Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CAPITAL REGION HOUSING COORPORATION and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S, MNDCL-S, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution that was filed by the Landlord under the *Residential Tenancy Act* (the Act), on March 31, 2022, seeking:

- Compensation for the cost of repairing damage to the rental unit caused by the Tenant, their pets, or their guests;
- Compensation for monetary loss or other money owed;
- Retention of the security deposit and pet damage deposit; and
- Recovery of the filing fee

The hearing was convened by telephone conference call on November 29, 2022, at 1:30 P.M. and was attended by three agents for the Landlord (the Agents), and legal counsel for the Tenant D.K. All testimony provided was affirmed. As the Tenant's lawyer acknowledged receipt of the Notice of Dispute Resolution Proceeding (NODRP) and the Landlord's documentary evidence, and stated that there are no concerns with regards to the date s or methods of service, the hearing therefore proceeded as scheduled and I accepted the Landlord's documentary evidence for consideration. The participants were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The participants were advised that pursuant to rule 6.10 of the Residential Tenancy Branch Rules of Procedure (the Rules of Procedure), interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The participants were asked to refrain from speaking over me and one another and to hold their questions and responses until it was their opportunity to speak. The participants were also advised that personal

recordings of the proceeding were prohibited under the Rules of Procedure, and confirmed that they were not recording the proceedings.

At the request of the parties, a copy of the decision and any orders issued in their favor will be emailed to them at the e-mail addresses provided in the hearing.

Issue(s) to be Decided

Is the Landlord entitled to compensation for the cost of cleaning and repairs?

Is the Landlord entitled to recovery of the filing fee?

Is the Landlord entitled to withhold any deposits held in trust?

Background and Evidence

The Agents stated that they received an Order of Possession for the rental unit at a different hearing, and that the tenancy ended at approximately 1:00 A.M. on February 5, 2022, as a result when the Tenant handed over vacant possession of the rental unit. The Agent(s) initially stated that no date and time for the condition inspection was agreed to in advance, but when advised of the requirements of sections 35 and 36 of the Act, and questioned about how the Landlord had met these requirements, the Agent(s) stated that the Tenant and/or their support worker and the building manager had agreed to conduct the move-out condition inspection at 6:00 P.M. on February 4, 2022. The Agent(s) stated that the move-out process was very chaotic, and the Tenant was not ready for the inspection at the scheduled time, so they returned at approximately 1:00 A.M. on February 5, 2022, at which time the Tenant handed over vacant possession of the rental unit but refused to participate in the inspection. The Agent(s) also stated that a forwarding address for the Tenant was not properly received in writing until March 25, 2022.

The Agent(s) stated that the rental unit was built in 2018 and that the Tenant was the first occupant. The Agent(s) stated that the Tenant failed to leave the rental unit reasonably clean and undamaged, except for reasonable wear and tear and pre-existing damage, at the end of the tenancy, and therefore sought $4,209.95 in cleaning and repair costs as follows:

- $178.50 for carpet cleaning;
- $884.10 for replacement of damaged doors;

- $2,698.50 for drywall repairs and painting;
- $112.85 for the cost of removal of a freezer; and
- $336.00 for the replacement of damaged blinds.

The Agent(s) stated that the Tenant also owes $350.00 in outstanding fees for parking, lock changes, and NSF/bank fees. In support of their claims the Agent(s) submitted condition inspection reports, a video showing the state of the rental unit at the end of the tenancy, a monetary order worksheet outlining their claims, the tenancy agreement, a statement of fees owed, a copy of a previous decision and Order of Possession, copies of email correspondence, and invoices for costs incurred.

The Tenant's Lawyer D.K. stated that as they have not received any instructions from the Tenant, they cannot respond to the accuracy of the Landlord's above noted claims. However, they did dispute the date provided by the Agent(s) as the date the Landlord received the Tenant's forwarding address in writing. D.K. stated that they sent a letter to the Landlord, via email, on March 14, 2022, advising them that they had been retained to act on the Tenant's behalf and providing them with a forwarding address for the Tenant. Although the Agent(s) acknowledged receipt of this email on March 14, 2022, they stated that they did not accept this as proper provision of the Tenant's forwarding address under the Act, as they did not have anything in writing from the Tenant authorizing D.K. to act on their behalf or confirming that the address provided by D.K. was in fact their forwarding address. The parties agreed that a release of information signed by the Tenant was sent to and received by the Landlord on March 25, 2022, authorizing D.K. and the advocacy agency they work for, to act on their behalf.

D.K. sought doubled the amount of the Tenant's security and pet damage deposits, as it was their position that the Tenant's forwarding address was provided to the Landlord on March 14, 2022, and therefore the Landlord did not file the Application seeking retention of the deposits on time, as it was filed on March 31, 2022. The Agent(s) stated that as the forwarding address was not considered properly received by the Landlord in writing until March 25, 2022, the Application was filed on time and therefore the Tenant is not entitled to double the amount of their deposits. They also sought $100.00 for recovery of the filing fee.

Analysis

Based on the documentary evidence and affirmed testimony before me for consideration, I am satisfied that a tenancy to which the Act applies existed between the parties, which ended at approximately 1:00 A.M. on February 5, 2022.

Based on the documentary evidence and affirmed testimony before me, and in the absence of any evidence to the contrary, I am also satisfied that the Tenant breached section 37(2)(a) of the Act by failing to leave the rental unit reasonably clean and undamaged at the end of the tenancy, except for reasonable wear and tear and/or pre-existing damage, that the Landlord incurred the $4,209.95 sough for cleaning and repair costs as a result, that the Landlord acted reasonably to mitigate their loss, and that the Tenant owes the $350.00 sought in outstanding fees.

As a result, I therefore grant the Landlord's Application seeking $4,559.95 pursuant to sections 7 of the Act. As the Landlord was successful in their Application, I also grant them recovery of the $100.00 filing fee pursuant to section 72(1) of the Act. Pursuant to section 72(b) of the Act, I authorize the Landlord to withhold the $560.00 in deposits currently held in trust, towards the $4,659.95 owed by the Tenant to the Landlord. The Landlord is therefore awarded recovery of $4,099.95, $4,559.95, less the $560.00 security deposit they currently hold in trust.

Although the parties disputed the date upon which the Landlord received the Tenant's forwarding address in writing, it is unequivocally clear to me from the e-mail chain in the documentary evidence before me, that a letter containing a forwarding address for the Tenant, authored by D.K. who is a lawyer acting on behalf of the Tenant through an advocacy agency, was sent by e-mail to an agent for the Landlord on March 14, 2022, and received on that date. The parties also agreed to this at the hearing. Although the Agent(s) argued at the hearing that I should not consider March 14, 2022, as the date the Landlord received the Tenant's forwarding address in writing for the purposes of section 38(1) of the Act because the Landlord did not have at that time, authorization in writing from the Tenant advising them that either D.K. or the advocacy agency were entitled to act on their behalf, I disagree. Although the parties agreed that authorization directly from the Tenant was received by the Landlord or their agents on March 25, 2022, stating that D.K. and the advocacy agency were authorized to act on their behalf with regards to provision of their forwarding address, I do not find that receipt of this authorization by the Landlord on March 25, 2022, negates the undisputed fact that the Landlord received a letter via email on March 14, 2022, in writing from D.K., who I am

satisfied is both a lawyer and an employee of an advocacy agency, stating that they are authorized to act on the Tenant's behalf and providing a forwarding address for the Tenant. There is a general presumption in law that lawyers are honourable, competent, and of high integrity as they are subject to strict rules of professional conduct. I therefore find that it was unreasonable for the Landlord or their agents to not only assume that D.K., having already disclosed that they are a lawyer acting on behalf of the Tenant through a well-known advocacy agency, was not acting in good faith on behalf of the Tenant, but also to refuse to accept the forwarding address provided by D.K. on behalf of the Tenant.

I therefore find that the Landlord received the Tenant's forwarding address in writing for the purposes of the Act on March 14, 2022, when it was received via email by an agent for the Landlord from the Tenant's lawyer D.K.

At the hearing the Agent(s) provided contradictory and confusing testimony with regards to whether a date and time for a move-out condition inspection was mutually agreed to by the parties. Further to this, an email dated February 4, 2022, in the documentary evidence before me between K.L. and R.D, both of whom attended the hearing, states that the Tenant is moving out that day and that a move-out condition inspection will need to be scheduled for the following week. A standby report was also submitted by the Landlord for my consideration wherein it states that agents for the Landlord attended the rental unit on several occasions on February 4, 2022, and February 5, 2022, to do various things such as change or attempt to change the locks, or repair a leaking pipe, but I note that nothing in this document refers to a move-out condition inspection. Finally, in an email between two agents for the Landlord on March 29, 2022, the Agent S.H. asks if a move-out condition inspection was discussed with the Tenant and whether they offered to participate in one.

Based on the above I find that the Landlord has failed to satisfy me on a balance of probabilities that there was a mutual agreement between the Tenant and an agent for the Landlord with regards to a date and time for the move-out condition inspection pursuant to section 16(1) of the regulation. As a result, I have turned my mind to whether the Landlord has satisfied me on a balance of probabilities that they provided the Tenant with at least two opportunities, as prescribed, for the inspection, in compliance with section 35(2) of the Act and section 17 of the regulations. Although the Agent(s) stated at the hearing that they contacted the Tenant's support worker T.K. to offer another opportunity for a move-out condition inspection, they acknowledged that they did not use the approved form #RTB-22 Notice of Final Opportunity to Schedule a

Condition Inspection. As a result, I find that the Landlord failed to comply with section 35(2) of the Act and section 17(2)(b) of the regulation.

Pursuant to section 36(2)(a) of the Act, I therefore find that the Landlord extinguished their right to claim against the pet damage deposit, as pet damage deposits may only be claimed against for pet damage in accordance with Residential Tenancy Policy Guideline (Policy Guideline) #31. I also find that the Landlord extinguished their right to claim against the security deposit, but only in relation to damage. Policy Guideline #17, section B, subsection 8 states that in cases where both the landlord's right to retain and the tenant's right to the return of the deposit have been extinguished, the party who breached their obligation first will bear the loss. As I have already found that the Landlord breached their obligation under section 35(2) by failing to provide the Tenant with two opportunities for a condition inspection, and as I am satisfied that the Landlord was provided with the Tenant's forwarding address in writing on March 14, 2022, I find that the Tenant has not extinguished their right to the return of their deposit, despite the fact that they did not participate in a move-out condition inspection.

Policy Guideline #17 section C, subsection 3 states that unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit if the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant's forwarding address is received in writing or if the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act, whether or not the landlord may have a valid monetary claim. I have already found above that the Landlord extinguished their right to claim against the pet damage deposit, and as pet damage deposits may only be claimed against for pet damage, I therefore find that the Landlord was not entitled to file a claim against it and was obligated to return the $280.00 pet damage deposit to the Tenant by March 29, 2022, 15 days after the date I find the Tenant's forwarding address was received by the Landlord. As the parties agreed at the hearing that this amount was not returned, I find that the Tenant is therefore entitled to double this amount, $560.00, pursuant to section 38(6)(b) of the Act.

Although the Landlord retained the right to claim against the security deposit for things other than damage, such as cleaning costs and unpaid rent and fees, I find that they were required to do so no later than March 29, 2022. As the Application seeking retention of the security deposit was filed on March 31, 2022, I find that the Landlord

therefore also failed to comply with section 38(1) of the Act with regards to the security deposit. I therefore grant the Tenant $560.00, double the amount of the security deposit, pursuant to section 38(6) of the Act.

I offset the remaining amount owed to the Landlord by the Tenant, $4,099.95, with the amount owed to the Tenant by the Landlord, and grant the Landlord a Monetary Order in the amount of $2,979.95 for the balance owed pursuant to section 67 of the Act.

Conclusion

Pursuant to section 67 of the Act, I grant the Landlord a Monetary Order in the amount of **$2,979.95**. The Landlord is provided with this Order in the above terms and the Tenant must be served with this Order as soon as possible. Should the Tenant 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: November 30, 2022

Residential Tenancy Branch