Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

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

- Compensation for damage caused by the Tenant, their pets, or guests to the unit, site or property;
- Authorization to withhold the security deposit; and
- Recovery of the filing fee.

This hearing also dealt with a Cross-Application for Dispute Resolution (the Cross-Application) that was filed by the Tenants under 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 Landlord, the Landlord's Agent (the Agent) an interpreter from the Landlord (the Interpreter) and the Tenants, all of who provided affirmed testimony. As the parties acknowledged receipt of each other's Applications and Notice of Hearings, and raised no concerns regarding service of these documents or proceeding with the hearing as scheduled, the hearing therefore 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 address provided in the hearing.

Preliminary Matters

Preliminary Matter #1

Although the Agent acknowledged receipt of the Tenants' documentary evidence, the Tenants denied receipt of anything but the Notice of Dispute Resolution Proceeding Package, which includes a copy of the Landlord's Application and Notice of Hearing, the Respondent instructions, and the fact sheet.

The Agent stated that they printed off all of the documents before me and included them in the registered mail package sent to each of the Tenants at their forwarding address on August 20, 2020, and provided me with the registered mail tracking number. The Canada Post website confirms that the registered mail was sent as descried above and delivered on August 27, 2020.

The Tenants acknowledged receipt of this registered mail on August 27, 2020, but reiterated that the only documents contained in the package were the Notice of Dispute Resolution Proceeding Package, which includes a copy of the Landlord's Application and Notice of Hearing, the Respondent instructions, and the fact sheet.

In reviewing the documentary evidence before me submitted on behalf of the Landlord, I noticed that 12 documents had been uploaded into the Dispute Access Site on behalf of the Landlord on November 25, 2020, well after the date the Agent stated that all of the documentary evidence before me on behalf of the Landlord had been sent to the Tenants by Registered mail. When I asked the Agent about whether these documents had been served on the Tenants, either as part of the registered mail sent on August 20, 2020, or on a different date, they acknowledged that they had not, which is contradictory to their testimony earlier in the hearing that all of the documentary evidence before me on behalf of the Landlord had been served on the Tenants as part of the above noted registered mail package.

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 the Notice of Dispute Resolution Proceeding Package and all evidence as required by the Act and the Rules of Procedure. Based on the contradictory testimony

provided by the Agent in the hearing with regards to what evidence before me was included in the above noted registered mail package, the Tenants' denial of receipt of any documentary evidence from the Landlord or their agents, and the lack of documentary or other evidence to corroborate the Agent's testimony regarding what was included in the registered mail package sent, such as a witness statement, witness testimony, photographs or a video, I find that I am not satisfied that any of the documentary evidence submitted on behalf of the Landlord for my consideration was sent to or received by the Tenants in relation to this hearing.

Rule 3.14 of the Rules of Procedure states that documentary and digital evidence that is intended to be relied on at the hearing by the applicant must be received by the respondent and the Residential Tenancy Branch (the Branch) directly or through a Service BC Office not less than 14 days before the hearing. Further to this, I find that the ability to know the case against you is fundamental to the dispute resolution process. As a result, I find that it would be a breach of both the Rules of Procedure and the principles of natural justice to accept the documentary evidence before me from the Landlord for consideration in this hearing as I am not satisfied that it has been served on the Tenants as required by the Act and the Rules of Procedure. As a result, I have excluded the documentary evidence before me from the Landlord for consideration. The hearing therefore proceeded based only on the Tenants' documentary evidence and the testimony and submissions provided at the hearing.

Preliminary Matter #2

Although the Landlord selected the ground for "Compensation for damage caused by the Tenant, their pets, or guests to the unit, site or property" when filing their Application, I find that a more accurate characterization of their claim is compensation for monetary loss or other money owed as their monetary claim is for recovery of cleaning costs, not physical damage to the rental unit. I have therefore assessed the Landlord's claims as compensation for monetary loss or other money owed, not damage.

Issue(s) to be Decided

Is the Landlord entitled to compensation for cleaning costs?

Is the Landlord entitled to withhold the Tenants' security deposit towards any compensation owed to them for monetary loss or other money owed?

Are the Tenants entitled to the return of all, some, none, or double the amount of their $1,150.00 security deposit?

Is either party entitled to recovery of the filing fee?

Background and Evidence

The tenancy agreement in the documentary evidence before me, signed on June 22, 2014, states that the one year fixed term of the tenancy commenced on July 1, 2014, and ended on June 30, 2015, after which time the tenancy continued on a month to month basis. The tenancy agreement states that rent at the start of the tenancy was $2,300.00 per month, and that rent is due on the first day of each month. During the hearing the parties agreed that rent was $2,500.00 per month at the end of the tenancy, due to a mutual agreement to increase the rent effective April 1, 2020, after service of a Notice of Rent Increase three months in advance. The tenancy agreement also stated that a 7 page addendum forms part of the tenancy agreement and a copy of the addendum was submitted for my review and consideration.

The parties agreed that the Tenants personally served the Landlord or their agent on June 29, 2020, with written notice to end their tenancy effective July 27, 2020, and that the Tenants' forwarding address was included in this written notice. Although July 27, 2020, is several days earlier than the earliest date that the Tenants could have legally ended their tenancy under section 45(1) of the Act, July 31, 2020, the parties agreed that the Tenants vacated the rental unit by 1:00 P.M. on July 27, 2020, in accordance with their written notice to do so.

Although the parties agreed that a move-in condition inspection was completed as required, they disputed whether a proper condition inspection report was either completed or served on the Tenants as required by the Act and the Rules of Procedure. The Tenants denied ever being served with a move-in condition inspection report of being asked to sign one. The Agent and Landlord however stated that a handwritten move-in inspection report was completed and served on the Tenants both at the start of the tenancy and in relation to this hearing.

The parties agreed that no move-out condition inspection was completed, however, they disagreed about why. The Tenants stated that despite having been served with written notice on June 29, 2020, that the tenancy would be ending on July 27, 2020, and knowing that the Tenants would be moving a substantial distance away, the Landlords never made any attempts to schedule a move-out condition inspection and did not serve

them with the #RTB-22 Final Notice of Opportunity to Schedule a Condition Inspection as required. The Landlord, Agent, and Interpreter denied that the Landlord had made no attempts to schedule a move-out condition inspection, stating that numerous attempts have been made by phone, in person, and over email without success, but agreed that an #RTB-22 Final Notice of Opportunity to Schedule a Condition Inspection was not served. The Landlord and Interpreter also stated that the Landlord's spouse was home at the time the Tenants vacated the rental unit but instead of requesting that they complete the condition inspection with them, they left the keys to the rental unit with a minor child of the Landlord who resides on the property.

The Tenants responded by stating that it is not their obligation to schedule the move-out condition inspection and that the Landlord knew when they were moving out therefore could have made attempts to schedule the inspection or serve them with the Final Notice of Opportunity to Schedule a Condition Inspection as required but did not do so. The Tenants also stated that when they were getting ready to leave, they checked to see if either the Landlord or their spouse was home and were advised by the minor child that they were not. The Tenants stated that it was not until they were driving away from the property that they saw the Landlord's spouse in the garden.

Fundamentally the parties disagreed about whether the rental unit was left reasonably clean at the end of the tenancy, whether the carpets had been cleaned as required, and whether the Landlord was therefore entitled to the amounts sought for general cleaning of the rental unit and carpet cleaning. The Tenants argued that they cleaned the rental unit themselves and left it in the same or better condition than when it was rented to them. They also stated that they rented a carpet cleaner and cleaned the carpets themselves before the end of the tenancy, as they did not want to bring a professional carpet cleaner into the property due to concerns about the pandemic and a chronic health condition suffered by one of the Tenants. In support of this testimony the Tenants submitted photographs and a receipt for the rental of a carpet cleaner on July 26, 2020.

The Landlord and their Agent stated that the rental unit had not been properly cleaned at the end of the tenancy and that the walls, floors, kitchen, and bathrooms all required extensive cleaning and that two cleaners were hired at a cost of $50.00 per hour ($25.00 per person per hour) to clean the rental unit for a total of 10 hours at a cost of $525.00. They Also stated that the carpets required professional cleaning at the end of the tenancy, which they had done at a cost of $224.70. Based on the above the Landlord sought $749.70 in cleaning costs, recovery of the $100.00 filing fee, and withheld the Tenants' $1,150.00 security deposit pending the outcome of the Application.

The Tenants argued that the Landlords extinguished their right to claim against the security deposit due to their failure to complete or serve them with a proper move-in condition inspection report and their failure to provide them with two opportunities for a move-out condition inspection, including serving them with the #RTB-22. As a result, the Tenants stated that the Landlord was obligated to return their security deposit to them, in full, with 15 days after the end date for the tenancy, which they did not do. As a result, the Tenants argued that they are entitled to double the amount of their security deposit. The Tenants also sought recovery of the $100.00 filing fee.

Analysis

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 Landlord argued that the Tenant had not left the rental unit reasonably clean at the end of the tenancy, the Tenant denied this testimony stating that it was left reasonably clean and submitted several photographs and a receipt for the rental of a carpet cleaning machine in support of this position. In the absence of documentary evidence before me for consideration on behalf of the Landlord to support their position that the rental unit was not left reasonably clean at the end of the tenancy, I find that I am not satisfied by them that it was. As a result, I dismiss their claim for $525.00 in general cleaning costs. Having made this finding, I will now turn my mind to the matter of carpet cleaning.

Although I am satisfied that the Tenants rented a carpet cleaner and cleaned the carpets themselves prior to the end of the tenancy, a term in the 7 page addendum to the tenancy agreement states that at the end of the tenancy the Tenants agree to have the carpets professionally cleaned at their own expense. It also states that if the Tenants do not provide verification of professional carpet cleaning to the Landlord, the Landlord may have the carpets cleaned at the Tenants' expense and deduct this amount form the security deposit. As there is no documentary evidence or testimony before me from the Tenants that they had the carpets professionally cleaned, I am not satisfied that they did. Although the Tenants argued that they had health and other concerns about allowing a professional carpet cleaner into their home, I do not accept this as a valid reason for breaching a clear term of the addendum to their tenancy agreement. Further to this, I find that there were options open to the Tenants to comply with this term of the addendum which presented no risk to them or their health, such as having the carpets cleaned after they vacated by a professional carpet cleaner of their

own choosing. As a result, I find that the Landlord was entitled to have the carpets professionally cleaned at the end of the tenancy at the Tenants' expense. As the Tenants did not dispute that the Landlords had the carpets of the rental unit professionally cleaned at a cost of $224.70, and I find the costs sought for carpet cleaning by the Landlords reasonable, I therefore award the Landlords the $224.70 sought for professional carpet cleaning.

Having assessed the Landlord's claims for compensation for cleaning costs, I will now turn my mind to the issue of retention and return of the security deposit. Based on the documentary evidence I have accepted for consideration in this matter, and the testimony provided during the hearing, I am satisfied that the Landlords failed to meet the obligations incumbent upon them under sections 23 and 35 of the Act and Part 3 of the regulations, with regards to condition inspections and reports. As a result, I am satisfied that the Landlord extinguished their right to claim against the security deposit for damage to the rental unit pursuant to sections 24(2) and 36(2) of the Act. As I find that the Landlord extinguished their right in relation to the security deposit first, I find it unnecessary to determine if the Tenants also extinguished their rights to its return, as Policy Guideline 17 states that the party who extinguishes their right in relation to the security deposit first, shall bear the loss.

However, as stated in the Preliminary Matters section of this decision, I find that the Landlord's Application actually relates to cleaning costs, and not damage. Records at the Branch show that the Landlord filed their Application seeking compensation for cleaning costs and retention of the Tenants' security deposit on August 10, 2020. As the parties agreed that the tenancy ended on July 27, 2020, and that the Tenants forwarding address was received in writing by the Landlord on June 29, 2020, I find that the Landlord had until August 11, 2020, to file their Application seeking retention of the security deposit or return it to the Tenants in full, pursuant to section 38(1) of the Act.

Based on the above, I am satisfied that the Landlord filed their Application seeking retention of the Tenants' security deposit within the legislative timeframe set out in section 38(1) and that they therefore had authority to withhold the security deposit pending the outcome of the Application, as their claims relate to cleaning costs and recovery of the filing fee, not damage. As a result, I dismiss the Tenants' claim for the return of double the amount of their security deposit without leave to reapply.

Despite the above, I find that the Tenants are entitled to $925.30, the balance of their $1,150.00 security deposit retained by the Landlord, less the $224.70 owed to the Landlord for professional carpet cleaning costs. Pursuant to section 67 of the Act, I

therefore grant the Tenants a Monetary Order in the amount of $925.30 and I order the Landlord to pay this amount to the Tenants.

As both parties were only partially successful in their Applications, I decline to grant either party recovery of the filing fee.

Conclusion

Pursuant to section 67 of the Act, I grant the Tenants a Monetary Order in the amount of **$925.30**. 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. The Landlord is cautioned that costs of such enforcement are recoverable from them by the Tenants.

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 4, 2020

Residential Tenancy Branch