Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OP MNSD MNDC FF

Introduction

This hearing dealt with the Landlords' Application for Dispute Resolution, dated September 6, 2016, as amended by an Amendment to an Application for Dispute Resolution (the "Amendment"), received at the Residential Tenancy Branch on January 26, 2017 (the "Application"). The Landlords applied for the following relief pursuant to the *Residential Tenancy Act* (the "*Act*"):

- an order of possession for breach of an agreement;
- an order allowing the Landlords to keep all or part of the security deposit or pet damage deposit;
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or a tenancy agreement; and
- an order granting recovery of the filing fee.

The Landlords both attended the hearing. The Tenant T.M. attended the hearing on behalf of both Tenants. All parties giving testimony provided a solemn affirmation.

The Landlords testified that the Application Package, including the Notice of a Dispute Resolution Hearing and documentary evidence, was served on the Tenants by registered mail on September 8, 2016. T.M. acknowledged receipt on behalf of the Tenants. Pursuant to sections 89 and 90 of the *Act*, documents served in this manner are deemed to be received five days later. I find the Tenants are deemed to have received the Landlords' Application package on September 13, 2016.

Further, L.C. stated that the Amendment was served on the Tenants by Purolator. L.C. testified to her belief that a delivery attempt was made on February 8, 2016, at which time a pick-up notice was left at the Tenants' residence. On behalf of the Tenants, T.M. testified she did not receive a pick-up notice as alleged by L.C., and that the

Amendment was not received until the afternoon of February 15, 2017. I am satisfied and find that the Amendment was received by the Tenants on that date.

In response to the Landlords' Application, the Tenants submitted a documentary evidence package, which was received at the Residential Tenancy Branch on March 3, 2017. The Tenants testified the documents were served on the Landlords by UPS and that tracking information confirmed the package was received by the Landlords on March 8, 2017. Although unable to recall the date of receipt, the Landlords acknowledged receipt on or about that date. I find the Landlords received the Tenants' documentary evidence on March 8, 2017.

No further issues were raised during the hearing with respect to service or receipt of the documents described above. The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The Landlords' Application sought an order of possession of the rental unit. However, in an arbitrator's decision dated January 27, 2017, it was confirmed that the Landlords had possession of the rental unit and that the tenancy had ended. With the agreement of the Landlords, this aspect of the Application is considered withdrawn and has not been considered further in this Decision.

Issues to be Decided

1. Are the Landlords entitled to an order allowing them to keep all or part of the security deposit or pet damage deposit?
2. Are the Landlords entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or a tenancy agreement?
3. Are the Landlords entitled to an order granting recovery of the filing fee?

Background and Evidence

The parties confirmed the tenancy began on or about August 1, 2015, and ended on or about August 4, 2016, when the Tenants vacated the rental unit. Rent in the amount of $2,000.00 per month was due on the first day of each month. The Tenants paid a security deposit of $1,000.00 and a pet damage deposit of $1,000.00.

According to the Landlords, the Tenants agreed to certain deductions from the deposits for a cleaning fee ($200.00) and for carpet cleaning ($222.60). While T.M. agreed the balance of the deposits has been returned to the Tenants, she denied she agreed to allow the Landlords to deduct $200.00 from the deposits for cleaning. These two items are listed as #1 and #2 on the Landlords' Monetary Order Worksheet, dated January 25, 2017.

In addition, the Landlords claimed $3,780.00 to replace carpeting in the rental unit. L.C. testified the rental property is a 2400-square-foot home with three bedrooms and three bathrooms. Of that space, roughly 800 square feet is carpeted. L.C. testified to her belief that the carpet was last replaced by the previous owners in or about 2012.

L.C. testified that the carpets were stained with and smelled of urine from the Tenants pet. She advised that although the carpets were cleaned, it was not sufficient to deal with the smell. The carpets have not yet been replaced roughly eight months after the tenancy ended. In support of this aspect of the Landlords' claim, L.C. referred to a photograph of stairs, an incorrectly dated move-in condition inspection report that was not signed by the Tenants, and an estimate from a carpeting company.

In reply, T.M. denied she left the carpets dirty at the end of the tenancy, and indicated the carpets were dirty when the Tenants moved in. She acknowledged there was a period of toilet training for the Landlords' pet, and for their child. However, she stated that the carpets had been cleaned and did not smell. T.M. denied ever having seen the condition inspection report document submitted by the Landlords, and suggested the Landlords' photograph of stairs had been digitally altered.

The Landlords also sought to recover $6,853.77 for money spend to repair damage caused by a water leak. The Landlords noticed the leak after the Tenants moved out and observed that parts of the hardwood floor in front of the fireplace were "squishy". L.C. testified that mold was detected after the flooring was removed. The fireplace also had to be replaced. According to the Landlords, the contractor hired to perform the work – who did not attend the hearing – suggested the Tenants may have left an

exterior hose on, and that the leak occurred when the hose and tap froze and then defrosted. The Landlords submitted a copy of an invoice and a job costs detail form in support of the amount sought, and confirmed the work was completed and the invoice was paid.

In reply, T.M. testified denied responsibility for the water leak. She testified that she has lived in cold climates, and that she detached the hose and stored it in the garage. The Tenant also referred me to an undated text message to the Landlord T.C., which stated:

> *…the only thing that might need looked at is the fireplace. In the winter months it's a constant flow of cold air that blows out of it. Not sure is that's normal or if maybe there is something we are supposed to close. We dont tend to use that room in the winter where it gets so cold down there. Also that patio door seems to have a major draft. You might need that outside wall look at as I noticed just this week almost a stain and bubble, the floor in front of that patio door seems to have a bit of a bow to it. We did just have a lot of rain recently so not sure if that is what has contributed to it. Just something to check out just in case.*
>
> [Reproduced as written.]

In reply, T.C. wrote:

> *Might be a damper open outside. I was a bit confused on that cool air myself.*
>
> [Reproduced as written.]

During the hearing, T.M. suggested the above exchange suggested the Landlord was aware of issues with the fireplace and possible water ingress, and suggested the damper might also have been the source of any water in the home. In addition, T.M. advised that the job costs detail submitted by the Landlords refers to drywall being installed in the laundry room, which is on the opposite side of the house to where the water damage occurred.

Next, the Landlords claimed $14,000.00 for lost rent for the months of August 2016 to and including February 2017. L.C. submitted that the Landlords have been unable to rent the home pending the outcome of the Tenants' pursuit of occupancy of the rental property, despite the fact the Tenants found alternative accommodation in October 2016.

In reply, the Tenant disputed this claim. She confirmed she lived transiently in August and September 2016 but found a temporary rental in October 2016.

Finally, the Landlords sought to recover $121.50, which is comprised of $100.00 for recovery of the filing fee and $21.50 for postage expenses incurred during the dispute resolution process. The Landlords submitted into evidence a copy of a Canada Post receipt for $21.50.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Act.* An applicant must prove the following:

1. That the other party violated the *Act,* regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on the Landlords to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act,* regulation, or tenancy agreement on the part of the Landlord. Once that has been established, the Landlords must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlords did what was reasonable to minimize the damage or losses that were incurred.

The Landlords' Application discloses a request to retain $200.00 for cleaning. The parties both acknowledged an agreement permitting the Landlords to deduct this amount from the security and pet damage deposits. This aspect of the Landlords' claim has not been considered further in this Decision.

The Landlords also seek to retain $222.60 for carpet cleaning, which they say was also deducted from the security and pet damage deposits by agreement. However, on behalf of the Tenants, T.M. denied they agreed to this deduction. However, after carefully considering the oral testimony and documentary evidence submitted by the parties, I find it more likely than not that the parties agreed the Landlord could deduct the carpet cleaning amount from the deposits. There are several reasons for this finding. First, the photographic evidence of carpeting submitted by the Landlord depicts carpets that do not look clean. Second, although previous hearings have been initiated by the Tenants, they have not sought recovery of this deduction since the tenancy ended. Third, the amount of the deduction is modest, and is supported by a copy of a receipt, submitted by the Landlords.

With respect to the Landlords' claim to recover $3,780.00 to replace carpeting in the rental property, I find there is insufficient evidence before me to conclude the Landlords are entitled to recover the amount sought. First, L.C. testified that the work has not yet been completed. Further, the move-in condition inspection report was not signed by the Tenants. Accordingly, there is no way to confirm the condition of the rental property at the beginning and end of the tenancy. This aspect of the Landlords' claim is dismissed.

With respect to the Landlords' claim to recover $6,853.77 to repair water damage they claimed was caused by the Tenants, I find there is insufficient evidence before me to conclude the water leak was caused by the Tenants. It would appear to be just as likely that the leak occurred spontaneously, through no fault of the Tenants. This finding is supported by the Tenants' documentary evidence, which suggests the Landlords were made aware of possible issues with the fireplace and water ingress. This aspect of the Landlords' claim is dismissed.

With respect to the Landlords' claim to recover $14,000.00 in lost rent arising from the Tenants' persistence in seeking occupancy of the rental unit, a review of previous dispute resolution proceedings confirms the Tenants were granted an order of possession with respect to the rental unit in a decision dated September 27, 2016. However, the Landlords subsequently submitted an Application for Review Consideration to the Residential Tenancy Branch on November 8, 2016. A new hearing was granted and took place on December 23, 2016. In a decision dated January 27,

2017, the arbitrator noted that although the Tenants, in or about August 2016, had an expectation that the tenancy would continue after August 26, 2016, he concluded it was not necessary to consider possession of the rental property as the tenancy had ended.

Based on the above, I find there is insufficient evidence before me to conclude the Landlords are entitled to the amount sought. First, the Landlords did not apply for a review of the original decision until November 8, 2016 – more than a month after the decision was issued. Second, the repair required as a result of the leak was not completed until December 2016, roughly four months after the tenancy ended. I find it would have been reasonable to expect the Landlords to perform the repairs quickly to preserve their asset and/or make it rentable, particularly when mold is an issue as claimed. Third, the testimony of L.C. confirmed that the carpets have not yet been replaced. Assuming the odour emanating from the carpets is as bad as alleged, I find it would have been reasonable to expect the Landlords to address this issue promptly to preserve their asset and/or make it rentable.

With respect to the Landlords' claim to recover $21.50 as recovery of postage costs associated with the dispute resolution process, I find that this amount is not recoverable and should be borne by the parties. As the Landlords have not been successful, I also decline to grant recovery of the $100.00 filing fee.

The Landlords' Application is dismissed.

Conclusion

The Landlords' Application is dismissed.

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: March 31, 2017

Residential Tenancy Branch