Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL; MNSD, FFT

Introduction

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

- a monetary order for damage to the rental unit, pursuant to section 67;
- authorization to retain the tenants' pet damage deposit, pursuant to section 38;
- authorization to recover the filing fee for his application, pursuant to section 72.

This hearing also dealt with the tenants' application pursuant to the *Act* for:

- authorization to obtain a return of double the value of the tenants' pet damage deposit, pursuant to section 38;
- authorization to recover the filing fee for their application, pursuant to section 72.

The landlord and the two tenants, female tenant ("tenant") and "male tenant" (collectively "tenants") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 56 minutes.

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

Both parties affirmed that they had no objections to the other party's evidence, and they were ready to proceed with the hearing.

Issues to be Decided

Is the landlord entitled to a monetary order for damage to the rental unit?

Is the landlord entitled to retain the tenants' pet damage deposit?

Are the tenants entitled to obtain a return of double the value of their pet damage deposit?

Is either party entitled to recover the filing fee for their application?

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 relevant and important aspects of both parties' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on November 1, 2017 and ended on July 30, 2019. Monthly rent in the amount of $1,500.00 was payable on the first day of each month. A security deposit of $750.00 and a pet damage deposit of $750.00 were paid by the tenants. The landlord returned the full $750.00 security deposit to the tenants and continues to retain the $750.00 pet damage deposit. A written tenancy agreement was signed by both parties. Move-in and move-out condition inspection reports were completed for this tenancy. The tenants provided a written forwarding address to the landlord on July 30, 2019, by way of the move-out condition inspection report and again on July 31, 2019, by way of email. The landlord did not have any written permission to keep the tenants' pet damage deposit of $750.00. The landlord's application to retain the tenants' pet damage deposit was filed on August 13, 2019.

The landlord seeks to retain the tenants' entire pet damage deposit of $750.00 plus the $100.00 application filing fee. The tenants seek to obtain a return of double the value of their pet damage deposit of $750.00, totalling $1,500.00, plus the $100.00 application filing fee.

The landlord seeks $750.00 to repair the rear deck at the rental unit house, which he said was chewed by the tenants' dog. He pointed to document 4, which he said was a summary of his costs, totaling $787.44. He provided receipts for $387.44 and claimed that he did the work himself, for which he charged $400.00 for 8 hours of labour at $50.00 per hour. He provided photographs of the deck before and after the repair. He claimed that he replaced the wooden railing with a metal one, and repaired the beam, posts, staircase, and deck boards. He provided estimates for the work to be done by professionals, claiming that he saved money by doing the repairs himself.

The tenants dispute the landlord's application. The tenant claimed that the damage to the landlord's deck was mainly pre-existing from before the tenants moved into the rental unit. She maintained that the deck was rotting, pointed to the landlord's photographs to prove same, and said that the landlord replaced items not caused by damage, such as the beam and railing. She confirmed that the landlord was required to replace the beam and railing anyway during the tenancy but failed to do so until after the tenants moved out, so he could claim the costs from them. She explained that the landlord replaced a whole beam on the deck because of a chew mark, and that he replaced the railing with a metal one, when he should have done so when they moved in, since the metal railing was in the backyard during the entire tenancy. She claimed that the landlord completed upgrades "above and beyond" what was required and that a simple repair, sanding, and painting could have been done. She went through the landlord's photographs, pointing out the damage caused by her dog. She noted that the move-in condition inspection report refers to damage to the deck at the start of the tenancy. During the hearing, the tenants agreed to pay the landlord $165.48 for the pet damages to the deck, based on their own research prior to the hearing.

Analysis

Landlord's Application

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim on a balance of probabilities. In this case, to prove a loss, the landlord 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 the landlord followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

I award the landlord $165.48 of the $750.00 sought for the pet damage to the rear deck at the rental unit. The tenants agreed to pay this amount during the hearing. I find that this is a reasonable amount for the repair. I find that there was some damage caused by the tenants' dog, which the tenants agreed was true, and I have awarded the above amount based on this damage. I find that some of the damage was pre-existing from when the tenants moved in, and some of the damage was also reasonable wear and tear, both of which the tenants are not responsible for.

I find that the landlord did not sufficiently prove his claim, failing to properly explain his receipts, which had handwriting all over them with different details. I also find that the landlord did not explain the damage and repairs in detail, while the tenants spent more time disputing the landlord's photographs, than the landlord did explaining the damage in his own photographs.

I find that the landlord failed to clearly indicate the condition of the deck when the tenants moved in, as the tenants alleged that much of the damage was pre-existing. The parties' move-in condition inspection report indicates "deck handrail" under "repairs to be completed at start of tenancy."

In the move-out condition inspection report, which the tenants disagreed with, the landlord indicated "severly [sic] chewed by dog" under "exterior" and "patio/balcony doors." The landlord described this as "back sun deck chewed by dog → no return of pet deposit" under "end of tenancy" and "damage to rental unit or residential property for which the tenant is responsible." In this move-out condition inspection report, the landlord did not describe the damage specifically, he did not indicate what had to be repaired or replaced, he simply indicated that he was keeping the pet damage deposit.

Tenants' Application

Section 38 of the *Act* requires the landlord to either return the tenants' pet damage deposit or file for dispute resolution for authorization to retain the pet damage 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 pet damage deposit. However, this provision does not apply if the landlord has obtained the tenants' written authorization to retain all or a portion of the pet damage 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)).

A pet damage deposit can only be used for damage caused by a pet to the residential property. Section 38(7) of the *Act* states that unless the tenants agree otherwise, the landlord is only entitled to use a pet damage deposit for pet damage. Both parties agreed that the damage to the rear deck was caused by the tenants' pet.

The tenancy ended on July 30, 2019. The tenants provided the landlord with a written forwarding address on the same date in the move-out condition inspection report. The landlord did not have written permission to retain the tenants' pet damage deposit. The landlord did not return the pet damage deposit to the tenants.

I find that the landlord filed an application for dispute resolution to claim against the pet damage deposit on August 13, 2019, which is within 15 days of July 30, 2019. Although the tenants said that they did not receive the landlord's application until August 21, 2019, the 15-day deadline is counted from when the landlord filed his application, not when it was received by the tenants. Therefore, I find that the tenants are not entitled to double the value of their pet damage deposit totaling $1,500.00.

Over the period of this tenancy, no interest is payable on the tenants' pet damage deposit. As I awarded the landlord $165.48 for the rear deck repairs, I allow the landlord to retain this amount from the tenants' pet damage deposit, leaving a balance of $584.52 owed to the tenants. I issue a monetary order to the tenants for $584.52.

As both parties were only partially successful in their applications, I find that they are not entitled to recover the $100.00 filing fees paid for their applications.

Conclusion

I order the landlord to retain $165.48 from the tenants' pet damage deposit of $750.00.

I issue a monetary order in the tenants' favour in the amount of $584.52 against the landlord. 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.

The remainder of both parties' applications 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: December 09, 2019

Residential Tenancy Branch