Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL; MNSDB-DR, FFT

Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* ("*Act*") for:

- a monetary order for damage to the rental unit, pursuant to section 67;
- authorization to retain the tenants' security and pet damage deposits (collectively "deposits"), pursuant to section 38; and
- authorization to recover the filing fee for their application, pursuant to section 72.

This hearing also dealt with the tenants' application pursuant to the *Act* for:

- authorization to obtain a return of double the amount of their deposits, pursuant to section 38; and
- authorization to recover the filing fee for their application, pursuant to section 72.

The two landlords, landlord MD ("landlord") and "landlord RD," and the two tenants, tenant MK ("tenant") and "tenant EG," attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 61 minutes.

The hearing began at 1:30 p.m. with me, the landlord, and the two tenants present. Landlord RD called in late at 1:41 p.m. The hearing ended at 2:31 p.m.

The two landlords and the two tenants confirmed their names and spelling. The landlord and the tenant provided their email addresses for me to send this decision to both parties after the hearing.

The two landlords stated that they co-own the rental unit together. The landlord confirmed the rental unit address.

At the outset of this hearing, I informed both parties that they were not permitted to record this hearing, as per Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure ("Rules")*. The two landlords and the two tenants all separately affirmed, under oath, that they would not record this hearing.

At the outset of this hearing, I explained the hearing and settlement processes, as well as the potential outcomes and consequences, to both parties. Both parties had an opportunity to ask questions, which I answered. Neither party made any adjournment or accommodation requests. Both parties confirmed that they were ready to proceed with this hearing, they wanted me to make a decision, and they did not want to settle both applications.

Both parties confirmed receipt of the other party's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that both parties were duly served with the other party's application.

Tenants' Direct Request Application

The tenants' application was originally scheduled as a direct request proceeding, which is a non-participatory hearing. The direct request proceeding is based on the tenants' paper application only, not any submissions from the landlords. An "interim decision," dated October 28, 2021, was issued by an Adjudicator for the direct request proceeding. The interim decision adjourned the direct request proceeding to this participatory hearing. A notice of reconvened hearing, dated October 29, 2021, was also issued.

The landlord confirmed receipt of the interim decision, the notice of reconvened hearing, and evidence, from the tenants.

At pages 2 and 3 of the interim decision, the Adjudicator noted the following;

> *Section 13(2)(b) of the Act establishes that a tenancy agreement is required to identify "the correct legal names of the landlord and tenant."*
>
> *I have reviewed all documentary evidence and I find that tenancy agreement only*

provides initials for Landlord R.S.D.'s first name. I also find that the spelling of Landlord R.S.D.'s name on the tenancy agreement does not match the spelling of the last name on the Application for Dispute Resolution.

I find these discrepancies raise questions that can only be addressed in a participatory hearing.

Both parties agreed that both landlords and both tenants signed the written tenancy agreement. Landlord RD confirmed that his middle initial is "S" and he referred to himself with initials "R.S.D." in the parties' tenancy agreement, which was drafted by the landlords.

Pursuant to section 64(3)(c) of the Act, I amend the tenants' application to correct the spelling of landlord RD's surname. The landlords indicated the incorrect spelling for their surnames in the tenancy agreement that they drafted. I find no prejudice to either party in making this amendment.

Issues to be Decided

Are the landlords entitled to a monetary order for damage to the rental unit?

Are the landlords entitled to retain the tenants' deposits?

Are the tenants entitled to a return of double the amount of their deposits?

Is either party entitled to recover the filing fee for their application?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of both parties' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on September 1, 2020 and ended on September 1, 2021. Monthly rent in the amount of $1,650.00 was payable on the first day of each month. A written tenancy agreement was signed by both parties. No move-in condition inspection report was completed for this tenancy. The landlords did not have written permission to retain any amount from the tenants'

deposits. The landlords' application to retain the tenants' deposits was filed on September 24, 2021.

Both parties agreed to the following facts. Each tenant paid a security deposit of $400.00 and a pet damage deposit of $400.00 to the landlords. The landlords retained $200.00 from the security deposit and $100.00 from the pet damage deposit, totalling $300.00, and returned $200.00 from the security deposit and $300.00 from the pet damage deposit, totalling $500.00, to the tenant on September 22, 2021 by e-transfer. The landlords retained $100.00 from the security deposit and $400.00 from the pet damage deposit, totalling $500.00, and attempted to return $300.00 from the security deposit to tenant EG on September 20, 2021, but she refused the e-transfer.

The landlord stated a move-out condition inspection report was completed but the tenants did not sign it and a copy was not provided by the landlords for this hearing. The tenant stated that the tenants were not offered a chance to participate in or sign a move-out condition inspection report and no copy of a report was given to the tenants by the landlords.

Both parties agreed that the tenant provided a written forwarding address to the landlords on August 30, 2021, and tenant EG provided a written forwarding address to the landlords on September 3, 2021, both by email. The landlord stated that she received both emails on the above dates from the tenants, and they were sent directly to her email address. She agreed that she listed her same email address in the landlords' application, and she sent the landlords' application and evidence to the tenants at their above forwarding addresses, which are also listed in the landlords' application.

The tenant claimed that she gave a letter with her forwarding address to landlord RD in person on August 27, 2021. Tenant EG said that she left a letter with her forwarding address on the counter of the rental unit on August 31, 2021. Landlord RD denied personally receiving any forwarding address letters from the tenants.

As per their online RTB application details, the landlords applied for a monetary order of $800.00 plus the $100.00 filing fee. However, the landlords provided a monetary order worksheet requesting $1,400.00 from the tenants, including $200.00 for cleaning and $1,200.00 for painting. At this hearing, the landlords claimed that they only wanted to retain the tenants' deposits for the above costs.

The tenants seek a return of double the value of their deposits, totalling $3,200.00, minus the $500.00 already returned by the landlords, plus the $100.00 application filing fee. The tenant stated that the tenants applied for double the value of their deposits in this application. She said that the tenants indicated $1,100.00 on their application, because they deducted the $500.00 returned by the landlords, from the original amount of both deposits, totalling $1,600.00. She claimed that the tenants did not include the doubled value amount since it would be decided at this hearing.

The landlord testified regarding the following facts. The landlords seek $800.00 and to keep the tenants' deposits, even though they spent way more money than they are claiming. The tenants had two cats at the rental unit. The cats caused damages and scratching. The landlords had to clean the bathroom and refrigerator at the rental unit. The landlords had to clean because the rental unit was not in the same condition as it was at the start of the tenancy. The tenants denied the damages but they are "pretty evident." The landlords want to keep $800.00 from the deposits and return $300.00 to tenant EG. The landlord has receipts in front of her during this hearing, but she did not provide it as evidence because she thought that the monetary order worksheet was sufficient, and receipts were not required. She can provide receipts after the hearing. The landlords calculated the damages for each tenant based on who lived in which bedroom, since each tenant had one cat.

Landlord RD testified regarding the following facts. The living room curtain had a tear from the cat. The walk-in closet curtain in the bedroom had cat damage. The tenants admitted that they covered the wall with mud, which did not fix the damages to the walls. The whole suite had to be painted. The tenants' cats damaged three curtains at the rental unit. The main door of the basement unit was scratched and rubbed off three layers of paint. The landlords are being generous with the tenants and only want to keep their deposit. The landlords love cats and pets and that is why there is a pet deposit. The tearing of the three curtains at the rental unit is not reasonable wear and tear, as claimed by the tenants.

The tenant testified regarding the following facts. There were minor scratches on the walls at the rental unit and the tenants tried to fill it in with plaster. It is the landlords' obligation to sand and paint the walls, not the tenants' responsibility. The tenants made an effort to fill in the scratches. The drywall did not have to be replaced, as claimed by the landlords. There were two doors to get into the basement suite. There was another basement suite besides the tenants' rental unit, so the damages to the door could have been from other occupants. There were no pictures or a walkthrough report done by the landlords when the tenants moved in or out.

Tenant EG testified regarding the following facts. The landlords claim that they completed cleaning to the rental unit, as per their application. However, the landlords did not provide receipts for any of their damages to the tenants, including for cleaning and painting. The tenants were not offered to complete a move-in or move-out inspection report on paper with the landlords. The tenants were not told any numbers by the landlords for damages, they were only told by the landlords that there were damages. The tenants did not hear anything from the landlords until they e-transferred different amounts to both tenants from their deposits. The landlords claimed that they did $1,200.00 in painting and $200.00 in cleaning but have not provided any receipts for these claims. The damages to the blinds are reasonable wear and tear.

Analysis

Landlords' Application

Rules and Legislation

The following Residential Tenancy Branch ("RTB") *Rules* are applicable and state the following, in part:

> *7.4 Evidence must be presented*
> *Evidence must be presented by the party who submitted it, or by the party's agent…*
> …
> *7.17 Presentation of evidence*
> *Each party will be given an opportunity to present evidence related to the claim. The arbitrator has the authority to determine the relevance, necessity and appropriateness of evidence…*
>
> *7.18 Order of presentation*
> *The applicant will present their case and evidence first unless the arbitrator decides otherwise, or when the respondent bears the onus of proof…*

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicants to establish the claim. To prove a loss, the landlords must satisfy the following four elements on a balance of probabilities:

1) Proof that the damage or loss exists;
2) Proof that the damage or loss occurred due to the actions or neglect of the tenants in violation of the *Act*, *Regulation* or tenancy agreement;
3) Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4) Proof that the landlords followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Findings

On a balance of probabilities and for the reasons stated below, I dismiss the landlords' application of $1,400.00, without leave to reapply.

I find that the landlords did not properly present their evidence, as required by Rule 7.4 of the RTB *Rules of Procedure*, despite having multiple opportunities to do so, during this hearing, as per Rules 7.17 and 7.18 of the RTB *Rules of Procedure.*

This hearing lasted 61 minutes so the landlords had ample opportunities to present their application and respond to the tenants' claims. During this hearing, I repeatedly asked the landlords if they had any other information to present and provided them with multiple opportunities for same.

The landlords did not provide specific amounts or explain their claims in any detail during this hearing. The landlords did not review their documents in any detail during this hearing. I find that the landlords failed the above four-part test.

I find that the landlords failed to prove damages beyond reasonable wear and tear, caused by the tenants, as required by Residential Tenancy Policy Guideline 1. I find that the landlords did not indicate how old the paint at the rental unit was, for me to determine its useful life, as per Residential Tenancy Policy Guideline 40.

The landlords did not provide any receipts, quotes, estimates, invoices, or other such documentation to show if or when they had any cleaning or painting done, when the work was completed, who completed it, how many people completed it, what the rate per hour or per worker was, what tasks were completed, how long it took to complete, when the work was paid for, how it was paid, and who paid it. The landlords did not provide any testimony about the above information during this hearing.

The landlord claimed that she had receipts in front of her during this hearing. The tenants claimed that they did not receive any receipts from the landlords. The landlord stated that she could provide the receipts after this hearing. I informed the landlord that she could not submit any receipts after this hearing, as the landlords had ample time to provide the receipts to the tenants and the RTB prior to this hearing, as the landlords' application was filed on September 24, 2021, and this hearing occurred on April 22, 2022, almost 7 months later.

The landlords did not complete a move-in condition inspection report when the tenants moved in. The landlords said that they completed a move-out condition inspection report without the tenants, but they did not provide a copy to the RTB for this hearing or to the tenants. The tenants claimed that they were not offered an opportunity to complete a report or sign it with the landlords. Therefore, I cannot determine if any damages were caused by the tenants during their tenancy or whether these damages were pre-existing when they moved into the rental unit.

Accordingly, the landlords' application for cleaning of $200.00 and painting of $1,200.00 is dismissed without leave to reapply.

As the landlords were unsuccessful in their application, I find that they are not entitled to recover the $100.00 filing fee from the tenants.

Tenants' Application

Section 38 of the *Act* requires the landlords to either return the tenants' deposits or file for dispute resolution for authorization to retain the deposits, within 15 days after the later of the end of a tenancy and the tenants' provision of a forwarding address in writing. If that does not occur, the landlords are required to pay a monetary award, pursuant to section 38(6)(b) of the *Act,* equivalent to double the value of the deposits. However, this provision does not apply if the landlords have obtained the tenants' written authorization to retain all or a portion of the deposits to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenants to pay to the landlords, which remains unpaid at the end of the tenancy (section 38(3)(b)).

I make the following findings on a balance of probabilities and based on the testimony and evidence of both parties. This tenancy ended on September 1, 2021. The landlords did not have written permission to retain any amount from the tenants' deposits.

The tenant provided a forwarding address on August 30, 2021, and tenant EG provided a forwarding address on September 3, 2021, both by email to the landlord. Email is permitted by section 88 of the *Act* and section 43 of the *Regulation*. The landlord provided her same email address for service in the landlords' application. The landlord confirmed receipt of the tenants' forwarding addresses on the above dates, indicated both addresses in the landlords' application, and used both addresses to serve the tenants with the landlords' application and evidence.

I find that the tenants did not extinguish their right to the return of their deposits because they did not complete a move-out condition inspection report with the landlords, as per section 36 of the *Act*. I accept both tenants' testimony that they were not offered any opportunities by the landlords, to complete a move-out condition inspection report with the landlords. I find that the landlords failed to provide a copy of the move-out condition inspection report as evidence for this hearing, nor did they provide a copy of it to the tenants.

I find that the landlords' right to claim against the tenants' deposits for damages was extinguished for failure to complete a move-in condition inspection report with the tenants.

No interest is payable on the tenants' deposits during the period of this tenancy. In accordance with section 38(6)(b) of the *Act* and Residential Tenancy Policy Guideline 17, I find that the tenants are entitled to receive double the value of their security deposit of $800.00, totalling $1,600.00, and double the value of their pet damage deposit of $800.00, totalling $1,600.00. Therefore, the tenants are entitled to $3,200.00 total for both deposits, minus the $500.00 amount already returned by the landlords to the tenant, leaving a balance of $2,700.00.

Although the landlords returned $500.00 from the deposits to the tenant on September 22, 2021, this is after the 15-day period, since the tenant provided her written forwarding address to the landlords on August 30, 2021. Although the landlords attempted to return $300.00 from the deposits to tenant EG on September 20, 2021, and it was refused, this is also after the 15-day period, since tenant EG provided her written forwarding address to the landlords on September 3, 2021. Therefore, both deposits have been doubled, as noted above.

As the tenants were successful in their application, I find that they are entitled to recover the $100.00 filing fee from the landlords.

The tenants are provided with one monetary order (not separate monetary orders) as they filed their application jointly, and they were both listed as co-tenants of the rental unit during a joint tenancy, with only one written tenancy agreement with the landlords.

Conclusion

The landlords' entire application is dismissed without leave to reapply.

I issue a monetary order in the tenants' favour in the amount of $2,800.00 against the landlord(s). The landlord(s) must be served with this Order as soon as possible. Should the landlord(s) 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: April 22, 2022

Residential Tenancy Branch