Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ROYAL PACIFIC REALTY CORP.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MND, MNSD, FF

Introduction

This hearing dealt with "landlord SH's" application against tenant LB ("tenant") and "tenant NS" only, pursuant to the *Residential Tenancy Act* ("*Act*") for:

- a monetary order for unpaid rent and for damage to the rental unit, pursuant to section 67;
- authorization to retain the tenants' security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants, pursuant to section 72.

This hearing also dealt with all three tenants' application against "landlord RPRC" only, pursuant to the *Act* for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- authorization to obtain a return of double the value of the security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The tenant and both landlords' agent, AD ("landlord") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that he is a property manager and he has authority to represent both landlord SH and landlord RPRC as an agent at this hearing. The tenant confirmed that she had authority to speak on behalf of tenant NS and "tenant CV," who both did not appear at this hearing, as an agent. The landlord confirmed that landlord SH is now a current landlord for this property and landlord RPRC was named in the parties' tenancy agreement. This hearing lasted approximately 74 minutes in order to allow both parties to fully present their submissions.

Both parties confirmed receipt of the other party's application for dispute resolution hearing packages. In accordance with sections 89 and 90 of the *Act*, I find that both parties were duly served with the other party's application.

Issues to be Decided

Is either party entitled to the relief as noted above?

Background and Evidence

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

Both parties agreed to the following facts. This tenancy began on September 1, 2014 and ended on July 31, 2015. The tenancy agreement indicates a fixed term ending on March 31, 2015, after which the tenants were required to vacate the rental unit. Monthly rent in the amount of $1,750.00 was payable on the first day of each month. A security deposit of $1,000.00 was paid by the tenants and the landlord continues to retain the deposit. I note that this deposit amount is in excess of the half month's rent allowable under section 19 of the *Act*, as the landlord was only permitted to charge $875.00 for the security deposit. A copy of the written tenancy agreement was provided for this hearing. A move-in condition inspection report was not completed for this tenancy but a move-out condition inspection report was completed. The landlord received a forwarding address from the tenants on August 27, 2015, by way of a text message.

The tenant said that she agreed verbally and by way of a text message that the landlord could retain $131.25 for carpet cleaning but that she did not indicate it in writing on the move-out condition inspection report. The tenant said that the landlord altered the move-out condition inspection report indicating that she agreed to deductions that she did not. The landlord said that he used a move-out condition inspection report from previous tenants in the tenancy immediately before this tenancy, and combined it together with the move-out condition inspection report for the current tenants, on the same form.

Landlord SH seeks a monetary order of $2,243.00 for cleaning, repairs, damages and rental loss. Landlord SH also seeks to recover $50.00 filing fee paid for its application.
The tenants seek a return of double the value of their security deposit, totaling $2,000.00. The tenants seek the return of $350.00 that they paid to the landlord to fix the toilet. However, the tenant agreed during the hearing that the landlord was entitled to $250.00 for the toilet replacement, so only a $100.00 return is being sought. The tenants also seek to recover $50.00 filing fee for their application.

Analysis

Landlord SH's Application

Loss of Rent

The tenant said that the landlord agreed to a four-month extension of the tenancy agreement, after the fixed term ended on March 31, 2015. She noted that the landlord requested only four months and she gave only four rent cheques to the landlord to end in July 2015. The landlord said that he agreed to four months but the tenants requested to stay longer, they did not sign a written tenancy agreement and did not advise him in writing of their intention to leave. I find that as the parties did not sign a new written tenancy agreement and they both agreed to continue this tenancy on a month-to-month basis, that this tenancy defaulted to a month-to-month basis after the end of the fixed term on March 31, 2016, as per section 44(3) of the *Act*.

Section 45 of the *Act* requires tenants to provide one month's written notice to the landlord to end a tenancy. The notice must be given on the day before rent is due. Both parties agreed that rent was due on first day of each month, as noted in the tenancy agreement. The tenants gave notice on July 17, 2015, by way of text message, to leave by July 31, 2015. Text messages are not a permitted form of service under section 88 of the *Act*. However, in accordance with section 71(2)(c) of the *Act*, I find that the landlord was sufficiently served with the tenants' notice to vacate by text message, on July 17, 2015, as the landlord said that he received the message and acted upon it. This is less than one month's notice. Therefore, I find that the tenants are liable to pay for a loss of rent to the landlord.

Section 7(1) of the *Act* establishes that tenants who do not comply with the *Act*, *Regulation* or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from tenants' non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

Based on the evidence presented, I accept that the landlord did attempt to the extent that was reasonable, to re-rent the premises after receiving notice of the tenants' intention to vacate the rental unit. The landlord posted online rental advertisements on two websites on July 17, 2015, the day he received the text message from the tenant. The landlord said that he showed the unit more than 8 times and found a new tenant as of August 15, 2015, to rent for September 1, 2015.

Landlord SH is claiming for one month's rental loss for August 2015, the period during which the property could not be re-rented due to the tenants' breach. Accordingly, I find that landlord SH is entitled to a full month's rent for August 2015 in the amount of $1,750.00 on the basis that one month is a reasonable period of time to advertise, show and re-rent the rental unit.

Other Damages and Losses

Section 67 of the *Act* requires a party making a claim for damage or loss to prove the claim, on a balance of probabilities. In this case, to prove a loss, landlord SH must satisfy the following four elements:

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 landlord SH followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

I award landlord SH $131.25 for carpet cleaning. The landlord provided a receipt for this amount. The landlord noted that the carpets were dirty when the tenants vacated. Residential Tenancy Policy Guideline 1 indicates that tenants will be held responsible for steam cleaning or shampooing carpets after a tenancy of one year. It also notes that where the tenants have deliberately or carelessly stained the carpet, they will be held responsible for cleaning the carpet regardless of the length of tenancy. The tenants resided at this rental unit for 11 months. The tenant stated that she only vacuumed the carpet when vacating, she did not shampoo or steam clean it. The tenant said that a red stain was caused by the tenants at the main door entrance during the tenancy. Therefore, I find that the tenants were responsible to complete steam cleaning or shampooing of the carpet and that they failed to appropriately clean the carpet prior to vacating.

I award landlord SH $10.00 for cleaning and $6.00 for missing light bulbs that were not replaced, of the $201.10 sought by the landlord. The landlord provided an invoice for $201.10 for supplies and cleaning as well as a description of the cleaning done. The landlord did not provide photographs of the dirty condition of the rental unit after the tenants vacated, except to show that one bowl was dirty or scratched. The tenant said that she properly cleaned the rental unit before vacating. However, the tenant said that she did not clean the blinds. As per Residential Tenancy Policy Guideline 1, the tenants are required to clean the internal window coverings, including blinds. Therefore, I award $10.00 for this cleaning, as no breakdown was given for the amount or time taken to clean the blinds only. As per Residential Tenancy Policy Guideline 1, the tenants are required to replace light bulbs during the tenancy. The tenant agreed that she did not replace missing light bulbs before vacating. Therefore, I award $6.00 for the light bulbs. The landlord's invoice indicates $10.00 plus tax for "supplies" but the landlord was unable to provide a breakdown for the supplies bought, stating only that it included light bulbs and some supplies to repair a coffee table.

I dismiss landlord SH's claim of $160.00 to diagnose and replace a stove burner. I find that the landlord failed to prove that the tenants caused the stove burner to stop working. The landlord said that the previous tenants' move-out report shows that the strove was in good, working

condition when the current tenants moved in and that he received no repair reports from these current tenants during their tenancy, indicating that there was a problem. The tenant said that this damage was already pre-existing when she moved in and that the landlord did not complete a move-in inspection report with these current tenants to show the condition of the stove when they moved in. She said that she did not report the problem to the landlord because the tenants did not cook often and did not use the damaged stove burner, as there were three other burners to use. I find that by failing to complete a move-in inspection report with these tenants, the landlord was unable to prove the condition of the stove when the tenants moved in. Regardless of the move-out condition inspection report done with the previous tenants, there is no date of when they moved out, as the report only states September 2013, more than a year prior to the current tenants' tenancy, or any indication of who may have had access to the stove after the previous tenants vacated. Therefore, I find that landlord SH failed part 2 of the above test to show that the tenants are responsible for the stove burner damage.

As landlord SH was only partially successful in this Application, I find that it is not entitled to recover the $50.00 filing fee from the tenants.

Tenants' Application

Security Deposit

The landlord continues to hold the tenants' security deposit, totalling $1,000.00. Over the period of this tenancy, no interest is payable.

Section 38 of the *Act* requires the landlord to either return the tenants' security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenants' provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act,* equivalent to double the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenants' written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenants to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

Both parties agreed that the tenants provided a written forwarding address by way of a text message. This service method is not permitted by section 88 of the *Act*. However, the landlord confirmed that he received this address from the tenant and he listed this address on his application. The landlord even provided a copy of the text message with the forwarding address from the tenant, dated August 27, 2015. Therefore, in accordance with section 71(2)(c) of the *Act*, I find that the landlord was sufficiently served with the tenants' forwarding address on August 27, 2015.

I find that the tenants effectively gave written permission to the landlord, by way of text message, for the landlord to retain $131.25 from their deposit. The tenant agreed that she did, but only revoked this permission when the parties began filing their applications and disputing these issues. Therefore, for the purposes of section 71(2)(c) of the *Act*, I find that the landlord was sufficiently served with the tenants' written permission to retain $131.25 from their deposit.

The tenancy ended on July 31, 2015. The landlord did not return the full deposit to the tenants as both parties agreed that the landlord provided a partial return cheque of $507.65 to the tenants, which was returned for insufficient funds.
I find that the landlord's right to file an application to claim for damage against the deposit was extinguished because he failed to complete a move-in condition inspection report, as required by section 24 of the *Act*. However, the landlord's right to claim against the deposit for other losses aside from damage is permitted, as a claim was made for a rental loss of $1,750.00. But the landlord's application was filed outside of the 15 day time period on September 16, 2015, when he received the forwarding address on August 27, 2015. Therefore, I find that the tenants are entitled to double the value of their security deposit from the landlord, totalling $2,000.00. I find that the doubling applies to the entire deposit of $1,000.00 because the landlord's right to claim for damage, including carpet cleaning of $131.25, was extinguished as noted above. Therefore, as per Residential Tenancy Policy Guideline 17, I find that the $131.25 should not be deducted from the total amount when determining the amount to be doubled.

Toilet Replacement

I award the tenants a return of $100.00 of the $350.00 already paid to the landlord for the toilet replacement at the rental unit. The tenant agreed that $250.00 was owed to the landlord because one of the tenants broke the lid on the toilet. The landlord said that he had to replace the whole toilet and it was done after the tenants vacated because the tenants failed to allow a contractor to come into the unit to complete the work while they were still living there. The tenant said that access was provided to the contractor and the landlord failed to replace the toilet in a timely manner. I find that the landlord failed to produce a receipt for the toilet replacement of $350.00, despite having a receipt and ample time to submit it since the parties filed their applications in September and October 2015. The tenant provided a printout of estimates for new toilets ranging between $179.00 and $448.00.

As the tenants were successful in their application, I find that they are entitled to recover the $50.00 filing fee.

In accordance with section 72 of the *Act*, I have offset the landlord's monetary order against the tenants' security deposit.

Conclusion

I issue a monetary order in the three tenants' favour in the amount of $252.75 against landlord RPRC only, as the tenants' application was only filed against the one landlord. Landlord RPRC must be served with this Order as soon as possible. Should landlord RPRC 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.

Landlord SH's application to recover the $50.00 filing fee 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: March 29, 2016

Residential Tenancy Branch