Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL
MNSD, MNDCT, FFT

Introduction

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

- Compensation for damage to the rental unit;
- Retention of the security and pet damage deposits, and
- Recovery of the filing fee.

This hearing dealt with a Cross-Application for Dispute Resolution filed by the Tenants (the Tenants' Application) under the Act seeking:

- The return of all, some or double their security and pet damage deposits;
- Compensation for monetary loss or other money owed; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by the Landlords, the Tenants, and the Tenants' support person/advocate, all of who provided affirmed testimony. The parties agreed that they had been served with each other's Applications, documentary evidence and Notice of Hearing and neither party raised any concerns regarding this service. As a result, I accepted the documentary evidence before me from both parties for consideration in these matters and the hearing proceeded as scheduled. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

Although 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), I refer only to the relevant and determinative 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 hearing.

Preliminary Matters

Although the tenancy agreement in the documentary evidence before me states that it is a roommate agreement, there was no dispute between the parties that a tenancy under the Act existed, and the parties agreed that it was a roommate agreement only in the sense that the Landlord R.A.'s adult child K.M., who is also a landlord, resided in the upper portion of the home and therefore some communal space was shared, such as the laundry room. As a result, I accept that a tenancy for which the Act applies existed and find that I therefore have jurisdiction to hear and decide the matters claimed by the parties in their respective Applications. For the sake of clarity, I have also referred to the roommate agreement as the tenancy agreement throughout this decision.

Issue(s) to be Decided

Are the Landlords entitled to compensation for damage to the rental unit?

Are the Landlords entitled to retention of all or part of the security deposit?

Are the Tenants entitled to the return of all, some, or double the amount of their security and pet damage deposits?

Are the Tenants entitled to compensation for monetary loss or other money owed?

Is either party entitled to recovery of the filing fee?

Background and Evidence

The tenancy agreement in the documentary evidence before me, signed on July 19, 2019, states that the tenancy began August 1, 2019, that rent in the amount of $1,200.00 was due on the first day of each month, including utilities, and that a security deposit and pet deposit were to be paid. During the hearing the Landlords confirmed that they still hold the Tenants' $600.00 security deposit and $300.00 pet damage deposit.

Although a move-in condition inspection report was submitted for my review, there was disagreement between the parties regarding whether or not the Tenants participated in the move-in condition inspection. The Landlords stated that despite 5 attempts to schedule a move-in condition inspection and service of a final notice for the inspection, the Tenants failed to participate and therefore an inspection was not completed. The Landlord acknowledged that the condition inspection report was pre-completed before the tenancy began and stated that a copy was slipped under an interior door for the Tenants.

The Tenants disputed this testimony stating that they were present during the move-in condition inspection but acknowledged that the move-in condition inspection report had been pre-completed, and as a result, required changes during the inspection. However, they disputed being provided a copy of the report or being provided with an opportunity to sign it.

Although the parties agreed that the Tenants gave proper notice under the Act to end their tenancy effective April 30, 2020, there was a dispute between them about the date the tenancy actually ended. The Landlords argued that the Tenants maintained possession until 1:15 P.M. on April 30, 2020, and that the Tenants were in and out of the rental unit between April 9, 2020 – April 30, 2020. However, the Tenants argued that they had stopped residing in the rental unit on April 9, 2020, as a result of behaviour from the Landlord K.M., who also resides on the property and for which police involvement was required, which made it unsafe and untenable for them to continue residing there. As a result, the Tenants sought recovery of April 2020 rent in the amount of $1,200.00 for their loss of use and quiet enjoyment. In support of this position the Tenants submitted videos, copies of police reports, and copies of correspondence received from K.M. The Landlords denied these allegations stating that according to the Tenants own documentary evidence, the Tenants chose of their own accord not to stay in the rental unit consistently until the end of April, 2020, and were in fact still coming and going from the rental unit all through April. Further to this, the Landlords denied asking or requiring the Tenants to vacate early. As a result, the Landlords argued that the Tenants are not entitled to the return of any rent for April 2020.

Again, there was a dispute between the parties regarding whether or not the parties complied with the requirements of the Act in terms of the move-out condition inspection. While the parties agreed that a move-out condition inspection was not completed together at the end of the tenancy, they disputed why. The Landlords argued that the Tenants had agreed in writing that the Landlord could complete it on their own after the

end of the tenancy due to concerns about COVID-19. The Tenants disputed this testimony stating that while the Landlords made a written offer to that affect, it was never agreed to by them and the Landlords never made arrangements for the inspection to be properly completed with them. The Landlords stated that a move-out condition inspection and report were completed and mailed to the Tenants on May 4, 2020, and the Tenants confirmed receipt shortly thereafter.

The Landlord stated that the locks were re-keyed at a cost of $37.37 as the Tenants failed to return all keys to the rental unit at the end of the tenancy and sought recovery of this amount from the Tenants. Although the Tenants acknowledged that they accidentally retained one key, they stated that it was mailed to the Landlord several days later when they became aware of their error and therefore it was not necessary for the Landlord to re-key the lock. The Landlords acknowledged receipt of the last key by mail approximately one week after April 30, 2020.

Although there was agreement that the Tenants failed to change several light bulbs and to clean several light fixtures, window tracks, vents and behind the stove, the Tenants argued that the rental unit was left reasonably clean at the end of the tenancy. The Landlords disagreed stating that approximately 5 hours of cleaning was required at a cost of $128.63. They also sought $30.00 for cleaning of the exterior entry way and $27.95 for replacement of a two year old rubber exterior door mat which they stated was not properly cleaned or cared for by the Tenants. Although the Tenants did not deny failing to clean the exterior entrance, they argued that the entire exterior of the property looked like that and therefore they were not responsible for these costs or replacement of the exterior door mat. Although the Tenants agreed to the $30.09 sought by the Landlords for replacement of two light bulbs, they disputed the $89.17 charge for replacement of the shower lightbulb, as they stated it burnt out shortly after the start of the tenancy. Both parties agreed that it was not a simple matter to change the bulb in the shower, as power needed to be shut off, and that the light bulb was expensive as it formed a part of the light fixture. Although the Tenants acknowledged that it burnt out during the tenancy, they argued that it bunt out only a few weeks into the tenancy and that despite notifying the Landlord, nothing was done. As a result, they did not feel responsible for the cost of replacing it. The Landlord denied ever being notified and stated that in any event, it was the Tenants' responsibility to replace it as it burnt out during the tenancy.

The Landlords also sought $116.48 in repair costs for water damaged millwork in several areas of the rental unit, including the bathroom, a bedroom, and the kitchen. Although the Landlords were unclear how the damage had been caused, they stated

that it was possibly related to plants and/or a pet water dish. The Tenants denied causing any water damage and stated that the move-in condition inspection report clearly indicates that there was water damage throughout the rental unit prior to the start of the tenancy and speculated that it was due to house plants owned by the previous occupant.

The parties also disputed the nature of wall damage and whether it existed prior to the start of the tenancy. The Landlords argued that many holes were located in several walls, and stated that as a result, they now require filling and painting at a cost of $160.97. The Landlords stated that the nail holes are large, and not regular wear and tear. The Tenants denied putting any holes in the walls, stating that this damage pre-existed the start of the tenancy. They also disputed the size of the holes, stating that they look more like push-pin holes than nail holes.

While the parties agreed that taps in the rental unit were lose, the Tenants argued that this was wear and tear due to normal use and natural deterioration and therefore not their responsibility to pay for or repair. The Landlords disagreed and sought $75.00 for the cost of tightening the faucets.

Although there was agreement that several items were left behind in the rental unit at the end of the tenancy, the Tenants denied responsibility stating that the vast majority of items either were in the rental unit prior to the start of their tenancy, or could have been recycled for free. The Landlords denied this stating that the items clearly belonged to the Tenants and that no free recycling pick-up is available in the area the rental unit is located in. As a result, the Landlords sought $45.00 for debris removal and $40.00 for dump fees and gas. The Landlords also claimed $37.49 for replacement or repair of a heat register vent.

Both parties sought recovery of the filing fee and submitted substantial documentary evidence in support of their claims including but not limited to written submissions, copies of communications between them (such as letters, text messages and emails), videos, copies of police incident reports, unsigned witness statements, receipts and invoices, accountings of compensation sought, condition inspections reports, registered mail receipts and tracking information, photographs, the tenancy agreement, and a Notice of Final Opportunity to Schedule a Condition Inspection.

Analysis

Sections 24 and 36 of the Act state that if a tenant or a landlord fails to comply with the requirements set our under sections 23 or 35 of the Act in relation to condition inspections and reports, they extinguish their rights to either the return of the deposits, if they are a tenant, or their right to claim against them for damage to the rental unit, if they are a landlord. Although the Landlords argued that the Tenants failed to attend the move-in condition inspection despite their compliance with section 23(2) of the Act, the Tenants denied this testimony stating that they in fact attended the move-in condition inspection but were not provided with a copy of the condition inspection report, which had clearly been pre-completed by the Landlords prior to the condition inspection, or an opportunity to sign it. The Landlords denied failing to provide the Tenants with a copy and stated that it was slipped under their door.

Although the parties agreed that no move-out condition inspection was completed together at the end of the tenancy, they disagreed about why, with the Landlords arguing the Tenants agreed that it could be completed without them after the end of the tenancy and the Tenants arguing that no such agreement took place.

I find that there is no compelling documentary or other evidence before me from either party with regards to whether either party failed to meet the requirements of the Act in relation to the move-in condition inspection and as the parties provided differing yet affirmed testimony regarding whether or not the Tenants actually participated and whether the move-in condition inspection form was properly provided to the Tenants by the Landlords, I therefore find that I am not satisfied that either party extinguished their rights in relation to the security or pet damage deposit as a result of the move-in condition inspection.

I am however satisfied, based on a letter authored and signed by the Tenants on August 27, 2020, that the move-out condition inspection was completed in the absence of the Tenants because the Tenants agreed to this arrangement. As a result, I find that the Landlords were entitled to conduct the move-out condition inspection after the end of the tenancy and without the Tenants present and that the Tenants did not breach the Act by failing to attend, as their lack of attendance was pre-agreed to by the parties and in the benefit of the Landlords, who had initially requested such an arrangement for health and safety reasons related to the pandemic. Based on the above and as the Tenants acknowledged receipt of the move-out condition inspection report from the Landlords, I find that neither party extinguished their rights in relation to the security or pet damage deposit as a result of the move-out condition inspection. Having made

these findings, I will now turn my mind to whether the Landlords' Application seeking retention of the security and pet damage deposits was file don time and whether they were permitted under the Act to retain either or both of the deposits as part of the Application.

Section 38(1) of the Act states that except as provided in subsection (3) or (4) (a), of the Act, 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 either 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.

During the hearing the Landlords acknowledged that they received the Tenants' forwarding address in writing by courier on April 26, 2020, and that they still hold both deposits. However, there was a dispute between the parties regarding whether the tenancy ended on April 9, 2020, or April 30, 2020. Although the Tenants argued that the tenancy ended on April 9, 2020, I do not agree. The parties agreed in the hearing that the Tenants had given notice to end their tenancy effective April 30, 2020, and there is sufficient evidence before me from the parties demonstrating that the Tenants returned to and resided in the rental unit on a periodic basis after April 9, 2020, and that the majority of their possessions remained in the rental unit. As a result, I find that the tenancy ended on April 30, 2020, despite the fact that the Tenants chose not to reside in the rental continuously between April 9, 2020, and April 30, 2020.

Based on the above, I therefore find that the Landlords' Application in relation to the retention of the security deposit was filed on time in compliance with section 38(1) of the Act. However, I agree with the Tenants that there is no indication in the Application filed by the Landlords' that there is any pet damage. Policy Guideline #31 states that a pet damage deposit is to be held by the landlord as security for damage caused by a pet. It also states that a landlord may apply to an arbitrator to keep all or a portion of the pet damage deposit but only to pay for damage caused by a pet. Although the Landlords suggested during the hearing that its possible that water damage in one are of the rental unit was caused by a pet water dish, they did not submit any evidence in support of this claim, which I find speculative in nature, and there is no indication in the Application that the pet damage deposit is being withheld due to pet damage. There is also no evidence or testimony before me that the Landlords had a right under any other section of the Act to retain the pet damage deposit.

As a result, I am satisfied that the Landlords did not have a right to retain the pet damage deposit and were therefore required to return it to the Tenants, in full, by May 15, 2020. As the pet damage deposit was not returned, I find that the Tenants are entitled to the return of double its amount, $600.00, pursuant to section 38(6) of the Act. Based on the date the tenancy commenced, no interest is due. As the Landlord's Application was filed within 15 days after receipt of the Tenants' forwarding address in writing, I find that they were therefore entitled to retain the security deposit pending the outcome of their Application.

Having dealt with the Landlords' retention of the security deposit and pet damage deposit as part of their Application, I will now turn my mind to their claims in relation to damage and cleaning costs. Section 37(2) 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, and give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property. Although the Tenants provided reasons for why they failed to return all of the keys to the rental unit at the time the tenancy ended, which I have already found was April 30, 2020, I find that they none the less breached section 37(2)(b) of the Act by failing to do so. Pursuant to section 7 of the Act, I therefore award the Landlords the $37.37 sought for the cost changing the locks.

Although the Landlords sought compensation for a wide variety of costs associated with cleaning an repairing the rental unit at the end of the tenancy, the Tenants stated that they left the majority of the rental unit clean and undamaged, except for reasonable wear and tear. As it is the Landlords who are claiming compensation for damage and cleaning costs, I therefore find that it was incumbent upon them to satisfy me of their claims. Although the Landlords submitted a copy of the move-in and move-out condition inspection report, photographs of the rental unit after the end of the tenancy, and invoices and quotes for the cost of repairs and supplies, I am not satisfied that much of the repairs requested are the responsibility of the Tenants. During the hearing the parties agreed that a heat register was cracked during the tenancy, however, I find that this crack resulted because a cord that was run under the side of the register by the Landlords, had been accidentally snagged. As the damage resulted because of a cord placed by the Landlords in a place likely to result in damage, I therefore do not find that the Tenants are responsible for the cost of replacing this heart register vent and dismiss the Landlords' claim for this cost.

Although the Landlords also sought $75.00 for tightening loose faucets and plumbing fixtures in the rental unit, I find that there is no compelling documentary or other

evidence before me for consideration by the Landlords that the Tenants caused these fixtures to loosen. As a result, I find it more likely than not that these fixtures simply loosened over time through regular use, which is a very common occurrence, and that the loosening of these faucets and fixtures constitutes reasonable wear and tear for which the Tenants are not responsible. As a result, I therefore dismiss this $75.00 claim without leave to reapply.

Although the Landlords sought $116.48 for carpentry repairs due to water damage, I agree with the Tenants that the move-in condition inspection report clearly shows pre-existing water damage throughout the rental unit at the start of the tenancy. As a result, I find that I am not satisfied that the water damage noted by the Landlords at the end of the tenancy was in fact caused by the Tenants and I therefore dismiss this portion of their claim without leave to reapply. The Landlords also sought $160.97 for the repair of nail holes and painting; however, the Tenants disputed that they are responsible for putting any holes in the walls and argued that the Landlords have greatly exaggerated the size of the holes, which they state pre-dated the start of their tenancy. Overall I find the Landlords documentary evidence significantly lacking in this regard and given the Tenants' dispute of this portion of the claim, I find that I am therefore not satisfied that the Tenants caused this damage or that the Landlords are responsible for the amounts sought for its repair. As a result, I dismiss this portion of the Landlords' claim without leave to reapply.

As the Tenants agreed that they did not clean the exterior entrance to the rental unit, and tenants are required to leave the rental unit, which I find includes any private entrance ways, reasonably clean at the end of the tenancy, I award the Landlords the $30.00 sought for exterior entrance cleaning. I also award the Landlords the full $119.26 sought for light bulb replacement, as the replacement of light bulbs which burn out in a rental unit during the course of a tenancy are the responsibility of the tenants as set out in Residential Tenancy Policy Guideline #1. Had the Tenants wished to avoid or control this expense, they should have replaced all burnt out light bulbs prior to the end of the tenancy. As the Tenants agreed that several areas of the rental unit were also not cleaned at the end of the tenancy, such as several light fixtures, window tracks, vents and behind the stove, and the Landlord submitted documentary evidence in support of the need for cleaning, I award the Landlords the $128.63 sought for professional cleaning as shown in the invoice provided by them for my consideration.

Although the Tenants agreed that some items were left behind at the end of the tenancy, they argued that these items were either not theirs or could be recycled for free and therefore they should not be responsible for the cost of disposing of such items. I

do not accept this argument. There is no compelling evidence before me that any items left behind and disposed of by the Landlords either belonged to the rental unit or were already present in the rental unit at the start of the tenancy and the Landlords stated that no free recycling pick-up services exist in the area in which the rental unit is located. As tenants are required to leave rental units reasonably clean at the end of the tenancy, I therefore find that the Landlords are entitled to $85.00 sought for removal of items left behind by the Tenants at the end of the tenancy.

Finally, the Landlords sought $27.96 for the replacement of an exterior door mat. Although the Landlord argued that it was not well kept by the Tenants and therefore required replacement, from the photographs submitted by the Landlords it appears only to be dirty, not damaged, and I am therefore not satisfied that it could not simply have been cleaned instead of replaced. Further to this, the Landlords stated in the hearing that the door mat was two years old and I am not satisfied that exterior door mats left continually exposed to the elements have a life expectancy beyond that period. As a result, I dismiss the Landlords' claim for replacement of the door mat without leave to reapply. Having addressed the Landlords claims, I will now turn to the claim by the Tenants for the return of April 2020 rent.

The Tenants stated that the Landlord K.M. had so significantly interfered with their right to quiet enjoyment that it was not tenable for them to reside in the rental unit after April 9, 2020. As a result, they sought the return of rent paid for April in the amount of $1,200.00. The Landlords denied interfering with the Tenants right to quiet enjoyment and stated that in fact, the Tenants had periodically resided in the rental unit between April 9, 2020 – April 30, 2020. Further to this, they argued that it was the Tenants choice not to reside in the rental unit full-time during that period and therefore they should not be entitled to the return of any rent.

Having reviewed the video evidence, police incident reports, copies of correspondence between the parties, witness statements and written submissions submitted for my consideration by the Tenants, I find that the Landlord K.M., who also resides on the property, did in fact significantly interfered with the Tenants' right to quiet enjoyment of their rental unit between April 9, 2020, and April 30, 2020, by restricting their ability to have guests, by attempting to enter the rental unit without proper notice or authorization, by demanding that the Tenants meet their own personal health and safety standards even when in their own rental unit and by attempting to dictate who was allowed to attend the rental unit to assist the Tenants in cleaning and vacating the suite. I also find several letters authored by K.M. and sent to the Tenants disrespectful, demeaning and harassing in nature.

Section 28 of the Act states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

> (a)reasonable privacy;
> (b)freedom from unreasonable disturbance;
> (c)exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 *[landlord's right to enter rental unit restricted]*;
> (d)use of common areas for reasonable and lawful purposes, free from significant interference.

As a result of the above, I find that K.M. significantly disturbed the Tenants, interfered with their right to quiet enjoyment of their rental unit, as well as their rights to reasonable privacy, use common areas for lawful purposes free from significant interference and exclusive possession of the rental unit. While I appreciate K.M.'s health and safety concerns, I find that neither they, nor the Landlord R.A. had any right to restrict access to the rental unit by the Tenants or their guests, to dictate the safety precautions taken by the Tenants within their own rental unit, or to harass them in any way.

Despite the above, I find that the Tenants still benefitted from use of the rental unit during this period as they continued to store their possessions there and returned to the renal unit during this time period on several occasions. As a result, I award the Tenant's only 50% of the rent paid for the 22 day period between April 9, 2020 – April 30, 2020, totalling $440.00.

As both parties were at least partially successful in their Applications, I award them each recovery of their respective $100.00 filing fees, pursuant to section 72(1) of the Act.

Pursuant to section 72(b) of the Act, I authorize the Landlords to retain $500.26 from the Tenants' $600.00 security deposit, in recovery of the $100.00 filing fee and the amounts awarded to them as set out in this decision for cleaning and other costs. Pursuant to section 67 of the Act, I therefore grant the Tenants a Monetary Order in the amount of $1,239.74; $99.74 for the return of the balance of their security deposit, $100.00 for recovery of the filing fee, $600.00 for double the amount of their pet damage deposit, and $440.00 for loss of use and quiet enjoyment.

Conclusion

Pursuant to section 67 of the Act, I grant the Tenants a Monetary Order in the amount of **$1,239.74**. The Tenants are 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.

Although this decision has been rendered more than 30 days after the conclusion of the proceedings due to unforeseen circumstances, I note that section 77(2) of the Act states that the director does not lose authority in a dispute resolution proceeding, nor is the validity of a decision affected, if a decision is given after the 30 day period in subsection (1)(d).

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: October 21, 2020

Residential Tenancy Branch