Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL

Introduction

The Landlord filed an Application for Dispute Resolution (the "Application") on May 3, 2022 seeking compensation for damage caused by the Tenant, and the filing fee.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the "Act") on January 16, 2023. Both parties attended the hearing. I explained the process to the parties. Each party had the opportunity to present oral testimony and present their prepared evidence in the hearing.

Preliminary Matter – notification of the hearing and evidence

The Landlord stated they delivered notice of this dispute, as well as their prepared evidence, to the Tenant via registered mail on May 15, 2022. The Tenant confirmed they received this material.

The Tenant provided material to the Residential Tenancy Branch on January 11, 2023 via the online portal. The Landlord stated they received this material from the Tenant on January 13. This was three days prior to the hearing on January 16, 2023.

As per the *Residential Tenancy Branch Rules of Procedure*, in particular Rule 3.15, a party to an administrative hearing process is obligated to follow basic procedures in line with a fair, efficient, and consistent process. A respondent's evidence (here, the Tenant) must be received by the applicant (the Landlord) and the Residential Tenancy Branch not less than seven days before the hearing. Rule 3.17 grants an arbitrator discretion to consider evidence that was not provided to the other party or the Residential Tenancy Branch in accordance with Rule 3.15.

I find consideration of this late evidence submission by the Tenant here – who knew about this upcoming hearing at least by the end of May 2022 – is prejudicial to the Landlord, who then did not have the opportunity to prepare evidence that would rebut or otherwise call that evidence into question, as they should fairly have the opportunity to do.

For these reasons, I exclude the Tenant's evidence in its entirety from consideration in this hearing.

Issue(s) to be Decided

- Is the Landlord entitled to monetary compensation for damage to the rental unit, pursuant to s. 67 of the *Act*?

- Is the Landlord entitled to recover the filing fee for this Application pursuant to s. 72 of the *Act*?

Background and Evidence

The Landlord provided a copy of the tenancy agreement in their evidence. This shows the tenancy started on August 1, 2019 and was initially set for a fixed term that would end on July 31, 2020. The amount of rent was set at $1,300 per month, payable on the first of each month. The copy in the evidence shows the parties signed the agreement on August 21, 2019. There was a second Tenant listed on the first page of the agreement; however, only the Tenant named as the Respondent in this hearing signed the tenancy agreement.

The tenancy agreement shows the Tenant paid a security deposit of $650. In the hearing, the Tenant maintained the paid a pet damage deposit of $650 in November 2019 when they acquired a pet. The Landlord stated they did not receive a pet damage deposit.

The Landlord provided a completed Condition Inspection Report showing notes on the condition of the rental unit at the start of the tenancy. All items on the report are indicated to be in a good state, and the report specifically noted "No repairs needed will deduct $300 from the tenants rent to re clean carpets." The Landlord signed the report; however, the Tenant did not sign. The Landlord provided a date of July 29, 2019 as the move-in inspection date.

The Landlord and Tenant agreed that the rent amount of $1,300 was reduced by $300 for the first three months of the tenancy. This was to cover the Tenant's own time and effort and attempt to clean carpets and other issues. The Tenant described the state of the rental unit at the start of the tenancy as less than satisfactory, with the walls needing painting due to the previous tenant's heavy smoking. Additionally, there was an issue with the hearing in the rental unit.

The Landlord described this tenancy ending when the Tenant notified the Landlord that they were moving. The Landlord stated this was 29 days prior to moving; the Tenant disagreed and stated it was 32 days prior to moving, being "a few days prior to the first of the month."

The Landlord stated they had a walk-through meeting with the second Tenant (who did not attend the hearing) on April 29, 2022. This second Tenant was not happy with the contents of the Condition Inspection Report that the Landlord completed at that time and would not sign it.

The Landlord pointed to a May 4 email to them from that second tenant, to show that the second Tenant had confirmed damage in the rental unit. The second Tenant noted:

- they did not steam clean the carpets "as required by the act for tenancies over one year", stating they did this same work upon their move in to the rental unit
- the blinds malfunctioned only upon the Landlord's inspection at the end of the tenancy, and they would have informed the Landlord of any issue prior to that
- the marks on the kitchen floor were normal wear and tear.

This second Tenant proposed a $100 deduction for carpet cleaning and "$50 for someone to sort out the right front blind." They asked for the $650 full pet damage deposit returned, as well as the $550 damage deposit returned within 15 days.

The Tenant in the hearing noted they did not receive this email from the second Tenant to the Landlord. Additionally, they did not sign the Condition Inspection Report as completed by the Landlord at the end of the tenancy.

The Landlord provided photos of the purported damage in the rental unit, showing wall damage, carpet stains, and floor damage in the kitchen. The Tenant in the hearing described each of these alleged damages from their perspective, and reiterated that they cleaned and repaired the rental unit extensively upon their move in.

The Landlord submitted a message they had from another property resident who made themself available to help the Landlord with work in the rental unit. The Landlord confirmed

the amount of “around $2000” which that person confirmed. The details are shown to be as follows:

> Floor,,,paint wool be approx. 325 for material and for you 550 in labor, paint includes walls and trim,,,not drs,,,if drs and casings then add 200. Normally flooring labor is at 2.25 per ft for install with materials on top. Paint currently running 1,75_2 per ft…That best deal I can do for you brotha. Let me know your thoughts.

On the Application, the Landlord provided the amount of $2,500. This was for “The wall all needs to be painted due to holes that were patched up but not painted, damaged blinds, scratched up kitchen floor and stained carpets.” An undated text message from the Landlord to the Tenant, as appears in the Landlord’s evidence, shows them informing the Tenant that “I’ve been quoted between $2200 and $2500 to paint the walls that had the holes in them and the kitchen floor that was damaged.”

Analysis

I find the Tenant paid a security deposit amount of $650. Additionally, I find the Tenant paid a pet damage deposit amount of $650. The Tenant in the hearing described their payment to the Landlord after the start of the tenancy when they acquired a pet. The Tenant specifically noted the date of their payment to the Landlord as November 21, 2019, affirmed under oath in their testimony. As well, the second Tenant in their message to the Landlord on May 4, 2022 specified “the full $650 pet deposit” to be returned to them. My finding on this rests on an assessment of credibility, and weighing the statements of the Tenant in the hearing against what the Landlord provided – as well as the matter of the Landlord’s credibility on the dollar amount of damages, in my finding below – I find the Tenant was more believable on their assertion that they had paid a second deposit for a pet.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Applying each of the above points to the submissions and testimony of the Landlord – who bears the burden of proof – I find as follows:

- I am not satisfied that damage in the rental unit exists. The Landlord provided scant evidence showing that. There is no reference to the blinds that the Landlord seemed to take issue with. The Landlord has not provided an abundance of evidence to show there was damage beyond what the *Act* sets out (in s. 32) as reasonable wear and tear. Part of the issue with this Application is the unilateral Condition Inspection Report, both at the start and end of the tenancy. There was also extensive testimony from the Tenant – verified by the Landlord's reduction of rent for the first three months of this tenancy – that the state of the rental unit was not pristine, and this throws the Landlord's unilateral initial Condition Inspection Report into question.

- From this, I am not satisfied the Tenant breached the *Act* in terms of not maintaining reasonable, health, cleanliness and sanitary standards, given the questionable state of the rental unit at the start of the tenancy. I find what the Landlord showed in pictures is "reasonable wear and tear" which a tenant is not required to repair.

  The second Tenant referred to their agreement on $50 for carpet cleaning "as required by the act for tenancies over one year." I note there is no reference in the *Act* to this requirement, and the Landlord did not provide any statement in the tenancy agreement or other acknowledgement by the Tenant that this was required at the end of this tenancy.

- The Landlord provided a very informal quote from another resident at the rental unit property. I do not know whether that individual reviewed the state of the rental unit prior to providing that information and amount or referred to pictures taken by the Landlord, as set out above. The quote is vague and imprecise. I find this is not an accurate or verifiable statement of the value of damage, in addition to my finding above that there was no damage beyond reasonable wear and tear.

  On top of this, the Landlord confirmed "around $2000" with the individual who provided the quote; however, this became "between $2200 and $2500 to paint the walls that had the holes in them and the kitchen floor that was damaged" when the Landlord communicated with the Tenant. This is a complete misstatement on the part of the Landlord, and the evidence shows the Landlord provided an inflated expense amount to the Tenant. I find this entirely dishonest, and even fraudulent.

For the reasons above, I dismiss the Landlord's Application in its entirety, without leave to reapply. I grant no reimbursement of the Application filing fee to the Landlord for this Application.

I order the Landlord to return the security deposit and pet damage deposit to the Tenant, forthwith. I grant the Tenant a Monetary Order for the full amount of two deposits, $1,300.

Conclusion

I dismiss the Landlord's Application in its entirety, without leave to reapply.

I order that the Landlord pay to the Tenant the amount of $1,300. I grant the Tenant a Monetary Order for this amount. The Tenant may file the Monetary Order at the Provincial Court (Small Claims) where it will be 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 s. 9.1(1) of the *Act*.

Dated: January 18, 2023

Residential Tenancy Branch