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 an Application for Dispute Resolution (the "Landlord's Application") that was filed by the Landlord under the *Residential Tenancy Act* (the "*Act*"), seeking:

- Compensation for the cost of cleaning and cleaning supplies;
- Authorization to withhold the security deposit; and
- Recovery of the filing fee.

This hearing also dealt with a Cross-Application for Dispute Resolution (the "Tenants' Application") that was filed by the Tenants under the *Residential Tenancy Act* (the "*Act*"), seeking:

- Double the amount of their security deposit; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by the Tenants and two agents for the Landlord (the "Agents"), all of whom provided affirmed testimony. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. Neither party raised concerns about service of the Applications or Notice of Hearing.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Residential Tenancy Branch Rules of Procedure (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 their respective Applications.

Preliminary Matters

Preliminary Matter #1

The Tenants stated that although they received the Notice of Dispute Resolution Proceeding Package, including a copy of the Landlord's Application and the Notice of Hearing, as well as several photographs, they never received a copy of the condition inspection report and any notices of rent increase as alleged by the Agents.

The Agents stated that all of the Landlord's documentary evidence was sent to the Tenants by registered mail on January 17, 2020, along with the Application and the Notice of Hearing. The Agents provided me with the tracking numbers for the registered mail and the Canada Post website shows that these packages were sent on January 17, 2020, and delivered on January 21, 2020. In the hearing the Tenants acknowledged receipt or the registered mail packages but argued that these packages contained only the Notice of Dispute Resolution Proceeding. They also stated that they later received several photographs and an invoice by email in relation to the Landlord's Application.

The Agents denied that the registered mail packages contained only the Notice of Dispute Resolution Proceeding but acknowledged that several photographs were sent to the Tenants by email on May 20, 2020, as they were not included in the registered mail packages. The Agents also pointed to copies of several emails between themselves and the Tenants as proof that the Landlord's documentary evidence was in fact served.

Rule 3.5 of the Rules of Procedure states that at the hearing, the applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with all evidence to be relied on at the hearing. Although the Agents for the Landlord stated that all documentary evidence was served, The Tenants disputed this testimony stating that only the Application, the Notice of Hearing, an invoice and several photographs were received, and I find that the testimony of the Agents on this point during the hearing was inconsistent.

First, they stated that all documentary evidence was served by registered mail, then they reversed this testimony, stating that some documentary evidence was served by email at a later date. Although the Agents pointed to copies of several emails in the documentary evidence before me as proof that all of the documents before me on behalf of the Landlord were served, I find that the names of the file attachments in these

emails does not include either the notices of rent increase or the condition inspection report.

Based on the above, and the fact that there is no documentary or other corroborative evidence before me showing what was contained in the registered mail packages, I find that I am not satisfied by the Landlord or the Agents that the Tenants were in fact served with the notices of rent increase and the condition inspection report in relation to this hearing. As a result, I accept only the Landlord's photographic evidence and an invoice for consideration in this matter, as the Tenants acknowledged receipt. The notices of rent increase and the condition inspection report were excluded from consideration.

Preliminary Matter #2

During the hearing the Tenant H.D. requested permission to submit additional documentary evidence for review; specifically, they requested permission to submit photographs of the rental unit.

Rule 3.17 of the Rules of Procedure states that evidence not provided to the other party and the Residential Tenancy Branch directly or through a Service BC Office in accordance with the *Act* or Rules 2.5 [Documents that must be submitted with an Application for Dispute Resolution], 3.1, 3.2, 3.10.5, 3.14 3.15, and 10 may or may not be considered depending on whether the party can show to the arbitrator that it is new and relevant evidence and that it was not available at the time that their application was made or when they served and submitted their evidence.

When asked why they did not submit this documentary evidence in advance of the hearing, the Tenant stated that they could not locate the photographs on their phone and only recently thought of checking their online data storage for the photographs.

As the evidence the Tenant H.D. wished to submit late existed well in advance of the hearing, and the delay in the submission of this evidence was the result of the Tenants failure to act with due diligence with regards to locating and submitting these photographs for consideration by myself and the Landlord, I therefore find that they do not qualify as new evidence. As a result, I declined to allow the submission or consideration of this documentary evidence and the hearing proceeded based on the testimony of the parties and the documentary evidence already served.

Issue(s) to be Decided

Is the Landlord entitled to compensation for the cost of cleaning and cleaning supplies?

Is the Landlord entitled to withhold all or a part of the Tenants' the security deposit towards money owed?

Are the Tenants entitled to double the amount of their security deposit?

Is either party entitled to recovery of the filing fee?

Background and Evidence

In the hearing the parties agreed that the one year fixed-term tenancy began on April 1, 2014, and became month to month (periodic) when the fixed term ended on March 31, 2015. The parties agreed that the Tenant's gave written notice December 1, 2019, to end their periodic tenancy as of December 31, 2019, and that the tenancy subsequently ended on December 31, 2019 as a result of this notice. The parties also agreed that rent in the amount of $1,338.00 was due each month at the time the tenancy ended, that a move-in condition inspection and report were completed in compliance with the *Act* and the regulation at the start of the tenancy, and that the Tenants provided their forwarding address in writing on December 31, 2020.

However, the parties agreed that the rental unit was not inspected together at the end of the tenancy as required by the *Act* and disputed the state of the rental unit at the end of the tenancy and who breached with *Act* with regards to the move-out condition inspection.

The Tenants stated that after giving their written notice, they received a move-out checklist from the Landlord, which stated that check-out time is 12:00 P.M. (noon) on the last day of the tenancy, and that condition inspections will be completed once all their possessions are removed and all cleaning has been completed. A copy of this checklist was submitted for my review. The Tenants stated that they took this to mean that all of their possessions needed to be removed and the rental unit needed to be cleaned by 12:00 P.M. on December 31, 2019, at which time the condition inspection would take place.

The Tenant H.D. stated that they complied with these requirements and waited in the rental unit until 12:50 P.M. for the agent J.D. to attend for the condition inspection. The

Tenant H.D. stated that when J.D. had not attended after almost an hour, they left the rental unit to go home and charge their phone, at which point they saw the agent J.D. as they were coming into the building to complete a condition inspection for another tenant. H.D. stated that although they were scheduled to start work in the afternoon, a second condition inspection was scheduled for 1:30 P.M. that same day, and that they re-arranged their work schedule in order to attend.

H.D. stated that they returned to the rental unit at 1:30 P.M. to complete the condition inspection as scheduled, but again, J.D. failed to attend. H.D. stated that they called the Residential Tenancy Branch (the "Branch") for advice on what to do, and were advised that since the Landlord or their agent failed to attend two scheduled move-out condition inspections, they can simply leave the keys for the rental unit along with their forwarding address, and vacate the rental unit. H.D. stated that after waiting 30 minutes for J.D. to attend, they prepared their forwarding address in writing and were about to leave it, along with the keys to the rental unit, when J.D. and another agent for the Landlord, R.V., arrived.

H.D. stated that the keys for the rental unit and their forwarding address were given to J.D. and they left, as they needed to report for work and could not reschedule the move-out inspection again. As a result, the Tenants stated that the Landlord or their agents failed to meet their obligations under the *Act* with regards to scheduling and attending the move-out condition inspection. In support of this testimony the Tenants provided a copy of text messages between J.D. and H.D. in relation to the move-out condition inspection.

The agent J.D. stated that although the move-out checklist provided to tenants states that check-out is at 12:00 P.M., tenants usually contact them to schedule the condition inspection and that this has never been an issue before. J.D. stated that when they ran into H.D. at the building, they were about to complete a condition inspection for another tenant and that they agreed to return at 1:30 in order to complete the Tenants' move-out inspection. While J.D. acknowledged that they were a few minutes late for the inspection due to rain and bad traffic, they denied being 30 minutes late, and stated that when they arrived only a few minutes late, the Tenant was in the kitchen and advised them that as they had not attended on time, they would be seeking the return of double the amount of their security deposit. The agent stated that the Tenant then stayed in the rental unit while the condition inspection and report were completed but refused to sign it or participate. In support of this testimony the agent called a witness, R.V., who is also an agent for the Landlord.

R.V. stated that they were present with J.D. at the time of the inspection, acknowledged that they were 5 minutes late, and agreed that the Tenant H.D. was present during the inspection but refused to participate or sign the move-out condition inspection report.

As a result, the Agents stated that it is actually the Tenants who failed to meet their obligations under the *Act* with regards to attending and participating in the move-out condition inspection.

The Agents stated that the rental unit was not left reasonably clean at the end of the tenancy as required, and sought $270.00 from the Tenants for the cost of cleaning and cleaning supplies. The Agents stated that the stove, fridge, balcony, carpet, cupboards and the floors under the appliances were not cleaned, and as a result, it took two cleaners charged at $40.00 per hour, six or more hours to clean the rental unit. In support of this testimony the agents provided five photographs and an invoice authored by the Landlord for the cleaning and supply costs.

The Tenants denied that the rental unit was not left reasonably clean at the end of the tenancy, and stated that with the exception of the patio, which could not be adequately swept and cleaned due to rain, the rental unit was thoroughly cleaned before the end of the tenancy. The Tenants also alleged that the photographs submitted are not of their rental unit as they did not have shelves in the bathroom above the toilet and the shower curtain pictured does not belong to them. As a result, they stated that they should not be responsible for any of the cleaning costs sought by the Landlord.

The Landlord also sought $35.00 for the cost of chimney/fireplace cleaning at the end of the tenancy as there is a wood-burning fireplace in the rental unit. The Tenants acknowledged that there is a wood burning fireplace in the rental unit and that they did not clean it at the end of the tenancy as they had not used it in several years leading up to the end of the tenancy. Further to this, the Tenants stated that the Landlord cleaned the fireplace at their own cost throughout the tenancy and as a result, they do not see how this cost is their responsibility. When asked, the Agents acknowledged that the Landlord pays for chimney cleaning for the entire building every year.

The Tenants stated that due to the post-mark on the registered mail they received from the Landlord or their agents in relation to this hearing, they believe that the Landlord's Application seeking to keep their $575.00 security deposit was not filed within the required timelines, and as the Landlord failed to return the deposit to them and extinguished their rights to claim against the security deposit under the *Act* by failing to

attend the scheduled move-out inspections, they are entitled to the return of double the amount of their security deposit under the *Act*.

The Agents denied that the Landlord extinguished their rights to claim against the security deposit or that the Application seeking to retain the deposit was not filed on time. Both parties sought recovery of the filing fee.

Analysis

Section 35 of the *Act* states that the landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit, that the landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection, and that the landlord must complete a condition inspection report and give the tenant a copy in accordance with the regulations.

I do not find that the move-out checklist provided to the Tenants constitutes offering an opportunity to complete the move-out condition inspection in compliance with the *Act* or the regulations. As a result, I find that the Landlord made only one offer of an opportunity to complete the inspection at 1:30 P.M. on December 31, 2019, and even in making this finding, I am cognizant that the scheduling of this inspection was initiated by the Tenant, and not the Landlord or their agent as required by the *Act*. Further to this, the parties disagreed about who attended the move-out condition inspection as scheduled at 1:30 P.M. on December 31, 2019. As the parties disputed whether they both attended the move-out inspection as required, and there is no evidence before me that the Landlord or their agents offered a final opportunity for a condition inspection on the Branch form as required by the section 35 (2) of the *Act* and section 17 of the regulation, I therefore find that the Landlord extinguished their right to claim against the security deposit for damage to the rental unit pursuant to section 36 (2) of the *Act*.

Having made this finding, I find that it is not necessary to consider if the Tenants also extinguished their right to claim for the return of the security deposit under section 36 (1) (b) of the *Act* by failing to participate in the inspection as the Landlord extinguished their right first by not properly offering two opportunities for the inspection as required.

Despite my finding above, I find that the Landlord was still entitled to file their Application with the Branch and to withhold the Tenants' security deposit for this purpose, as the Application related to cleaning costs and recovery of the filing fee, not damage to the rental unit. Having made this finding, I will now turn my mind to whether the Landlord's Application was filed in compliance with section 38 (1) of the *Act*.

As the parties agreed in the hearing that the tenancy ended on December 31, 2019, and that the Tenants' forwarding address was received in writing that same day, I find that the Landlord had until January 15, 2020, to either return the Tenants' security deposit to them, in full, or file a claim against it with the Branch. Records at the Branch indicate that the Landlords Application was started on January 10, 2020, and paid for on January 13, 2020. Rule 2.6 of the Rules of Procedure states that an Application for Dispute Resolution has been made when it has been submitted and either the fee has been paid or when all documents for a fee waiver have been submitted to the Residential Tenancy Branch directly or through a Service BC Office. As a result, I find that the Landlord's Application was considered filed with the Branch on January 13, 2020, and I therefore find that it was filed within the legislative timelines set out under section 38 (1) of the *Act*. Based on the above, I therefore dismiss the Tenants' Application seeking the return of double the amount of their security deposit without leave to reapply.

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. Although the Agents sought $35.00 for the cost of chimney/fireplace cleaning, they did not submit an invoice from the company that completed this work in support of this claimed amount or stating the date upon which this cleaning occurred. It was also agreed between the parties that the Landlord regularly pays for fireplace cleaning, which the Agents stated occurs once per year. Based on the above, I find that I am not satisfied that a cost of $35.00 was in fact incurred for the cost of chimney/fireplace cleaning in the rental unit at the end of the tenancy and in any event, I find no reason for the Tenants to be responsible for this cost as the Landlord has historically paid for this service throughout the tenancy. As a result, I dismiss the Landlord's claim for $35.00 in chimney/fireplace cleaning costs without leave to reapply.

While the Tenants alleged that the photographs submitted by the Landlord or their agents were not taken in the rental unit, they did not submit any documentary or other evidence to support this testimony. As a result, I am not satisfied on a balance of probabilities that this is the case and I therefore accept that these photographs were taken in the rental unit. Although the Tenants stated that they left the rental unit reasonably clean, except for the patio, they did not submit any documentary or other evidence in support of this testimony. In contrast the Agents submitted five photographs in support of their testimony that the rental unit was not left reasonably clean as required. As a result, I find that I am satisfied that the photographs submitted by the Agents accurately represent the condition of the rental unit at the end of the tenancy.

However, the photographs show only a dirty hood vent and ceiling fan, the bathroom, one dirty drawer and a small square patch of uncleaned floor from behind and beneath an appliance. I find that the photograph of the bathroom is too far away to demonstrate to my satisfaction that any cleaning of the bathroom was required. As a result, I find that I am not satisfied that the bathroom required cleaning. As the remaining photographs show only a dirty ceiling fan and hood vent, a small patch of uncleaned floor, and one dirty drawer, I am therefore not satisfied that it took two cleaners six or more hours to clean these areas and I therefore award the Landlord only $80.00 for two hours of cleaning at $40.00 per hour for cleaning of the above noted areas, as well as the patio, as the Tenants acknowledged that it was not cleaned at the end of the tenancy. As no receipts or detailed account for cleaning materials was provided, I dismiss the Landlord's claim for these costs without leave to reapply.

As the parties were either entirely or largely unsuccessful in their respective Applications, I decline to grant either party recovery of the filing fee.

Based on the above, I find that the Landlord is entitled to withhold $80.00 from the Tenants' security deposit and I order that the Landlord return the remaining balance of $495.00 to the Tenants. The Tenants are therefore provided with the attached Monetary Order in the amount of $495.00, pursuant to section 67 of the *Act* and policy guideline #17.

Conclusion

The Landlord is entitled to retain $80.00 from the Tenants' security deposit pursuant to 72 (2) (b) of the *Act*.

Pursuant to section 67 of the *Act*, I grant the Tenants a Monetary Order in the amount of **$495.00**. The Tenants are 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: June 18, 2020

Residential Tenancy Branch