Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNDL-S

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on July 31, 2019 (the "Application"). The Landlord applied for compensation for damage to the unit and sought to keep the security and pet damage deposits. The Landlord also sought reimbursement for the filing fee.

The Landlord and Tenant appeared at the hearing. I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

The Landlord submitted evidence prior to the hearing. The Tenant did not. I addressed service of the hearing package and Landlord's evidence and the Tenant confirmed receipt of these.

The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered all documentary evidence pointed to during the hearing and all oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Landlord entitled to compensation for damage caused to the rental unit?

2. Is the Landlord entitled to keep the security and pet damage deposits?

3. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

The Landlord sought $1,250.00 in compensation for damage to the flooring in the living room of the rental unit.

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. It is between the Landlord, Tenant and Tenant's son in relation to the rental unit. The tenancy started January 15, 2016 and was for a fixed term of one year. The tenancy then became a month-to-month tenancy. The Tenant paid a $625.00 security deposit and $625.00 pet damage deposit.

The parties agreed the tenancy ended July 31, 2019.

The parties agreed the Tenant provided the Landlord her forwarding address on the move-out Condition Inspection Report (CIR) on July 31, 2019.

The parties agreed the Landlord did not have an outstanding monetary order against the Tenant at the end of the tenancy. Both agreed the Tenant did not agree in writing at the end of the tenancy that the Landlord could keep some or all of the security or pet damage deposits.

The parties agreed on the following. The parties did a move-in inspection January 15, 2016. The unit was empty at the time. Both parties signed the move-in CIR.

A copy of the move-in CIR was submitted as evidence.

The Tenant testified that she received a copy of the CIR on move-in. She could not recall when or how but testified that it was probably dropped off to her. The Landlord could not recall when or how the CIR was provided to the Tenant on move-in but testified that it was probably sent by email or given to the Tenant personally.

The parties agreed on the following. The parties did a move-out inspection January 31, 2019. The unit was empty at the time. A CIR was completed. Both parties signed the move-out CIR.

A copy of the move-out CIR was submitted as evidence.

The Tenant testified that she thinks she was given a copy of the move-out CIR at the inspection but that she might have received it in the mail with the dispute package. The Landlord testified that the move-out CIR was emailed to the Tenant July 31, 2019.

The Landlord testified as follows in relation to the claim.

The letter from the realtor in evidence states that the Tenant had a dog pen with soaked pee pads in it on the living room floor when the realtor did showings. The flooring in the living room was damaged from moisture that escaped the pads. The damage is shown in the photos and video submitted. The photos and video show the swelling in the creases of the flooring.

The floor plan with a shaded area submitted shows where the connected laminate flooring is throughout the rental unit.

The email to the strata submitted shows the Landlord asked if the strata had the original flooring available to replace the damaged portion. The email shows the strata did not have extra pieces of the original flooring.

The MLS listing submitted shows the square footage of the living and dining area. The MLS listing also shows the original listing price of $449,000.00 and sale price of $417,000.00.

A spreadsheet of the estimated cost of replacing the flooring was submitted. It is based on an inexpensive piece of laminate the Landlord found in the store for $1.99 per square foot. The spreadsheet is also based on the costs outlined in the Installation Specification Sheet from a hardware store, a photo of which was submitted. The spreadsheet is based on a low estimate of the square footage of the flooring.

The stores she spoke to would not provide an estimate for replacing the flooring without attending the rental unit. There was a cost associated with this. Further, the rental unit was sold and the Landlord no longer had possession as of August 01, 2019.

The website information and manuals submitted show that the Landlord could not simply fix the flooring and that the only option was to replace it.

The Tenant admitted to the damage in the move-out CIR.

The claim is based on the estimate for replacing the flooring and the money lost in the sale of the rental unit. The Landlord is not seeking the full amount of the estimate or loss in the sale. She is only seeking to keep the security and pet damage deposits.

The move-in and move-out CIR shows the living room floor was fine on move-in and damaged on move-out.

The Tenant testified as follows.

She agrees about the damage done. The letter from the realtor is not true. She did have a pee pen in the rental unit, but it was not in the location of the damage. It is not true that there were soaked pee pads in the pen when the realtor attended.

She had a dog that passed away in 2017. The dog had seizures and would loose control of its bladder. Prior to the Tenant realizing this, the dog had a seizure on the rug and urinated on the rug. The Tenant did not notice this right away and so it was not cleaned up right away. This is what caused the damage.

She is not denying that the flooring was damaged by her dog. She agrees that the damage is shown in the photos and video submitted.

I asked the Tenant if she disputed the Landlord's testimony and evidence about the estimate to replace the flooring, the square footage or the fact that the rental unit was devalued. I did not understand the Tenant to be disputing these points given her response. The Tenant said she assumes the information provided is correct.

The Tenant wrote the following on the move-out CIR:

> minor wear + tear after 3.5 yrs due to dog seizure

Analysis

Section 7 of the *Residential Tenancy Act* (the "*Act*") states:

> (1) If a…tenant does not comply with this Act…or their tenancy agreement, the non-complying…tenant must compensate the [landlord] for damage or loss that results.

> (2) A landlord…who claims compensation for damage or loss that results from the [tenant's] non-compliance…must do whatever is reasonable to minimize the damage or loss.

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

> 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:
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> - 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.

Under sections 24 and 36 of the *Act*, landlords and tenants can extinguish their rights in relation to the security and pet damage deposits if they do not comply with the *Act* and *Residential Tenancy Regulation* (the "*Regulations*"). Further, section 38 of the *Act* sets out specific requirements for dealing with a security and pet damage deposit at the end of a tenancy.

Based on the testimony of both parties, I accept that the Tenant participated in the move-in and move-out inspections and therefore I find the Tenant did not extinguish her rights in relation to the security or pet damage deposits under sections 24 or 36 of the *Act*.

Based on the testimony of both parties, I accept that the Landlord participated in the move-in and move-out inspections, completed the CIR and gave a copy to the Tenant at move-in and move-out. It is not clear from the testimony of the parties whether the Landlord complied with section 18 of the *Regulations*. The Tenant did not raise this as an issue. In the circumstances, I do not find that the Landlord failed to comply with section 18 of the *Regulations*. Nor do I find the Landlord extinguished her rights in relation to the security or pet damage deposits under sections 24 or 36 of the *Act*.

Based on the testimony of both parties, I accept that the tenancy ended July 31, 2019.

Based on the testimony of both parties, I accept that the Tenant provided the Landlord her forwarding address on the move-out CIR on July 31, 2019.

Pursuant to section 38(1) of the *Act*, the Landlord was required to repay the security and pet damage deposits or claim against them within 15 days of July 31, 2019, the date the tenancy ended and the date the Landlord received the Tenant's forwarding address. The Application was filed July 31, 2019, within the 15-day time limit. The Landlord complied with section 38(1) of the *Act*.

Section 37 of the *Act* addresses a tenant's obligations upon vacating a rental unit and states:

> (2) When a tenant vacates a rental unit, the tenant must
>
> > (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear…

The Tenant acknowledged that her dog caused the damage to the living room flooring shown in the photos and video submitted.

Policy Guideline 01 deals with reasonable wear and tear and states:

> Reasonable wear and tear refers to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion.

I find the damage to the flooring as shown in the photos and video is beyond reasonable wear and tear. The damage only occurred in the living room where urine got on the floor, not in other areas of the rental unit. I do not find the damage is natural deterioration that occurred from the normal use of the rental unit. When a tenant has a pet, it is reasonable to expect that the pet will not urinate on the flooring or that the tenant will ensure any urine is cleaned up immediately so as not to cause damage. Therefore, I do not find damage caused by urine left on the flooring to be natural deterioration that occurs through reasonable use of the rental unit. I acknowledge that the Tenant did not notice the urine and that the Tenant did not damage the flooring on purpose. However, the Tenant is still responsible for the cost of fixing the damage as it

is not reasonable wear and tear. I am satisfied the Tenant breached section 37 of the *Act* by leaving the flooring damaged beyond reasonable wear and tear.
Based on the testimony of the Landlord and materials submitted, I accept that the damaged flooring had to be replaced. I did not understand the Tenant to dispute this.

Based on the testimony of the Landlord and emails with the strata submitted, I accept that the strata did not have extra pieces of flooring and that the laminate used had been discontinued. Therefore, I accept that the flooring in the whole area shown in the shaded floor plan had to be replaced. I did not understand the Tenant to dispute this.

Based on the testimony of the Landlord, spreadsheet submitted and materials submitted as a basis for the spreadsheet, I accept that replacing the flooring would cost approximately $1,360.81. I did not understand the Tenant to dispute this.

I accept that the estimate of $1,360.81 is reasonable given the square footage and how the Landlord came to this estimate as shown in the spreadsheet and supporting materials. I accept that the Landlord based the estimate on reasonable prices as obtained from a hardware store.

Based on the testimony of the Landlord and MLS listing, I accept that the rental unit was listed for $449,000.00 and sold for $417,000.00. I decline to rely on the email from the relator submitted given it is an unsigned email and not a signed witness statement. However, I accept that the rental unit lost value due to the damaged flooring as this accords with common sense. I do not accept that the difference in the listing price and sale price is due solely to the damaged flooring in the absence of further evidence to support this. However, I accept that some value was lost. I did not understand the Tenant to dispute this.

I note that the email with the strata submitted indicates that the flooring was eight years old. This is supported by the MLS listing. Policy Guideline 40 deals with the useful life of building elements. Based on the useful life for hardwood, I find the useful life for laminate is 20 years. The flooring had been used for eight years. Therefore, I do not find the Landlord is entitled to the cost of brand new flooring. Taking into account the useful life of the flooring, I find the Landlord is entitled to $816.49 ($1,360.81 / 20 = $68.04 x 12 years of useful life remaining = $816.49).

Given the Landlord was successful in this application, I award the Landlord reimbursement for the $100.00 filing fee pursuant to section 72(1) of the *Act*.

In total, the Landlord is entitled to $916.49. The Landlord can keep $916.49 of the security and pet damage deposits pursuant to section 72(2) of the *Act*. The Landlord is to return the remaining $333.51 to the Tenant. The Tenant is issued a monetary order for this amount.

Conclusion

The Landlord is entitled to $916.49. The Landlord can keep $916.49 of the security and pet damage deposits. The Landlord is to return the remaining $333.51 to the Tenant. The Tenant is issued a monetary order for this amount. If the Landlord does not return this amount, this Order must be served on the Landlord. If the Landlord does not comply with the Order, it may be filed in the Provincial Court (Small Claims) 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 *Act*.

Dated: November 27, 2019

Residential Tenancy Branch