Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the "*Act*") for:

- return of the security deposit pursuant to section 38; and,
- and reimbursement of the filing fee pursuant to section 72.

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

- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and,
- authorization to recover the filing fee for this application pursuant to section 72.

Both parties attended the hearing and had full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions. The landlord acknowledged receipt of the tenant's Notice of Hearing and Application for Dispute Resolution. Neither party raised issues of service. I find the parties were served in accordance with the *Act*.

Issue(s) to be Decided

Are the tenants entitled to a return of the security deposit pursuant to section 38?

Are the tenants entitled to reimbursement of the filing fee pursuant to section 72?

Are the landlords entitled to a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67?

Are the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38?

Are the landlords entitled to reimbursement of the filing fee pursuant to section 72?

Background and Evidence

The parties agreed that the tenancy ended on June 30, 2019. The monthly rent was $1,995.00 and the landlords hold a $997.50 security deposit. The parties also agreed that they met on July 1, 2019 and they performed a condition inspection report move-out wherein the landlord stated that the rental unit left in acceptable condition and they would return the entire security deposit. The parties did not execute a written condition inspection report during this meeting.

The tenants sent their forwarding address to the landlords electronically on July 2, 2019. The landlords completed a written condition inspection report after the tenancy ended without the participation of the tenants.

The landlord testified that, after completing the condition inspection, he found water damage behind the washer and dryer unit. The landlords testified that the water connections from the house to the washer and dryer unit had leaked and caused damage to the wall. The landlord acknowledged that the washer and dryer unit were provided in the rental and the unit was not connected by the tenant. However, the landlords testified that they had instructed the tenants to regularly inspect the rental unit for damage.

The tenant testified that she was not aware of any water leak behind the washer and dryer unit. She testified that she could not see behind the washer and dryer unit and she was not aware of any water leaks during the tenancy. The tenant testified that they never pulled the washer and dryer unit out during the tenancy because the unit did not have wheels.

The landlord testified that it cost $300.00 to repair the water damage to the drywall. The tenant argued that this invoice was not credible because the invoice did not state the name of a contractor business or charge any sales taxes. The landlords admitted that the repairs were performed by a friend.

The landlord also claimed $80.00 for the cost of replacing an entry fob. The landlords testified that the fob did not open the garage doors when the fob was returned. The landlords testified that they tried to have the fobs reprogrammed but they still did not work so they purchased a replacement fob at a cost of $80.00. The tenant testified that the fob worked for pedestrian

doors but they did not use the fob for the garage doors. Regardless, the tenant testified that they did not damage the fob.

The landlords also argued that the tenants were responsible for a $100.00 moving fee and a $50.00 moving penalty owed to the strata organization.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy agreement or the *Act*, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. The purpose of compensation is to put the claimant who suffered the damage or loss in the same position as if the damage or loss had not occurred. Therefore, the claimant bears the burden of proof to provide sufficient evidence to establish **all** of the following four points:

1. The existence of the damage or loss;
2. The damage or loss resulted directly from a violation – by the other party – of the *Act*, regulations, or tenancy agreement;
3. The actual monetary amount or value of the damage or loss; and
4. The claimant has done what is reasonable to mitigate or minimize the amount of the loss or damage claimed, pursuant to section 7(2) of the *Act*.

In this case, the onus is on the landlord to prove entitlement to a claim for a monetary award. The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

I find that the landlords have timely filed their application for dispute resolution. Pursuant to section 38, the landlords have fifteen days after the tenants vacated the rental unit and they provided their forwarding address. As I have found that the tenants had provided their forwarding address on July 2, 2019, the landlords had until July 17, 2019 to dispute the return of the deposit. Since the landlords filed their application on July 17, 2019, I find the landlords have complied with section 38 by filing their dispute on time and I accordingly deny the tenants' application for a monetary order in the amount of double the security deposit.

I find that the landlords have not provided sufficient evidence to establish that the water damage resulted from a violation of the *Act*, regulations or tenancy agreement. Section 32 of the Act states the tenants' obligations as follows:

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(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.
(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

I find that the landlords have not provided sufficient evidence to establish that the tenants breached any of the obligations listed in section 32 of the Act. The landlord has not provided sufficient evidence to establish that the tenants caused the water leak or were aware of the water leak. Further, even the landlords did not notice the water leak during the inspection walk through on June 30. The leak was only notice after the washer and dryer were pulled out by the landlords and I find that the tenants are not under any obligation to pull out a heavy appliance, without wheels, to check behind them.

The landlords also argued that the tenants had an obligation to look behind the washer and dryer because the landlord distributed periodic maintenance demands to the tenants. However, I do not find any basis upon which the landlords can unilaterally impose further duties upon the tenant in addition to the duties set forth in section 32 of the *Act*.

For the forgoing reasons, I dismiss the landlords' application for a monetary award for the water damage.

Based upon the testimony of the landlords and the exhibits presented, find that the landlord has produced sufficient evidence to establish that the key fob became damaged during the tenancy. I further find that the landlords reasonably tried to mitigate their loss by attempting to have the key fob reprogrammed. Accordingly, I grant the landlords' application for a monetary order for $80.00 to replace the key fob.

I find that the landlords have not provided sufficient evidence to prove that the tenants are responsible for the $100.00 moving fee or the $50.00 moving penalty. The landlord has not provided any documentary evidence to show that the landlord has incurred these fines or penalties as a result of the tenants' conduct. As such, I find that the landlords have failed to establish that they are entitled to reimbursement of these expenses from the tenants. Accordingly, I dismiss the landlords' application for a monetary order regarding the strata fees and penalties.

Since both the tenants and the landlords were partially successful in this matter, I dismiss both parties' applications for reimbursement of their filing fees as offsetting.

For the forgoing reasons, I find that the tenants are entitled to a return of the $917.50 from the balance of their security deposit, as calculated below.

Item	Amount
Security deposit held by landlords	$997.50
Less: key fob	-$80.00
Total	**$917.50**

Conclusion

I grant the tenants a monetary order in the amount of **$917.50.** If the landlords fail to comply with this order, the tenants may file the order in the Provincial Court to be 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 13, 2019

Residential Tenancy Branch