Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNRL-S, MNDL-S, MNDCL-S

Introduction

This hearing dealt with the landlord's application for monetary compensation for unpaid rent; damage and cleaning costs; and, authorization to retain part of the tenants' security deposit and/or pet damage deposit. Both parties appeared or were represented at the hearing and had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

At the outset of the hearing, I confirmed the landlord sent the hearing package, including evidence, to each tenant via registered mail on August 7, 2020. The registered mail packages sent to two of the co-tenants were successfully delivered but the packages sent to co-tenants DC and MW were returned as there was no unit number specified in the address. The landlord then applied for and obtained a Substituted Service Order to permit the landlord to serve co-tenants DC and MW by email. The landlord sent the hearing packages to co-tenants DC and MW shortly thereafter and the tenants acknowledged receipt on August 31, 2020. All the tenants appearing for the hearing indicated they had reviewed the landlord's materials and were prepared to respond to them. I considered all of the tenants duly served and I admitted the landlord's materials for consideration.

The tenants had submitted rebuttal evidence to the Residential Tenancy Branch on September 8, 2020 and DC testified that he sent it to the landlord, via email, the same date and left another copy in the landlord's mailbox on or about September 9, 2020. The landlord confirmed he received the tenant's evidence in his newspaper box approximately 5 or 6 days ago; however, he had reviewed it and he was prepared to respond to it and he did not take issue with respect to admittance of the tenant's evidence. I admitted the tenant's evidence for consideration as I was satisfied to do so would not unduly prejudice the landlord.

The hearing process was explained to the parties and the parties were given the opportunity to ask questions about the process. The parties were affirmed.

Issue(s) to be Decided

1. Has the landlord established an entitlement to compensation from the tenants, as claimed?
2. Is the landlord authorized to make deductions from the security deposit and/or pet damage deposit?
3. Disposition of the security deposit and/or pet damage deposit.

Background and Evidence

The parties entered into a one year fixed term tenancy agreement set to commence on February 23, 2020. The parties were in agreement that the written agreement contains a typographical error and the expiry date of the fixed term should read February 22, 2021 rather than February 22, 2020. The tenants were required to pay rent of $3600.00 on the 23rd day of every month. The tenants paid a security deposit of $1625.00 and a pet damage deposit of $1625.00. The parties mutually agreed to end the tenancy effective July 1, 2020. The landlord continues to hold the security deposit and pet damage deposit tin trust, pending the outcome of this proceeding.

A move-in inspection report was prepared by the landlord and signed by two of the co-tenants, MW and SW ; however, the parties were in dispute as to whether the unit was inspected together. The landlord had difficulty recalling with accuracy when and with whom he performed the move-in inspection. The landlord stated he believed it was on February 20, 2020 when the tenants were given early possession of the rental unit and that he did the inspection with co-tenants DC and MW. The tenants agree they were given possession on February 20, 2020 but stated they do not do an inspection with the landlord. Rather, they found the move-in inspection report in the rental unit, already completed by the landlord, and he instructed them to review it and sign it, which they did and in doing so they agreed with the landlord's assessment of the rental unit.

As for a move-out inspection, the landlord met co-tenant DC at the rental unit on June 30, 2020 as the tenants were returning possession of the rental unit to the landlord on that date. According to the landlord, he and DC inspected the unit together and the parties had a discussion concerning deficiencies. According to DC, they did a quick "walk through" and the landlord pointed out a couple of deficiencies, namely: the repainting of the master bedroom and a hair on the toilet. Both parties provided

consistent statements that the landlord did not have the move-out inspection report with him when this inspection/walk through took place and that the landlord did not set up a date and time for the tenants to return to complete a move-out inspection report with him. Rather, the landlord went ahead and completed the move-out inspection report after June 30, 2020 without any of the tenants present.

I noted that on the condition inspection report, part Z. 2., it appears that one of the tenants, MW, had completed that section on March 3, 2020. The landlord could not explain why the tenant did that. MW was uncertain as to the reason she completed part Z. 2. on March 3, 2020 except to say perhaps that was done to reflect they had finished paying the security deposit and pet damage deposit on March 3, 2020. Neither party provided submissions or arguments that the completion of Z. 2. on March 3, 2020 reflected the tenant's authorization for the landlord to retain the security deposit and pet damage deposits. Rather, all parties were in agreement that the tenants are entitled to a refund of the deposits, at least in part, as the landlord's claims to do exceed the sum of the deposits. Accordingly, I took the position that section Z. 2. of the condition inspection report was completed in error and does not form authorization to for the landlord to retain all of the deposits.

Below, I have summarized the landlord's claims against the tenants and the tenants' responses.

Cleaning -- $315.00

The landlord submitted the tenants failed to sufficiently clean the rental unit. The landlord pointed to the cleaner's invoice for the description of areas that required cleaning. I noted that I had one page of a cleaner's invoice and it reflects 7.5 hours of labour, charged at $40.00 per hour, was charged to clean two bathrooms. The landlord stated the cleaning invoice was double sided and included cleaning of those two bathrooms and other rooms in the rental unit.

The tenants DC and MW had received a scanned copy of the landlord's materials, as had I, in the email they received containing the landlord's materials. DC and MW testified their package included only one page of the cleaning invoice. DC and MW went on to describe the pages that followed the cleaning invoice which were consistent with the pages in the package provided to me. As such, I was satisfied DC and MW had the same package I did and I informed the landlord that I would only consider cleaning of the two bathrooms since that is all that was in the evidence before me and two of the co-tenants.

Proceeding on the basis I was considering the cleaning costs for two bathrooms, the landlord estimated that one-half of the charge would be reasonably attributable to the two bathrooms as the bathrooms are the dirtiest rooms in a house.

The landlord testified that when he inspected the rental unit with DC on June 30, 2020, DC stated he had run out of cleaning supplies which is why the bathrooms were not entirely cleaned.

The tenant acknowledged that the landlord had pointed out one hair on the toilet on June 30, 2020 but the tenants took the position the rental unit was otherwise left very clean after they spent two days cleaning. I pointed out that one of the landlord's photographs appears to show a stain at the base of the shower stall. The tenants submitted that was caulking at the base of the shower stall and the caulking was already mouldy at the start of the tenancy and that mould cannot be cleaned from caulking. Rather, the caulking would have to be replaced and they cannot be expected to do that.

The tenants submitted that the landlord had already arranged for a cleaning company before he had even inspected the unit. At one point, the landlord submitted that he would not have hired cleaners had the tenants left the unit clean; however, at another time landlord acknowledged that he always hires a cleaner between tenancies but that the cleaning required at the end of this tenancy was greater than normal.

Painting Master Bedroom-- $545.50

During the hearing the parties reached a mutual agreement that they will split this claim equally and the tenants shall compensate the landlord 50% of the amount claimed, or $272.75.

Rent for June 23 - June 30, 2020 -- $960.00

After review of the evidence and further discussion the tenants agreed they owe the landlord this amount of rent for the subject period.

Analysis

Upon consideration of everything before me, I provide the following findings and reasons.

The parties reached an agreement during the hearing with respect to splitting the cost to repaint the master bedroom and I make their agreement an order of mine pursuant to the authority afforded me under section 63 of the Act. Accordingly, the landlord is awarded 50% of the repainting cost, or $272.75.

The tenants acknowledged during the hearing that they owed the landlord rent for the period of June 23 – 30, 2020 in the amount claimed of $960.00 and I award that amount to the landlord.

The only issue that remained in dispute was the landlord's claim for cleaning. I proceed to provide my findings and reasons with respect to the landlord's claim for cleaning.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Section 37 of the Act requires that a tenant leave a rental unit "reasonably clean" at the end of the tenancy. Reasonably clean is a standard that is less than perfectly clean or impeccably clean and it may be less than a standard the landlord provides to an incoming tenant. Where a landlord seeks to bring the rental unit to a level of cleanliness that exceeds "reasonably clean" the tenant is not responsible for the cost to do so.

In this case, the parties were in dispute as to the level of cleanliness at the end of the tenancy.

The tenants were of the position they left the unit very clean, although they acknowledged there was one hair found on the toilet. The landlord was of the position that a significant amount of cleaning was required.

The landlord provided a move-out inspection report that indicates several areas required cleaning; however, I have given the move-out inspection report very little evidentiary weight since it was not completed with the tenants. Nor, did the landlord invite the tenants to return to the property for purposes of completing the move-out inspection. Section 36 requires that a landlord give the tenant at least two opportunities to participate in the move-out inspection and to prepare the move-out inspection report with the tenant. The Residential Tenancy Regulations ("the Regulations) set out several criteria for scheduling and completing the condition inspection reports. Section 13 of the Residential Tenancy Regulations provides that a condition inspection report is the best evidence in a dispute resolution proceeding in most circumstances provided it was completed in accordance with the Regulations. The move-out inspection report in this case was not completed in accordance with the Regulations and the tenants were denied the opportunity to participate in completion of the report. Accordingly, I have given it very little evidentiary weight and I turn to other evidence in an effort to determine the level of cleanliness and the landlord's entitlement to compensation for cleaning, namely one page of the cleaning invoice and photographs.

The cleaning invoice details cleaning efforts undertaken in the downstairs bathroom and the ensuite. The cleaning invoice indicates the cleaner worked at the rental unit on July 1 and 3, 2020; however, I heard that the landlord also had the rental unit re-rented as of July 1, 2020 and I am uncertain whether the cleaner cleaned the bathrooms on July 1 before the new tenants moved in or after. I am also unable to determine from the cleaner's invoice how many hours were spent cleaning the bathrooms out the total 7.5 hours charged.

The landlord provided scanned photographs that were black and white. Only one photographs appears to be in a bathroom. The only thing I can discern that may be consistent with additional cleaning being required is a darker line at the base of the shower stall. The tenants stated this line represents caulking that was mouldy at the start of the tenancy and that mould cannot be removed from caulking by cleaning. Rather, the caulking has to be replaced. The landlord did not oppose these statements.

The landlord provided a few other scanned, black and white photographs, of other areas of the house and I cannot discern areas that would lead me to conclude the rental unit was not left reasonably clean based on these photographs. The tenants provided two

colour photographs that appear to be of the kitchen, dining and hallway area and the rental unit appears reasonably clean in their photographs.

Overall, I am of the view the landlord did not provided sufficient evidence to meet his burden to prove the tenants failed to leave the renal unit “reasonably clean” at the end of the tenancy. Therefore, I dismiss his claim for cleaning.

The landlord has some success in this application and I award the landlord recovery of 50% of the filing fee, or $50.00.

In keeping with all of the above, I find the landlord entitled to compensation totalling $1282.75 [$272.75 + $960.00 + $50.00] and I authorize the landlord to deduct that sum from the tenants’ security deposit. I further order the landlord return the balance of the deposits to the tenants, in the net amount of $2317.25 without delay.

As provided in Residential Tenancy Policy Guideline 17: *Security Deposit and Set Off,* I provide the tenants with a Monetary Order in the amount of $2317.25 to ensure payment is made.

Conclusion

The landlord is awarded compensation totalling $1282.75 and is authorized to deduct that sum from the tenants’ security deposit. The landlord is ordered to repay the balance of the security deposit and the pet damage deposit to the tenants without delay, in the net amount of $2317.25. The tenants are provided a Monetary Order in the amount of $2317.25 to ensure payment is made.

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: September 24, 2020

Residential Tenancy Branch