Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF (Landlord's Application)
MNSD, MNDC, OLC, FF (Tenants' Application)

Introduction

This hearing was convened by way of conference call in response to an application for dispute resolution filed by the Landlord on September 20, 2016 and by the Tenants on October 13, 2016.

The Landlord applied to retain a portion of the Tenants' security deposit and to recover the filing fee. The Tenants named two Landlords and applied for: the return of the remainder of their security deposit; for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the "Act"), regulation or tenancy agreement; for the Landlords to comply with the Act, regulation or tenancy agreement; and to recover the filing fee.

The Landlord and both Tenants appeared for the hearing. However, only the Landlord and the male Tenant provided affirmed testimony during the hearing. The parties confirmed receipt of each other's Application and evidence which was served prior to the hearing.

The hearing process was explained to the parties and they had no questions about the proceedings. The parties were given a full opportunity to present their evidence, make submissions to me, and cross examine the other party on the evidence provided.

Issue(s) to be Decided

- Is the Landlord entitled to a Monetary Order for damage to the rental unit?
- Did the Landlord extinguish her right to make a claim against the Tenants' security deposit?
- If so, are the Tenants entitled to double the amount of their security deposit pursuant to their claim for monetary compensation?

Background and Evidence

The parties agreed that this tenancy started on November 15, 2015 for a fixed term of one year set to expire on November 15, 2016. The signed tenancy agreement was

silent on what was to happen after the fixed term expired but the Tenant testified that it was set to end and the Tenants were required to vacate the rental unit. Rent was payable by the Tenants in the amount of $2,200.00 on the 15th day of each month.

The Tenants paid a security deposit of $1,100.00 on October 30, 2015. The tenancy ended when the Tenants provided written notice on July 14, 2016 by email to end the fixed term tenancy for September 15, 2016 which is when the Tenants vacated the rental unit.

The Tenants provided the Landlord with their forwarding address by email on September 11, 2016 which was received and responded to by the Landlord on September 12, 2016. The Landlord returned $843.55 to the Tenants and then filed an application to keep the remaining amount of $256.45 to cover carpet cleaning costs and the filing fee paid to file her application. The Tenants confirmed receipt of the amount returned by the Landlord but dispute the amount retained by the Landlords.

The parties confirmed that at the start of the tenancy the Landlord's son, named as the second respondent on the Tenants' application, completed a move-in Condition Inspection Report (the "CIR") with the Tenants; that move-in CIR was provided into evidence by the parties.

The Landlord explained that at the end of the tenancy, the Landlord and her son met with the Tenants at the rental unit on September 14, 2016 to complete the move-out condition inspection. The Landlord was unsure whether her son had completed the move-out CIR with the Tenants and acknowledged that this had not been completed at the time of the inspection and was later completed by her son and submitted into evidence by her. The move-out CIR shows no signature of the Tenants or whether the Tenants agreed or disagreed with the report. The move-out CIR also does not detail the Tenants' forwarding address. In the latter part of the hearing, the Landlord then testified that the report was done in the presence of the Tenant by her son and that the Tenants' refused to sign it.

The Tenant vehemently disagreed with the Landlord's testimony that the move-out CIR was done in their presence. The Tenant acknowledged that a visual inspection was done of the rental unit but no move-out CIR was completed in their presence and they were not offered anything to sign despite remaining at the rental unit for one hour after the condition inspection was done. The Tenant explained that despite returning to the rental unit on September 15, 2016 to complete the cleaning to the oven which had been identified as an issue on the move-out condition inspection the day before, nothing was given to them to sign or complete.

The Landlord testified that at the end of the tenancy, she noticed damage to the carpet which she alleges was caused by the Tenants. The Landlord testified that the Tenants caused a red wine stain next to the bathroom wall in the master bedroom carpet as well as traffic stains around the bed area and entrance area leading into the ensuite. The Landlord testified that the Tenants also caused a water stain in the second bedroom as well as door way traffic stains. The Landlord testified that the third bedroom carpet also had doorway traffic stains.

The Landlord testified that the carpets were cleaned at the start of the tenancy. The Landlord pointed to her photographic evidence on the USB stick which shows before and after pictures of the damage to the carpet which the Tenants had caused. The Landlord provided an invoice dated September 17, 2016 for all the carpet cleaning in the amount of $156.45. The invoice shows the pre-inspection state of the carpet which indicates staining as heavy and black traffic areas which were worked on.

The Tenant pointed out that the Landlord's photographs do not show the alleged damage, when they were taken, and to which rooms they relate to. The Tenant disputed the fact that the Landlord had cleaned the carpets at the start of the tenancy. The Tenant submitted that as the tenancy was less than one year and they were non-smokers and did not have pets, they had no obligation to have the carpets professionally cleaned at the end of the tenancy. The Tenant pointed to the move-in CIR which shows that in the master bedroom there was damage to the carpet indicated as "Worn in traffic stain". The Tenant submitted that the Landlord's son told them that the carpet was old and was going to be replaced at the end of the tenancy.

The Landlord stated that the move-in CIR refers to "Worn in traffic area" not "Worn in traffic stain". The Landlord was unable to explain why the alleged damage was not noted on the move-out CIR even though this was completed by her son at some point after the move-out condition inspection occurred.

The Tenant stated that if the Landlord had the carpets cleaned at the start of the tenancy then how was it that the move-in CIR details a worn in area of the carpet in the master bedroom.

The Tenants claim the return of the remainder of their security deposit of $256.45, the doubling penalty of $1,100.00, and the filing fee of $100.00. The Landlord requests to retain the $256.45 which she currently holds for carpet cleaning and for the filing fee paid to make the application.

Analysis

I first turn my mind to the Tenants' claim for double the security deposit because the Landlord failed to comply with the Act in dealing properly with it. I accept the Landlord was provided with a forwarding address in writing by the Tenant on September 12, 2016 in the form of an email which the Landlord responded to. I also accept that the tenancy ended on September 15, 2016.

Therefore, pursuant to the 15 day time limit set by Section 38(1) of the Act, the Landlord would have had until September 30, 2016 to make the Application to keep the Tenants' security deposit. The Landlord made the Application on September 20, 2016. Therefore, I find the Landlord correctly filed the application within the 15 day time limit set by the Act.

However, Sections 23 and 35 of the Act states that a tenant and landlord together must inspect the condition of the rental unit at the start and end of a tenancy. These provisions of the Act continue to state that the landlord must complete the condition inspection report in accordance with the regulations by providing the tenant opportunity to take part in it and that the CIR must be signed.

Sections 24(2) and 36(2) states that the right of the landlord to claim against the security or pet damage deposit **for damage** to the rental unit is **extinguished** if the landlord fails to comply with the reporting requirements as laid out in Section 23 and 35 of the Act.

In this case, I find that while the Landlord complied with the Act in completing the move-in CIR at the start of the tenancy, there is insufficient evidence before me that the Landlord complied with the requirement to do the move-out CIR. The Landlord provided conflicting evidence as to whether the move-out CIR was completed with the Tenants as they were inspecting the rental unit on September 14, 2016, which was disputed by the Tenant.

While the Landlord provided a move-out CIR which was completed by her son, the move-out CIR contains no signature of either the Tenant or the Landlord and does not even detail the alleged damage for which the Landlord filed the application for. The Landlord provided no supporting or corroborating evidence to show that the move-out CIR was completed pursuant to the Act and I find the Tenant's evidence more favourable as it is more consistent with the uncompleted move-out CIR. Therefore, I am only able to conclude that the Landlord failed to meet the reporting requirements of the

Act. As a result, I must find the Landlord's right to file an application against the Tenant's security deposit was extinguished and therefore, the Landlord had no right to make any deductions from it.

Policy Guideline 17 to the Act consists of a section titled "Return or Retention of Security Deposit through Arbitration." Point number 3 of this section states that an arbitrator **will** order the return of double the deposit if the landlord has made a claim **and** the right to make a claim has been extinguished under the Act. Therefore, I have no discretion and find that the Landlords must pay the Tenants double their security deposit in the amount of $2,200.00.

With respect to the Tenants' claim for the recovery of their filing fee, I deny this request. This is because, there was no requirement for the Tenants to file their application as the return of the security deposit, including any applicable penalty, would have been determined and awarded through the Landlord's application because it was made within the required 15 day period. The Tenants did not apply for any relief that would not have been otherwise awardable through the Landlord's application. Therefore, the Tenants application was premature and not necessary.

However, despite the above outcome, a landlord still retains the right to have a claim for damage to the rental unit determined through the making of the application. In this case, the Landlord did not select the MND (damages to the rental unit) option when the application was filed. However, I accept the Landlord filed the application for the purpose of claiming damage to the rental unit and it was accepted by the Residential Tenancy Branch for this purpose. I also find that the Landlord's application put the Tenants on sufficient notice that a claim was being made for carpet cleaning to the rental unit. Therefore, I amend the Landlord's application pursuant to my authority under Section 64(3) (c) of the Act and determined the Landlord's claim for carpet cleaning as follows.

Section 37(2) (a) of the Act provides 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. In addition, Policy Guideline 1 to the Act details the responsibilities of landlord and tenants in residential tenancies. In relation to carpet cleaning, the policy guideline states in part,

"The tenant is responsible for periodic cleaning of the carpets to maintain reasonable standards of cleanliness. Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year. Where the tenant has deliberately or carelessly stained the carpet he or she will be held

responsible for cleaning the carpet at the end of the tenancy regardless of the length of tenancy."

[Reproduced as written]

Having considered the evidence of both parties with respect to the carpet cleaning, I make the following findings. I find the CIR in this case has little evidentiary value as the move-out portion was not completed in the presence of the Tenants and does not document the state of the carpet at the end of the tenancy as described by the Landlord. However, a landlord is not prevented from relying on other evidence to prove damages to the rental unit. Therefore, I turn to the Landlord's photographic evidence.

Having examined the multitude of photographic evidence provided by the Landlord, I do not accept the Tenant's submission that the photographs do not indicate any of the damage testified to by the Landlord. I find the photographs show clear staining to the master bedroom carpet that is consistent with the Landlord's testimony of a wine stain and a water stain in the second bedroom. I also find the Landlord's photographs show dark areas consistent with high traffic areas in all three rooms where the carpet was located.

However, the Landlord testified that the cost of the carpet cleaning performed shortly after the tenancy ended included all the carpet, including high traffic areas in the master bedroom by the bed. In this respect, I find the move-in CIR does not clearly show whether this was a worn out area or a worn in stain; the Landlord had a duty to write this in clearly and not leave this open to interpretation. However, I am satisfied that because there was an issue with the carpet by the bed area in the master bedroom at the start of the tenancy, the Tenants should not be held liable for the cost of cleaning this area.

I find that the length of the tenancy is not relevant in this case. Based on the foregoing, the Landlord has provided sufficient comparative evidence that convinces me on the balance of probabilities that there was staining in the master bedroom carpet and the other bedroom that the Tenants were responsible for remedying at the end of the tenancy pursuant to their requirement under Section 37(2) (a) of the Act and the policy guideline. However, the Landlord cannot claim for carpet cleaning for areas in which damage existed at the start of the tenancy, namely in this case that which was recorded on the move-in CIR in the master bedroom. Therefore, I limit the Landlord's claim for carpet cleaning to $100.00 which is more reflective of the cost associated with the damage shown in the Landlord's photographs not present at the start of the tenancy.

As the Tenants denied the Landlords written consent to keep a portion of their security deposit, the Landlord had no other option but to file the application. As the Landlord has

been successful in proving a portion of this, I also grant the Landlord the filing fee of $100.00. Therefore, the total amount awarded to the Landlord is $200.00.

Consequently, the remainder amount of $56.45 the Landlords currently hold must be returned back to the Tenants. As the Landlord already returned to the Tenants $843.55 of this amount, the outstanding balance owed by the Landlord is $1,356.45 ($2,200.00 - $843.55), minus the $200.00 awarded to the Landlord, for a total of $1,156.45. The Tenants are issued with a Monetary Order for this amount which may be enforced in the Small Claims Division of the Provincial Court as an order of that court if the Landlords fail to make payment. The Landlords may be held liable for any enforcement costs incurred by the Tenants. Copies of this order are attached to the Landlord's copy of this Decision.

Conclusion

The Tenants failed to clean the carpets in this tenancy and the Landlord is awarded $200.00 for cleaning costs and the filing fee. The Landlord failed to meet the reporting requirements of the Act. Therefore, the Tenants are awarded a total amount of $2,200.00. After the amounts returned back to the Tenants and the amount awarded to the Landlord is offset against the Tenants' award, the Tenants are issued with a Monetary Order for the outstanding amount payable by the Landlords of $1,156.45. 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: March 24, 2017

Residential Tenancy Branch