Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the "Act").

The Landlord applied on August 11, 2020 for:

1. A Monetary Order for damage - Section 67;
2. An Order to retain the security deposit - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Tenant applied on August 11 for:

1. An Order for the return of the security deposit - Section 38; and
2. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Preliminary Matter

The Tenant states that it could not open the Landlord's evidence provided on a usb stick. The Tenant states that it only received paper copies of the Landlord's application and notice of hearing materials and all else was on the usb stick. The Landlord confirms that it provided all its supporting evidence on the usb stick. The Landlord states that it did not confirm with the Tenant whether the Tenant would be able to open the documents on the usb stick.

Rule 3.10.5 of the Residential Tenancy Branch Rules of Procedure provides that before the hearing, a party providing digital evidence to the other party must confirm that the other party has playback equipment or is otherwise able to gain access to the evidence. If a party is unable to access the digital evidence the arbitrator may determine that the digital evidence will not be considered. Given the Landlord's evidence that there was no confirmation that the Tenants could access the evidence on the usb stick and given the Tenant's evidence that it could not access that evidence, I decline to consider the Landlord's supporting evidence.

The Landlord confirms that it did not provide a monetary order worksheet. The Landlord's was given opportunity, with the Tenant's consent, to provide the breakdown of its monetary claims at the hearing. The Landlord clarified its total claim of $650.00 set out in the application is comprised as follows:

- $300.00 for the cost of labour to replace or repair damaged flooring;
- $100.00 for the cost of cleaning the unit;
- $150.00 for the cost of the flooring supplies;
- $100.00 for recovery of the filing fee.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The tenancy under written agreement of a furnished unit started on January 1, 2020 and ended on June 30, 2020. Rent of $1,100.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected $550.00 as a security deposit. The Parties mutually conducted a move-in inspection with a completed report copied to the Tenants. The Parties mutually conducted a move-out inspection.

The Landlord states that the move-out condition report was completed but not provided to the Tenant for signature at the time of the inspection due to covid safety concerns. The Landlord states that the Tenant was given a copy of the report on July 14, 2020 by email. The Tenant states that the move-out report was not completed at the time of the walkthrough and that a completed report was emailed to the Tenant on August 5, 2020 with the Landlord asking for signature on the report. The Landlord states that it only took notes during the walkthrough and did not complete the report at that time. The Landlord states that it subsequently completed the report and was not able to arrange for the Tenant's signature until after the Tenant sent the Landlord its July 28, 2020 email. The Landlord states that prior to this receipt of an email address, the Landlord had only text communication with the Tenant and had texted the Tenants with the information on damages to the unit.

The Tenant states that its forwarding address was given to the Landlord in the Tenants' application to rent the unit. The Tenant states that it informed the Landlord at the time that this was the address the Tenant would be moving back to when the tenancy ends. The Landlord states that the Tenant did not inform the Landlord that its address at the time of the application would be its forwarding address at the end of the tenancy. The Parties agree that the Landlord received the Tenants' forwarding address in an email dated July 28, 2020.

The Landlord states that the Tenants left the unit unclean and claims the cleaning costs of $100.00. The Tenant states that it left the unit thoroughly cleaned. The Tenant states that the Landlord had asked the Tenant to leave the unit by 11:00 a.m. and that the Landlord had the cleaner already arranged regardless of the state of the unit.

The Landlord states that the Tenants left the cork flooring damaged under the area of the dining room table and chairs. The Landlord states that while it believes that the bottom of the legs of the table and chairs had floor protectors the Landlord did not check to ensure they were in place at the onset of the tenancy. The Landlord claims $300.00

as the estimated cost of the labour to replace the flooring and $150.00 as the estimated cost for the flooring supplies. The Tenant states that there were no protectors on the chair legs during the tenancy. The Landlord states that had the Tenant informed the Landlord when the scratches first appeared, the Landlord would have had opportunity to ensure protectors were on the leg thereby stopping further damage. The Landlord states that the repairs to the flooring has not been done. The Landlord states that it was unable to obtain an estimate for the flooring supplies as the store did not have the same flooring and that the Landlord just realized that it needed an estimate. The Landlord states that the estimate is now available but has not been provided as evidence for this hearing.

Analysis

Section 35(3) of the Act provides that the landlord must complete a condition inspection report in accordance with the regulations. Section 35(4) of the Act provides that both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations. Section 18(1)(b) of the Regulations provides that the landlord must give the tenant a copy of the signed move-out condition inspection report promptly and in any event within 15 days after the later of

(i)the date the condition inspection is completed, and

(ii)the date the landlord receives the tenant's forwarding address in writing.

Section 36(2)(c) of the Act provides that unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord, having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

There is nothing in the Act or Regulations that sets out when the Tenant must be given a copy for signature although it may be considered that the requirement to give the Tenant a copy of the completed report would include having given the Tenant an

opportunity to sign the report at the time of the inspection. Nonetheless, given the undisputed evidence that there were significant health and safety concerns at the time, and as the Tenant was given a copy of the move-out report, I consider that the Tenant was not prejudiced in any way by the lack of its signature on the report prior to it having been given to the Tenant.

Given the Landlord's evidence that the Tenant did not inform the Landlord that its forwarding address at the end of the tenancy would be that address contained in the Tenant's application for rental of the unit, and given the undisputed evidence that the Landlord received the Tenant's forwarding address on July 28, 2020, I find on a balance of probabilities that the Landlord received the Tenant's forwarding address on July 28, 2020. Given the Tenant's evidence that the Landlord sent the move-out report to the Tenant on August 5, 2020 I find that the Landlord gave the report to the Tenant within the time required. For the above reasons I find on a balance of probabilities that the Landlord's right to claim against the security deposit was not extinguished at move-out.

Section 38 of the Act provides that 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 the security deposit or make an application for dispute resolution claiming against the security deposit. Where a landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. Given the Landlord's evidence that it was unknown at the time of the onset of the tenancy that the Tenant's forwarding address would be the same address as held by the Tenant prior to the tenancy and without any supporting evidence from the Tenant of the Landlord knowing this address to be the future forwarding address I find that the Tenant did not provide a forwarding address prior to the onset of the tenancy. As the Landlord made its application on August 11, 2020 and given the above finding that the Landlord received the Tenant's forwarding address on July 28, 2020, I find that the Landlord made its application within the time required and is therefore not required to repay the Tenants double the security deposit.

Section 37 of the Act provides 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. Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that costs for the damage or loss have been incurred or established. Given the lack of any evidence that the Landlord incurred any costs associated with the damage to the floors, I find that the Landlord has not substantiated the total costs claimed for the flooring labour and supplies. Nonetheless, it is undisputed that the Tenant left the floors with damage and did not inform the Landlord of the first sign of damage caused by the table and chair legs. However, given the Tenant's evidence that no leg protectors were provided with the chairs and the Landlord's uncertain evidence on whether protectors were in place at the onset of the tenancy, I find on a balance of probabilities that the chairs and table legs were not protected by the Landlord at the onset of the tenancy. I find therefore that the Landlord shares equally in the cause of the damage to the flooring. For this reason and as I consider that a nominal award for all the damage would be $100.00, I find that the Landlord is only entitled to **$50.00** for the Tenant's contribution to the damage.

The Landlord has no supporting evidence of an unclean unit. The Tenant disagrees that the unit was left without being reasonably clean. Further, the Tenant gives undisputed evidence of the cleaner having been arranged prior to the move-out inspection. Given this evidence, I find on a balance of probabilities that the Landlord has not substantiated that the unit was left unclean and that the cleaning costs incurred by the Landlord were not related to the state of the unit at move-out. I therefore dismiss the Landlord's claim for cleaning costs.

Deducting the Landlord's entitlement of **$50.00** from the security deposit plus zero interest of **$550.00** leaves **$500.00** to be returned to the Tenant. Since both Parties have had some success with their applications, I find that each are entitled to recovery of their filing fees and set them off against each other leaving no additional entitlement for either Party.

Conclusion

I Order the Landlord to retain **$50.00** from the security deposit plus interest in the amount of **$550.00** in full satisfaction of the claim.

I grant the Tenant an order under Section 67 of the Act for **$500.00**. If necessary, this order may be filed in the Small Claims 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 Act.

Dated: December 9, 2020

Residential Tenancy Branch