Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNDCL, FFL, MNDCT, MNSD, FFT

Introduction

This was a cross application hearing that dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for the return of the security deposit, pursuant to section 38;
- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

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

- a Monetary Order for damages, pursuant to section 67;
- a Monetary Order for damage or compensation under the Act, pursuant to section 67;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants, pursuant to section 72.

Both parties 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 tenant testified that the landlord was served the notice of dispute resolution package by registered mail on August 10, 2018. The landlord testified that he received the package on August 12-13, 2018. I find that the landlord was served with this package in accordance with section 89 of the *Act.*

The landlord testified that the tenant was served the notice of dispute resolution package by registered mail; however, he could not recall on what date. The tenant

testified that she received the package on July 26, 2018. I find that the tenant was served with this package on July 26, 2018, in accordance with section 89 of the *Act.*

Issue(s) to be Decided

1. Is the tenant entitled to a Monetary Order for the return of the security deposit, pursuant to section 38 of the *Act*?
2. Is the tenant entitled to a Monetary Order for damage or compensation under the *Act*, pursuant to section 67 of the *Act*?
3. Is the tenant entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?
4. Is the landlord entitled to a Monetary Order for damages, pursuant to section 67 of the *Act*?
5. Is the landlord entitled to a Monetary Order for damage or compensation under the Act, pursuant to section 67 of the *Act*?
6. Is the landlord entitled to retain the tenant's security deposit, pursuant to section 38 of the *Act*?
7. Is the landlord entitled to recover the filing fee for this application from the tenants, pursuant to section 72 of the *Act*?

Background and Evidence

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

Both parties agreed to the following facts. This tenancy began on July 1, 2017 and ended on June 30, 2018. Monthly rent in the amount of $1,900.00 was payable on the first day of each month. A security deposit of $950.00 and a pet damage deposit of $950.00 were paid by the tenant to the landlord. The landlord is currently holding both deposits and filed for dispute resolution to retain the deposits on July 16, 2018. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

Both parties agree that a move in inspection and inspection report were completed and signed by both parties on June 29, 2017. The move in inspection report was entered into evidence. Both parties agree that a move out condition inspection was completed

by both parties and that the tenant refused to sign the move out inspection report because she did not agree with the damage assessment.

The landlord testified that on May 22, 2018 he posted a Two Month Notice for Landlord's Use of Property with an effective date of July 31, 2018 (the "Two Month Notice") on the tenant's door. The tenant confirmed receipt of the Two Month Notice sometime at the end of May 2018.

Both parties agree that in a letter dated June 18, 2018, the tenant provided the landlord with 10 days' notice of her intention to move out prior to the effective date on the Two Month Notice. The letter dated June 18, 2018 also stated the tenant's forwarding address for the return of her deposits. Both parties agree that the tenant paid full rent for June 2018 and that the landlord did not provide the tenant with one month's free rent. The tenant is seeking one month's rent in the amount of $1,900.00, pursuant to the Two Month Notice.

The landlord testified that the tenant caused significant water damage to the laminate floors in the subject rental property requiring that they be replaced. The landlord entered photographs into evidence showing water damage to the laminate flooring. The landlord testified that the tenant left large pet urine stains on the carpet in the bedroom and that the carpet also required replacing. The landlord entered photographs of the large stains on the bedroom carpet. The landlord testified that the photographs were taken shortly after the tenant had moved out and returned the keys. The move in condition inspection report states that the flooring in the subject rental property is all in good condition.

The landlord testified that the subject rental property was a new build and that the tenant was the first person to live in it. The tenant entered into evidence a quote in the amount of $2,850.00 plus GST. The tenant testified that he had the flooring replaced and paid this amount.

The tenant testified that she didn't know of the damage to the laminate before she moved out because she had a carpet on the laminate floor. The tenant entered into evidence a letter from a repair company which alleges that the flooring is made of sub-par materials and that the weight of the kitchen island may have caused the damage to the floor. The letter goes on to say that in order to tell if the flooring was damaged by water, they would need to cut a piece of the floor out to examine it.

The property manager testified that she did not believe the developer had used sub-par materials and that no other units in the building reported the same damage as that seen

to the laminate floors in the subject rental property. The property manager also testified that the kitchen island is approximately 10-15 feet from the area most damaged by water and that the area immediately adjacent to the kitchen island was not damaged.

The tenant testified that she hired a carpet cleaning company to clean the carpets prior to her departure and that the carpet stains were lighter after the treatment. The tenant entered into evidence a receipt from a carpet cleaning company.

Both parties agree that the landlord provided the tenant with two entry fobs when she moved into the subject rental property and that the tenant paid the landlord a fob deposit in the amount of $100.00. Both parties agree that when the tenant moved out she only returned one of the entry fobs and that the landlord did not return the fob deposit. The tenant is seeking the return of the fob deposit in the amount of $100.00

The landlord testified that it took 20 days to repair the damage which prevented him from moving into the subject rental property on July 1, 2018. The landlord testified that he had to move in with his parents for those 20 days and is seeking to recover a pro-rated rent charge from the tenant for those days, pursuant to the following calculation:

$1,900.00 (rent)/ 31 (days in July 2018) X 20 (days to repair) = $1,125.00

The landlord has applied to retain the tenant's security and pet damage deposits in partial satisfaction of his monetary claim and the tenant has applied for the return of double her security and pet damage deposits.

Analysis

Landlord's Claim

Policy Guideline 16 states that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due.

In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Section 37 of the *Act* states 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.

Based on the landlord and property manager's testimony, the photographic evidence of the landlord, and the move in and move out inspection reports, I find that the tenant breached section 37 of the *Act* by damaging the laminate flooring and staining the carpet. I gave the letter from the repair company, submitted by the tenant, very little weight as I found that it was not in harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those circumstances (*Faryna v. Chorny* (1952), 2 D.L.R. 354 (B.C.C.A.)).

The damage in the photographs submitted by the landlord appeared to be consistent with water damage and the fact that the damage was not located near the kitchen island which is described as the potential cause of the damage, is incongruous.

Policy Guideline #40 states that the useful life for carpet and tile is 10 years (120 months). I find that the useful life for laminate is also 10 years. At the time the tenant moved out, there was approximately 108 months of useful life that should have been left for the flooring of this unit. I find that since the unit required reflooring after only 12 months, the tenant is required to pay according to the following calculations:

> $2,850 X 1.05 (GST) = $2,992.50 (cost of flooring) / 120 months (useful life of flooring) = $24.94 (monthly cost)
>
> $24.94 (monthly cost) * 108 months (expected useful life of flooring after tenant moved out) = $2,693.52

Policy guideline 16 states that the purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. I find that since the landlord did not pay rent to his parents while living at their house during the repair of the subject rental property, he did not suffer a monetary damage for the delay in moving into the subject property. As the tenant did not suffer a monetary loss, I dismiss his claim for remuneration for the 20 days he lived with his parents.

<u>Tenant's Claim</u>

Section 50 of the *Act* states:

> **50** (1)If a landlord gives a tenant notice to end a periodic tenancy under section 49 *[landlord's use of property]* or 49.1 *[landlord's notice: tenant ceases to qualify]*, the tenant may end the tenancy early by
>
> (a)giving the landlord at least 10 days' written notice to end the tenancy on a date that is earlier than the effective date of the landlord's notice, and
>
> (b)paying the landlord, on the date the tenant's notice is given, the proportion of the rent due to the effective date of the tenant's notice, unless subsection (2) applies.
>
> (2)If the tenant paid rent before giving a notice under subsection (1), on receiving the tenant's notice, the landlord must refund any rent paid for a period after the effective date of the tenant's notice.
>
> (3)A notice under this section does not affect the tenant's right to compensation under section 51 *[tenant's compensation: section 49 notice]*.

Section 51of the *Act* states in part:

> **51** (1)A tenant who receives a notice to end a tenancy under section 49 *[landlord's use of property]* is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.
>
> (1.1)A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.
>
> (1.2)If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

Pursuant to sections 50 and 51 of the *Act*, I find that the tenant was entitled to receive one month’s free rent, in the amount of $1,900.00 from the landlord resulting from the landlord’s issuance of the Two Month Notice.

I find that since the tenant did not return both entry fobs to the landlord, she is not entitled to the return of the $100.00 fob fee.

Section 38 of the Act requires the landlord to either return the tenant's 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 tenant's 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 tenant's 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 tenant to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

In this case, the tenancy ended on June 30, 2018 and the tenant's forwarding address was provided to the landlord in writing on June 18, 2018. Pursuant to section 38 of the Act, the landlord had 15 days from the end of the tenancy to file for dispute resolution, in this case, the landlord had until July 15, 2018 to file. The landlord filed for dispute resolution on July 16, 2018, one day late. I therefore find that the tenant is entitled to receive double her security and pet damage deposits as per the below calculation:

$950.00 (security deposit) * 2 (doubling provision) = $1,900.00
$950.00 (pet damage deposit) * 2 (doubling provision) = $1,900.00
Total = $3,800.00

As both parties were partially successful in their applications, I find that neither party is entitled to recover their $100.00 filing fee from the other party.

Section 72(2) states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit or pet damage deposit due to the tenant.

Conclusion

I issue a Monetary Order to the tenant under the following terms:

Item	**Amount**
Doubled deposits	$3,800.00
One month's free rent	$1,900.00
Less flooring cost	-$2,693.52
TOTAL	**$3,006.48**

The tenant is provided with this Order in the above terms and the landlord must be served with this Order as soon as possible. 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.

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: November 22, 2018

Residential Tenancy Branch