Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **MNDL-S, FFL**

MNDCT, MNSD, FFT

Introduction
The words tenant and landlord in this decision have the same meaning as in the *Residential Tenancy Act, (the "Act")* and the singular of these words includes the plural.

This hearing dealt with applications filed by both the landlord and the tenant pursuant the Act.

The landlord applied for:

- A monetary order for damages caused by the tenant, their guests to the unit, site or property and authorization to withhold a security deposit pursuant to sections 67 and 38;
- Authorization to recover the filing fee from the other party pursuant to section 72.

The tenants applied for:

- A monetary order for damages or compensation pursuant section 67;
- An order for the return of a security deposit or pet damage deposit pursuant to section 38;
- Authorization to recover the filing fee pursuant to section 72.

The landlord and both tenants attended the hearing. As both parties were present, service was confirmed. The parties each confirmed receipt of one another's applications and evidence. Based on the testimonies I find that each party was served with these materials as required under RTA sections 88 and 89.

Issue(s) to be Decided
Are the tenants or the landlord entitled to compensation?
Should the security deposit be retained or returned to the tenants?
Can either party recover the filing fee?

Background and Evidence

At the commencement of the hearing, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony pursuant to rule 7.4. In accordance with rules 3.6, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The parties agree on the following facts:

- The tenancy began on October 1, 2021, although the tenants moved in a day or two before that.
- The landlord did not do a move-out condition inspection report with the previous tenant.
- The tenants in this hearing and the previous tenant did a "walkthrough" together without the landlord being present
- A security deposit of $925.00 and a pet damage deposit of $925.00 was collected from the tenants and the landlord returned the pet damage deposit via e-transfer after the tenancy ended.
- The tenants ended the tenancy by giving the landlord a one month's notice
- The tenancy ended on October 31, 2022.

The tenant J.G. testified that he wanted to do a condition inspection report with the landlord at the beginning of the tenancy and offered 3 times before moving in, but the landlord didn't give a reason for not doing one.

The tenant's reason for ending the tenancy was because the landlord and her husband made them uncomfortable. They were seen by the tenants driving by and looking up at their unit. The landlord would also give notices to enter without providing a proper time. They didn't have quality enjoyment of the suite and they felt the landlord was strange or weird. The landlord was selling the unit and they would have stayed until it was sold but they felt too uncomfortable, with a new baby. They felt they needed to leave and missed out a free months' rent by being forced to move.

The tenants seek to recover the cost they paid to move to their next accommodation, $2,238.70.

The tenant testified that he did not provide his forwarding address to the landlord on the last day of the tenancy on the condition inspection report but sent it to her via registered mail to her residential address on November 18th. The tracking number is recorded on the cover page of this decision. The landlord did not accept delivery of the forwarding address. The landlord acknowledges she received the tenant's forwarding address via email or text message, but it was more than 15 days after the tenancy ended. Once she got the forwarding address, she sent the pet damage deposit back to the tenants via e-transfer. She filed an application for dispute resolution seeking to retain the security deposit on November 16th.

The landlord testified that she owns multiple units in the building where the rental unit is. She has been a landlord for many years and she attends the building regularly as this is her place of business.

The reason she didn't do a condition inspection report with the tenants at the beginning of the tenancy is because the tenants wanted to move in early and the landlord was not available. She was agreeable for the tenant to note any deficiencies on the condition inspection report and she would sign off on it without being present. She acknowledges it's not a new unit and she would fix any of the items pointed out to her on the condition inspection report.

The reason she and her husband were driving around the building is because she owns numerous units in it. She is in charge of the building's finances and does regular runs around it to ensure homeless people are not causing trouble for the tenants by stealing cans and bottles or sleeping on the grounds.

The landlord seeks compensation for damage allegedly caused to the unit during the tenancy. For example the stove was dirty and the sink was cracked. Big blotches of spackle were used around the unit. Blinds were twisted and there was thick dust throughout. The landlord testified that she believes the tenant C.G. sprayed baby formula all over the common area hallways, carpets and stairways when she left.

Analysis

At the commencement of the tenancy, the landlord did not pursue a condition inspection of the rental unit with the tenants, as required by section 23 of the *Act*. Pursuant to section 24, the landlord's right to claim against the security deposit **is extinguished** if the landlord does not offer the tenant at least two opportunities for inspection or give the tenants a copy of it, signed by both parties in accordance with the regulations.

Section 38(1) and (6) of the *Act* addresses the return of security deposits.

(1)Within 15 days after the later of
a) the date the tenancy ends, and
b) the date the landlord receives the tenant's forwarding address in writing,
the landlord must do one of the following:
c) **repay**, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
d) **make an application** for dispute resolution claiming against the security deposit or pet damage deposit.

…

(6) If a landlord does not comply with subsection (1), the landlord
a. may not make a claim against the security deposit or any pet damage deposit, and
b. **must pay the tenant double the amount of the security deposit**, pet damage deposit, or both, as applicable.

In the case before me, the landlord's right to claim against the security deposit was extinguished at the commencement of the tenancy when she failed to conduct a condition inspection report with the tenants. While section 15 of the Regulations allows a tenant to appoint an agent for this purpose; no such provision exists for the landlord. The fact that the landlord agreed to fix whatever deficiencies the tenant noted on the report is irrelevant to whether she has fulfilled her responsibilities in attending for the condition inspection at the beginning of the tenancy.

As the landlord's right to claim against the security deposit was extinguished right from the beginning of the tenancy, the only choice the landlord had under section 38 was to repay the security deposit within 15 days of the tenancy ending and receiving the tenants' forwarding address. As this has not happened, the landlord must pay the tenants double the amount of the security deposit, or **$1,850.00.**

The landlord seeks to recover the cost of damages she alleges was caused by the tenants during the tenancy. Section 21 of the Regulations states that in dispute resolution proceedings, a condition inspection report completed in accordance with Part 3 is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

I find that because the landlord did not attend for a condition inspection report, no condition inspection report was completed at the commencement of the tenancy in accordance with Part 3 of the Regulations. I therefore turn to the photographs taken of the unit at the beginning of the tenancy by the tenants. Those photographs are dated by the tenants' camera, and I find them to be persuasive evidence of the condition of the unit when the tenants moved in. I have compared them to the photos taken at the end of the tenancy, submitted by both the landlord and the tenant.

Overall, I find the marks on the walls to be consistent with reasonable wear and tear to be expected during a one year tenancy. I note that the unit had wear marks and small holes in it from previous tenants when these tenants moved in. No testimony was provided as to how long that previous tenant occupied the unit and when the unit was last painted before she moved in. As there was no interval between when the last tenant moved out and when these tenants moved in, it is impossible for me to attribute any particular damage to these tenants rather than the previous one. I find the landlord has provided insufficient evidence to establish her claim for damages and I dismiss it without leave to reapply.

Regarding the landlord's claim for cleaning, section 37(2)(a) 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.

This notion is further elaborated in Residential Tenancy Branch Policy Guideline PG-1 which states:
the tenant must maintain "*reasonable health, cleanliness and sanitary standards"* throughout the rental unit or site, and property or park. The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard. The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. **The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises), or for cleaning to bring the premises to a higher standard than that set out in the Residential Tenancy *Act* or Manufactured Home Park Tenancy *Act* (the Legislation). (emphasis added)**

The tenant's legal obligation is "reasonably clean" and this standard is less than "perfectly clean" or "impeccably clean" or "thoroughly clean" or "move-in ready". Oftentimes a landlord wishes to turn the rental unit over to a new tenant when it is at this higher level of cleanliness; however, it is not the outgoing tenant's responsibility to leave it that clean. If a landlord wants to turn over the unit to a new tenant at a very high level of cleanliness that cost is the responsibility of the landlord. I find the unit was left reasonably clean and undamaged except for reasonable wear and tear. I decline to award the landlord a monetary award for cleaning.

The tenants seek to recover their moving costs because they felt uncomfortable due to the landlord's visits to the building and negative interactions. Section 7 of the Act allows me to award damages to a landlord or tenant when the other party fails to comply with the Act, regulations or tenancy agreement. In this case, I do not find the landlord breaching any of those in attending the building where she owns multiple units and has a right to observe from the street. I accept the landlord's testimony that she attends the building to ensure it is safe from vagrants. I find that the tenants made the appropriate choice to end the tenancy and that the tenants are responsible for their own moving

costs to find an accommodation that they find more suitable. This portion of the tenants' claims is dismissed without leave to reapply.

The tenants' application was successful and the landlord's was not. The tenants are entitled to recover their $100.00 filing fee and the landlord's filing fee will not be recovered.

Conclusion

I award the tenants a monetary order in the amount of $1,950.00.

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: September 06, 2023

Residential Tenancy Branch