work.

The first two items listed by the Landlord on their worksheet dated December 10, 2021 concerned the work undertaken by the Property Restoration firm. The remainder of the items show:

#	Items	$ claim
1	property restoration – insurer	12,582.26
2	property restoration – paid for by Landlord	11,579.58
3	garage door repair	120.75
4	roto rooter --	735.00
5	upstairs toilet	261.45
6	basement toilet	1,090.95
	Total	**26,369.83**

Line 1 shows the amount of the restoration work paid by the insurer to the Landlord. The Landlord provided an invoice dated April 7, 2021 showing this $ amount paid by the insurer to the Landlord. This invoice was provided by he Property Restoration firm to the Landlord.

Item 2 is the amount of restoration work not covered by the insurer. The Landlord paid this amount on their own. In an email from the Property Restoration firm to the Landlord dated February 16, 2021, the firm noted to the Landlord, in regard to this balance needing payment by the Landlord: "Your insurance is stating this extra work is not covered as they are saying it would be due to poor maintenance and ongoing issues." The Landlord provided the paid receipt from the Property Restoration, for this $ amount.

The Tenant also recalls that they earlier mentioned the state of the garage door – using a pulley system – was misplaced because of a wire that was removed from one of the wheels. With a very heavy door, the Tenant could not reset that wire on their own.

The Tenant recalled that Roto Rooter was called in because of the flooding in the basement, called for by the Landlord. The Tenant noted all the drain tiles around the house had collapsed. This occurred when the Tenant still had access to the basement. The Landlord provided an invoice dated March 21, 2020 for the amount of $735.00. The writing on the invoice that is legible reads: "drain tile backing up." The Tenant LK provided a report from a plumber written directly to them. That plumber recommended "Complete replacement of draintile around perimeter of home, including a gravity sump system."

In the hearing the Tenant also recalled their discussion with the Landlord about previous tenants who lived and worked in oilfields-type workplaces who were more likely responsible for any odour remaining within the rental unit. They recalled so much garbage left behind by previous tenants.

The Landlord provided a video entitled “toilet damage” that shows water running out from the back of the toilet onto the floor below.

Analysis

The Landlord had an agreement with the Tenant LK. This is shown with a tenancy agreement only signed by the Tenant LK. The Landlord did not provide easily identifiable evidence that they had an initial tenancy agreement with the Tenant RDS. I find the Tenant RDS is not a party to this action because they do not meet the definition as set out in s. 1 of the *Act*. This tenancy concerns the Landlord and the Tenant LK who signed a tenancy agreement.

I find the Landlord did not sign the agreement because they did not obtain the Tenant RDS’ signature on a separate provisional agreement. I find this separate provisional agreement was an attempt by the Landlord to contract outside of the *Act*. By s. 5 of the *Act*, any attempt by a landlord to contract out of the *Act* is of no effect, and I find that applies in the current situation.

The *Act* s. 23 also applies in this tenancy. That creates the obligation for a landlord to complete an inspection report, having both parties’ signatures on that document. A copy of that report must be provided to a tenant at the start of the tenancy. That did not occur in this tenancy: as the witness described, they wrote the move-in inspection date on the Condition Inspection Report at the time they completed the final inspection with the parties at the very end of the tenancy. The Landlord did not meet their obligation for this important documentation on the state of the rental unit at the start of the tenancy.

The *Act* s. 37(2) requires a tenant, when vacating a rental unit to leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and give the landlord all the keys and other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

To be successful in a claim for compensation for damage or loss the Applicant – here, the Landlord -- has the burden to provide clear and sufficient evidence to establish the following four points:

- That a damage or loss exists;
- That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
- The value of the damage or loss; **and**
- Steps taken, if any, to mitigate the damage or loss.

A large part of my evaluation of the Landlord's submission rests on the discernability of their evidence. There were many, many extraneous pieces of evidence submitted that I could not understand or place in the situation they had with the Tenant here. For example: photos of the Tenant's messy pet in the backyard space, which formed no part of what the Landlord claimed, as well as the state of the lawn at the rental unit property.

Additionally, the Landlord informed me in the hearing that they audio recorded every discussion or interaction they had with the Tenant. It appears that all of this material ended up in the Landlord's evidence for this file. It was very difficult to follow the Landlord's submissions overall, and the sheer volume of evidence they provided did not assist in the matter. This negatively impacted my evaluation of their Application, and on this I note the *Residential Tenancy Branch Rules of Procedure* provides in Rules 3.6 and 3.7 that evidence must be relevant, and it must be organized, clear and legible. I simply could not understand what the large majority of the Landlord's evidence consisted of in relation to their claimed monetary amount.

In general, on the Landlord's claim and the entirety of this tenancy, I note the following in relation to s. 23 of the *Act*:

- Any walkthrough the Landlord had with the Tenant LK or LK's parent is not document as is required. I cannot conclude that there was an initial condition inspection meeting. I find the Tenant credible on their singular point that there were a number of previous tenants in the rental unit. They even accurately described the previous tenants as working in heavy industry and coming to this rental unit space during or in between that type of work. I find the Tenant credible on this point, and there is nothing to show the state of the rental unit at the beginning of this tenancy. Ensuing damage that the Landlord chooses to attribute to the Tenant would be easily and readily identifiable and even easier to

categorize. With no before-after picture in this tenancy, I find the burden facing the Landlord on this Application is that much higher.

- The Landlord enlisted the services of a neutral third party to complete a final inspection. That individual attended the hearing as a witness, and I noted their candour and demeanour in attempting to handle the matter impartially. This lends credence to the account noted in the Condition Inspection Report completed at that final inspection. It is not known why the Landlord did not sign that document; however, the Tenant did.

- The Landlord returned the security deposit to the Tenant. The Landlord did not focus on this topic; however, I find this points to the lack of obvious damage attributable to the Tenant here. The Landlord did not seek to claim against the security deposit, which is the purpose of such a deposit. The Landlord here is now making a monetary claim against the Tenant; however, without due regard for the security deposit and making a claim against it, I find the Landlord is also subverting the *Act*.

- The Landlord's visit on the day following the inspection has undermined that entire process when they enlisted a neutral third party to complete that process. The Landlord undertook to pull carpets back, and made a more intense examination of the entirety of the rental unit property and its contents. I find this is all what they should have ensured was noted on the report, and made known to the Tenant LK in that meeting. There is a large gap in information here at this point, and I find the Landlord disingenuous on the inspection process with the Tenant in crafting a claim starting from the day following the Tenant leaving the rental unit. None of this information was made known to the Tenant at the inspection meeting, and the Landlord did not sign the inspection report. This negatively impacts the veracity of their claim.

- The Landlord did not clearly explain why they contacted their insurer, who then instructed the Landlord to consult with a Property Restoration firm who fully inspected all aspects of the rental unit. The Landlord's presentation to their insurer, and most of the dialogue with their insurer is not easily and readily identifiable in their evidence. Without the Landlord pointing this out specifically and making reference to it, I do not know if the Landlord pointed to the Tenant specifically as the reason for their claim. I find this is another instance of the Landlord subverting the *Act*, by bringing the matter to their insurer rather than having the correct law apply in this situation that is the *Act* exclusively. Minus

evidence showing that to me, I find the Landlord did NOT make that presentation to their insurer. As noted in the Property Restoration firm's message to the Landlord: "[the insurer is] saying it would be due to poor maintenance and ongoing issues". From this I conclude categorically and definitively that the Landlord's insurance claim was not against the Tenant, and there was no provision anywhere in this tenancy for the Tenant to have renter's insurance. This was a relatively short tenancy, and the Landlord has not met the burden of proof to show that all of the work undertaken, as well as the more incidental repairs on other singular items came from mistreatment or any damage from the Tenant here.

For this reason exclusively, I completely dismiss the Landlord's claim items 1 and 2 listed above. It was dishonest for the Landlord to claim insured paid amounts against the Tenant here, and there is no link between what the Landlord claimed to their insurer (not presented clearly in this hearing) and any damage left by the Tenant here beyond reasonable wear and tear.

I find as follows, in regard to remaining separate items listed above:

3. I find the Tenant's account was credible on the status of the garage door. There was no information on the state of the garage door at the start of this tenancy. I find it more likely than not that the garage door operated on an aged pulley system that broke down over time. The Tenant on their own was not able to reset the cable on to the pulley due to the weight of the garage door. I find the Landlord did not prove damage attributable to the Tenant here, so this piece of the Landlord's Application is dismissed.

4. The Tenant presented a plumber's report that pointed to draintile problems around the house. This was the work performed by Roto Rooter on the Landlord's call. This is not damage caused by the Tenant, and is due to upkeep of the rental unit property, i.e., not the Tenant's responsibility aside from any evidence of a calamity caused by the Tenant on the property which the Landlord did not prove.

5. The Landlord did not present clearly labelled and easily identifiable evidence of the value of this piece of their claim. I find there was no easily identified evidence of this completed work in the form of an invoice. I dismiss this piece of the Landlord's claim for this reason.

6. Similar to the point above, there is no easily identified invoice for this completed work. If it exists somewhere in the sheer volume of material the Landlord submitted, the onus was on the Landlord to identify and present that clearly, and they did not. I dismiss this piece of the Landlord's claim for this reason.

Should the Landlord wish to continue to rent to future tenants, I strongly recommend they familiarize themself with the tenets of the *Act* and their own obligations in a tenancy. I find that starting this process of dispute resolution with the *Act* in mind after a completed insurance claim is fraud. The *Act* provides for administrative penalties after investigations by the Residential Tenancy Branch, the application of common law, as well as offences and penalties for contravention of certain sections of the *Act*.

I dismiss the Landlord's Application in its entirety, without leave to reapply. Because the Landlord was not successful in this Application, I make no award for reimbursement of the Application filing fee.

Conclusion

For the reasons provided above, I dismiss the Landlord's Application in its entirety, without leave to reapply. This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: August 18, 2022

Residential Tenancy Branch