Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution (the "Application") that was filed by the Landlords under the *Residential Tenancy Act* (the "*Act*"), seeking:

- Authorization to withhold the Tenant's security deposit for cleaning costs and repairs, and
- Recovery of the $100.00 filing fee.

The hearing was convened by telephone conference call and was attended by the Tenant and both Landlords, all of whom provided affirmed testimony. The Tenant confirmed service and receipt of the Notice of Dispute Resolution Proceeding Package, including a copy of the Application and the Notice of Hearing.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Rules of Procedure; however, I refer only to the relevant facts, evidence and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be emailed to them at the email addresses provided in the Application.

Preliminary Matters

Evidence

Although there was a dispute between the parties regarding when and how the Tenant was served with the Landlords' documentary evidence, ultimately the Tenant acknowledged receipt of most of the Landlords' evidence in compliance with the *Act* and the Rules of Procedure. Although the Tenant denied receipt of a letter dated September 30th, as part of the Landlord's evidence package, they acknowledged that they have a copy as they authored the letter. As a result, I accepted the Landlords' documentary evidence for consideration in this matter, including the September 30th letter, except as set out below.

The Tenant stated that they never received the Landlords' response to their own documentary evidence, which the Landlords stated was sent to the Tenant by registered mail. Tracking for the registered mail shows that it was not delivered and although it states that notice of availability was left for the Tenant on April 14, 2020, the Tenant stated that they have not left their home as a result of the state of emergency. Further to this, I note that April 14, 2020, is only two days prior to the date of the hearing.

As a result of the above, I am not satisfied that the Tenant received the Landlords' response to their evidence, and even if I had been satisfied it was received, it would not have been received in time to allow the Tenant to review or respond to it or to comply with the timelines set out in the Rules of Procedure. As a result, I have excluded this documentary evidence from consideration in this matter.

Although the Landlord stated that the Tenant's documentary evidence was received late, they raised no objections to its consideration in this matter or any concerns regarding their ability to review and respond to it. As a result, I accepted the Tenant's documentary evidence for consideration.

Amendment

Although the Landlords' Application states that they are seeking to recover unpaid rent, it is clear from the Application and the supporting documentary evidence that they are seeking monetary compensation for damage to the rental unit and cleaning costs. The Tenant confirmed that they understood that the Landlords' Application related to damage and cleaning costs, not unpaid rent, and as a result, I have amended the Application to reflect the true nature of the Landlords' claims.

Issue(s) to be Decided

Are the Landlords entitled to compensation for damage to the rental unit and cleaning costs?

Are the Landlords entitled to retain all, or a portion of the Tenant's security deposit?

Are the Landlords entitled to recovery of the filing fee?

Background and Evidence

The tenancy agreement in the documentary evidence before me states that the tenancy began on June 1, 2017, and the parties confirmed in the hearing that the Landlords still hold the Tenant's security deposit in the amount of $825.00. Although the Landlords stated that the Tenant still owes $1,716.00 in outstanding rent, they did not seek this amount from the Tenant in the hearing or in their Application.

The Tenant stated that they vacated the rental unit on October 6, 2019, and although the Landlords denied receiving any official communication to that affect from the Tenant, ultimately they acknowledged suspicions that the Tenant had vacated the rental unit on or about that date as they had received communications from other occupants of the building as well as the roofers who had access to the rental unit, that the unit was vacant. In any event, the parties agreed that a move-out condition inspection was completed on October 13, 2019, and that the Tenant relinquished their keys for the rental unit at that time.

The parties agreed that a condition inspection was conducted at the start and end of the tenancy and that they each had copies of this report. Although the parties stated that the Tenant changed their forwarding address several times after moving out, they were in agreement that the Tenant had provided a forwarding address on the condition inspection report on October 13, 2020, the date the move-out condition inspection was completed.

The parties agreed that the condition inspection report states that the kitchen required cleaning but disputed the amount of cleaning required and whether the cleaning was needed due to the Tenant's neglect or ongoing construction in the rental unit. The Landlords stated that at the end of the tenancy the rental unit looked as though it had never been cleaned by the Tenant during the tenancy. Although the Landlords were unclear about the exact length of time it took for them to clean the rental unit, they estimated that it took somewhere between 3-6 days at approximately 6 hours per day. The Landlords sought $25.00 per hour for cleaning and based this amount off an estimate they stated they received from a professional cleaning company that quoted them 8 hours to clean the unit with two cleaners at $45.00 per hour each. The Landlords also stated that they purchased cleaning products to clean the rental unit as what they had on had was not sufficient. In support of their testimony the Landlords pointed to photographs they state were taken of the rental unit after the condition inspection report and the condition inspection report itself.

The Tenant denied that the rental unit was unclean, stating that only the stove and one drawer were dirty. The Tenant stated that the undated photographs from the Landlords were taken prior to the move-out inspection and that they had subsequently cleaned those areas prior to the inspection. The Tenant argued that the Landlords should not be entitled to any of the cleaning costs sought as the rental unit was clean, except for the stove and one drawer, and that they did not feel safe staying in the rental unit to clean them further due to the roofers and the mold present in the rental unit. In any event, the Tenant stated that if any cleaning costs were to be awarded for the stove, they should not exceed $20.00 as the stove has a self-clean function. In support of their testimony the Tenant pointed to their own photographs, a letter to the Landlords dated September 30, 2019, and the mold reports in the documentary evidence.

The Tenant also alleged that the Landlords and the roofers had accessed the rental unit between the date she moved out, October 6, 2019, and the date of the condition inspection, October 13, 2019, and that any additional cleaning required to the rental unit is as a result of that access. The Landlords initially denied accessing the rental unit, but ultimately acknowledged that the roofers and or the strata counsel president likely accessed the rental unit during this time period to deal with the ongoing roof and skylight repairs.

The parties disagreed about whether the damage noted to the living room walls on the condition inspection report related to the move-in or move-out condition inspection. The Landlord stated that the three small holes and one larger hole noted on the report relates to the move-out inspection and that as a result, the wall needed to be repaired and repainted. The Landlords sought $150.00 for these repairs. The Landlords stated that although they painted the entire rental unit, they did not seek these costs from the Tenant as they had only damaged the one wall. The Landlords also stated that the Tenant had damaged a light fixture in the kitchen, which could not be repaired due to the age of the fixture and the lack of available parts, and that as a result, the light fixture was replaced at a cost of $50.00. In support of their testimony the Landlords pointed to their photographic evidence.

The Tenant stated that the wall damage noted for the living room in the condition inspection report was there at the start of the tenancy and stated that it was simply recorded in the wrong spot. The Tenant pointed to the condition inspection report and stated that this is noted in black ink, just like the rest of the notations for the move-in condition inspection, whereas all notations relating to the move-out condition inspection are in blue. As a result, the Tenant stated that they should not be responsible for this

damage or its repair as it pre-existed their tenancy. The Tenant also stated that it was the roofers who damaged the light fixture and that they had notified the Landlords of this damage in September of 2019. As a result, the Tenant denied responsibility for the replacement cost of the light fixture.

The Landlords also sought recovery of the $100.00 filing fee.

Analysis

Section 7 of the *Act* states that if a landlord or tenant does not comply with the *Act*, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

Residential Tenancy Policy Guideline (the "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 and that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due. It also states that 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 (2) 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. In the hearing the Tenant acknowledged that the stove and one drawer were left unclean. Although the Tenant argued that they did not feel safe in the rental unit due to mold and the presence of the roofers, which is why they did not clean these remaining items, I do not accept this argument. The *Act* is clear that tenants need to leave the rental unit clean at the end of a tenancy and I therefore find that the Tenant breached section 37 of the *Act* when they failed to clean the stove and the drawer.

The condition inspection report in the documentary evidence before me clearly shows that the kitchen was unclean at the end of the tenancy. However, the report also contains a confusing statement that some unidentified portion of this cleaning is due to

construction. In the hearing the Tenant stated that all the remaining cleaning, except for the stove and drawer, were the result of construction/roofing repairs being done. The Landlords stated that only one counter was affected by construction and that all remaining cleaning was the responsibility of the Tenant. Although the Landlords pointed to their photographic evidence, I note that these photographs are not dated and in the hearing the Tenant stated that these photographs pre-dated the condition inspection and that the unit was cleaned after they were taken.

Rule 6.6 of the Rules of procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities and that the onus to prove their case is on the person making the claim. Although the Landlords stated in the hearing that it looked as though the rental unit had never been cleaned by the Tenant, the condition inspection report completed by the parties at the end of the tenancy indicates that only the kitchen was unclean. Given the significant ambiguity in the condition inspection report regarding what areas of the kitchen were dirty as a result of construction, the lack of date stamps or other evidence corroborating the dates upon which the Landlords photos were taken, the conflicts between the Landlords' testimony and the condition inspection report, and the Tenants testimony disputing the Landlords version of events, I find that the Landlords have failed to satisfy me on a balance of probabilities which portions of the rental unit, other than the stove and one drawer, were unreasonably dirty or that these areas were not unreasonably dirty due to the ongoing roofing/construction work in the rental unit.

Further to this, I note that the Landlords have not submitted a copy of the cleaning quote upon which they based their hourly cleaning rate, receipts for any cleaning supplies purchased, and were markedly inconsistent among themselves regarding the amount of cleaning required and the amount of time needed for this cleaning. As a result, I am not satisfied by the Landlords that they suffered a loss for the majority of their cleaning claims, the value of any loss actually suffered, or that any loss suffered due to cleaning any part of the rental unit other than the stove and one drawer was the result of the Tenant's breach of the *Act*. I therefore dismiss the Landlord's claims for all cleaning costs except for the cost of cleaning the stove and the drawer, without leave to reapply.

I have already found above that the Tenant was responsible to clean the stove and the kitchen drawer. As a result, I award the Landlords $50.00 for the cost of cleaning these items calculated as 2 hours of cleaning time at $25.00 an hour.

I will now turn my mind to the Landlords claims for the replacement of a light fixture and wall repairs. The Tenant denied damaging a light fixture in the rental unit stating that it was damaged by the roofers and that the Landlords were aware that the roofers had damaged this light. Although the Landlords denied the Tenant's version of events, they did not submit any evidence to corroborate their testimony that it was the Tenant, and not the roofers, who damaged this item. Further to this, the Landlords did not submit any documentary evidence to corroborate their testimony that the light fixture could not be repaired or any proof that a new fixture was purchased or at what cost. While I am satisfied by the parties that a light fixture was damaged during the tenancy, ultimately, I am not satisfied by the Landlords that it was the Tenant or a person permitted on the property by the Tenant who damaged this light fixture or of the amounts claimed for its replacement. As a result, I dismiss the Landlords' claim for $50.00 for the cost of replacing a light fixture without leave to reapply.

Although the Landlords sought $150.00 for the cost of painting and repairing a wall in the living room, the Tenant denied damaging this wall. The Landlords also did not submit any documentary evidence to support that any damage repair or painting cost them $150.00. Further to this, although the Landlords relied on a notation on the condition inspection report to support their claim for wall damage, I agree with the Tenant that this notation appears to be in relation to the move-in inspection, not the move-out inspection, given the different colors of ink used for each of the inspections. As a result, I find that the Landlords have failed to satisfy me that the Tenant damaged the living room wall or of the value of any such damage caused by the Tenant and I therefore dismiss their claim for $150.00 in repair and painting costs without leave to reapply.

As the Landlords were only partially successful in their claims, I award them only $50.00 for recovery of 50% of the filing fee pursuant to section 72 of the *Act.*

Based on the above, the Landlords are therefore entitled to $100.00 for cleaning costs and partial recovery of the filing fee.

Policy Guideline 17 states that on a landlord's application to retain all or part of the security deposit, the arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the *Act*, whether or not the tenant has applied for dispute resolution for its return. Policy Guideline 17 also states that the arbitrator will consider the doubling of the deposit, as applicable, unless the tenant has specifically waived this right. As the Landlords applied to retain the Tenant's security deposit, or a portion thereof, in relation to their application, I will now

turn my mind to whether the Tenant is entitled to the return of all, part, none, or double the amount of their security deposit.

In the hearing the parties agreed that the tenancy officially ended on October 13, 2019, the date of the move-out condition inspection, and that the Tenant provided the Landlords with their forwarding address, in writing, on that date. Records at the Branch indicate that the Landlords filed their Application seeking to retain the Tenant's security deposit on November 22, 2019. Section 38 (1) of the *Act* states that except as provided in subsection (3) or (4) (a), within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations or make an application for dispute resolution claiming against the security deposit or pet damage deposit.

There is no evidence before me that the Landlords were entitled to retain all or a portion of the Tenant's security deposit pursuant to sections 38 (3) or 38 (4) (a), and I therefore find that the Landlords had until October 28, 2019, to either return the Tenant's security deposit to them, in full, or file an Application with the Branch seeking to retain the deposit. As the Landlords neither returned the security deposit to the Tenant, nor filed their Application with the Branch by October 28, 2019, I find that they therefore breached section 38 (1) of the *Act*.

Section 38 (6) of the *Act* states that if a landlord does not comply with subsection (1), the landlord may not make a claim against the security deposit or any pet damage deposit, and must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable. As a result, I find that the Tenant is entitled to the return of $1,650.00, double the amount of their security deposit. The Tenant is not entitled to interest under the regulations.

As a result, I find that the Tenant is therefore entitled to a Monetary Order in the amount of $1,550.00; $1,650.00 for the return of double their security deposit, less the $100.00 owed to the Landlords for cleaning and partial recovery of the filing fee.

Conclusion

Pursuant to section 67 of the *Act*, I grant the Tenant a Monetary Order in the amount of $1,550.00. The Tenant is provided with this Order in the above terms and the Landlords must be served with this Order as soon as possible. Should the Landlords 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: May 6, 2020

Residential Tenancy Branch