Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding VALLEY REALTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND MNSD FF

Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Landlord on August 5, 2016. The Landlord filed seeking to obtain monetary relief for: damage to the unit site or property; to keep all or part of the security and/or pet deposit; and to recover the cost of the filing fee.

The hearing was conducted via teleconference and was attended by two agents for the corporate Landlord (the Landlords) and the female Tenant. Each person gave affirmed testimony and the Tenant submitted she was representing both Tenants. Therefore, for the remainder of this decision, terms or references to the Landlord or Tenants importing the singular shall include the plural and vice versa, except where the context indicates otherwise.

I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process; however, each declined and acknowledged that they understood how the conference would proceed.

Section 2.12 of the Rules of Procedure (hereinafter referred to as the Rules) allows a respondent to file an application for dispute resolution to counter a related application. That counter application is referred to as a cross application. The Rules stipulate that the issues identified in the cross application must be related to the issues identified in the application being countered or responded to. When making a cross-application, a party must apply as soon as possible and so that the service provisions in Rule 3.15 are met.

Five months after the Landlord filed their application the Tenants filed an application for Dispute Resolution on January 2, 2017, seeking monetary compensation for their services for cleaning and repairs; compensation for unusable furnishings; loss of space;

and for labour costs to pack and move the owner's belongings; and return of their security deposit.

After consideration of the foregoing, I found that the Tenants' application was not sufficiently related to the issues listed in the Landlord's application. Furthermore, I do not find the Tenants filed their application "as soon as possible" for it to be heard as a cross application during the one hour hearing that had been scheduled to hear the Landlord's application, pursuant to Rule of Procedure 2.12.

Accordingly, I severed the two applications to be heard during separate hearings and I continued to hear the matters relating to the Landlord's application; as that application was filed five months prior to the Tenants' application.

The parties will be sent a Notice of Reconvened hearing with a date and time when the Tenants' application will be heard. Both parties were advised that I would be making findings relating to the disbursement of the security deposit as it relates to the Landlord's application. Both parties were given the opportunity to comment on the aforementioned and no issues or concerns were raised.

The Tenant confirmed receipt of the application, notice of hearing documents, and the Landlord's evidence. No issues regarding service or receipt of that evidence were raised. The Tenant stated that her documentary evidence had been submitted on her file, which had been scheduled to be heard at the same time as the Landlord's application in error. As such, I accepted the relevant submissions from both parties as evidence for these proceedings.

Both parties were provided with the opportunity to present relevant oral evidence, to ask questions, and to make relevant submissions. Although I was provided a considerable amount of evidence, including verbal testimony and written submissions, with a view to brevity in writing this decision I have only summarized the parties' respective positions below.

Issue(s) to be Decided

1. Has the Landlord proven entitlement to $2,045.00 monetary compensation?
2. Is the Landlord entitled to retain the full security deposit?

Background and Evidence

The parties entered into a written fixed term tenancy agreement which commenced on August 1, 2013 and was initially scheduled to end on July 31, 2014. The parties entered into subsequent fixed term with the last term ending on July 25, 2016, at which time the Tenants were required to move out. Rent of $2,050.00 was payable on the first of each month and on July 29, 2016 the Tenants paid $2,045.00 which was comprised of a $1,025.00 security deposit plus a $1,020.00 pet deposit.

The rental unit was described as being a 3 level single detached home with 4 bathrooms, 4 bedrooms, and a den. The actual age of the house was unknown; however, the Landlords estimated it may have been built sometime around 2008.

Both parties were represented at the move in inspection and each signed the condition inspection report form on August 1, 2013. Both parties were represented at the move out inspection and each singed the condition inspection report form on July 25, 2016.

The Landlords now seek to retain the full $2,045.00 deposits as full compensation for the estimated $6,759.00 damages caused to the following: the back deck; the fence; the aluminum railing spindle on the deck; 2 white wooden blinds; a torn leather cushion; a missing rug; damaged queen mattress; 16 bolt holes that were drilled into the concrete patio; downstairs hand rail damage; kitchen chairs and table damage; and two missing grey and black folding chairs.

The Tenant disputed the Landlords' submissions as summarized below:

1) The house, deck, and fence were well used and many areas were in need of new paint, stain, repairs, and cleaning at the outset of the tenancy;
2) The owners vacated the property leaving numerous personal possessions and older furniture throughout the house which had to be packed up by the Tenants. Several months after the start of the tenancy the Landlord or owner arranged to have those possessions picked up and moved to storage;
3) The furniture which remained was old, had existing damage, and was of a lesser quality which showed the effects of normal wear and tear during their three years of use;
4) The Tenant confirmed that many of the items that were packed up were either damaged; not in working order; or not being used by the Tenants;
5) The Landlords failed to take an inventory of the items put in storage and many of the items claimed by the Landlords in this application relate to items that were placed in storage;

6) When the move out inspection was conducted the owner's possessions were still in storage; so the Tenants should not be responsible for lost or damaged items that had been in storage.
7) The Landlords completed the move out condition inspection report form which indicated they were only seeking to recover $150.00 plus $45.00 labour from the security deposit for the black railing being cut and $100.00 from the pet deposit to repaint the stairs and deck. This is what the Tenant signed agreement to on the condition inspection report form.

In closing the Landlords argued the Tenant was being defensive during the move out inspection so they decided to make it simple and only write the three dollar amounts on the move out condition inspection report form.

Analysis

Section 62 (2) of the *Act* stipulates that the director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this *Act*. After careful consideration of the foregoing; documentary evidence; and on a balance of probabilities I find pursuant to section 62(2) of the *Act* as follows:

Section 7 of the *Act* provides as follows in respect to claims for monetary losses and for damages made herein:

> 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
>
> 7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Section 67 of the Residential Tenancy *Act* states that without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Policy Guideline 16 provides that the party making the claim for damages must satisfy each component of the following: the other party failed to comply with the *Act,* regulation or tenancy agreement; the loss or damage resulted from that non-compliance; the

amount or value of that damage or loss; and the applicant acted reasonably to minimize that damage or loss. I concur with this policy and find it is relevant to the Landlord's application for Dispute Resolution.

It is important to note that where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails. In this case, the Landlord has the burden of proof.

Based on the above, I find the Landlords submitted insufficient evidence to prove they suffered a loss of $6,759.00. I make this finding in part, as the Landlords failed to compile an itemized list of the owner's possessions at the start of the tenancy and those that were moved to storage. I accept the Tenant's submissions that they are not responsible for the owner's possessions that were packed up and moved out of the rental unit and then lost or damaged during that time. Furthermore, pursuant to section 7 of the *Act,* the owner and Landlords were required to do what was reasonable to mitigate or minimize any potential loss and not leave personal possessions scattered about the house for the Tenants to have to move and/or pack away.

The Tenant readily admitted there had been things that were not operational, such as the blinds, and furniture that was broken or not needed which were put into storage. The Tenant's willingness to disclose the aforementioned leads credibility to her submissions. I do not accept the Landlords' submissions that they could not list all of the damages on the move out condition inspection report form because the Tenant was being defensive. If that was truly the case the Landlord should not have listed dollar amounts on the condition inspection report form relating to the deductions they agreed upon.

I find the Tenant's submissions that the Landlords agreed to only the deductions listed on the move-out condition inspection report form to be probable given the circumstances presented to me during the hearing. As such, I grant the Landlord's application in the amount of **$295.00** ($150.00+ $45.00 + $100.00), pursuant to section 67 of the *Act.* The balance of the Landlord's application is dismissed, without leave to reapply.

Section 72(1) of the Act stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) *[starting proceedings]* or 79 (3) (b) *[application for review of director's decision]* by one party to a dispute resolution proceeding to another party or to the director.

The Landlord has partially succeeded with their application; therefore, I award recovery of the **$100.00** filing fee, pursuant to section 72(1) of the Act.

This award meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit plus interest as follows:

The Residential Tenancy Branch interest calculator provides that no interest has accrued on the $1,025.00 security deposit and $1,020.00 pet deposit since July 29, 2013.

Damages	$ 295.00
Filing Fee	100.00
SUBTOTAL	$ 395.00
LESS: Pet Deposit	-1,020.00
LESS: Security Deposit	-1,025.00
Offset amount due to the Tenants	**$1,650.00**

The Landlord is hereby ordered to pay the Tenants the sum of **$1,650.00** forthwith.

In the event the Landlord does not comply with the above Order, the Tenants have been issued a Monetary Order for **$1,650.00.** This Order must be served upon the Landlord and may be enforced through Small Claims Court.

Conclusion

The Landlord was only partially successful with their application and were ordered to return the $1,650.00 balance of the security and pet deposits to the Tenants.

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: February 09, 2017

Residential Tenancy Branch