Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing was convened by way of conference call in response to the Landlord's Application for Dispute Resolution (the "Application") filed on May 17, to keep the Tenant's security and pet damage deposits (the "Deposits") and to recover the filing fee from the Tenant.

The Landlord and Tenant appeared for the hearing and provided affirmed testimony. The Tenant confirmed receipt of the Landlord's Application and nine pages of documentary evidence by registered mail.

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 his right to make a claim against the Tenant's Deposits?
- If so, is the Tenant entitled to double the amount of the Deposits?

Background and Evidence

The parties agreed that this month to month tenancy started on July 1, 2016. Rent under the tenancy agreement of $700.00 was payable on the first day of each month. The Tenant paid a security deposit of $350.00 and $100.00 as a pet damage deposit. The Landlord confirmed that he holds a total of $450.00 as Deposits in trust.
The Landlord provided a move in move-in Condition Inspection Report (the "CIR") which was completed at the start of the tenancy and was signed by the Tenant.

The Landlord testified that he was the owner of the rental unit and that the caretaker of the property took care of this tenancy. However, the caretaker could not be present to give evidence at this hearing.

The Landlord testified that the Tenant had provided notice to end the tenancy for April 30, 2017. The Landlord explained that the caretaker had verbally informed the Tenant that a move-out condition inspection of the rental unit was going to take place on April 30, 2017; no time was specified to the Tenant. The Landlord testified that the move-out CIR could not be completed because the Tenant failed to appear for the inspection on April 30, 2017.

The Tenant stated that she provided the Landlord with her forwarding address on May 8, 2017. The Tenant denied the Landlord's testimony and testified that while she was informed by the caretaker that a condition inspection was going to take place on April 30, 2017, she informed the caretaker that she was unable to make it for that date. The Tenant explained that the caretaker became angry and frustrated and insisted that it was going to happen on April 30, 2017. The Tenant submitted that the caretaker did not provide her with any other opportunity to conduct the move-out condition inspection and neither was she given a notice of final opportunity form.

The Landlord claims the Tenant's Deposits for extensive cleaning and damages to the rental unit. The Landlord testified that the Tenant failed to clean the rental unit and caused significant damage to the rental unit. The Landlord pointed me to a document dated November 15, 2017 which he explained showed evidence of work done prior to the Tenant moving in. This included in part: painting of the rental unit; installing ceiling fans and plug switches; installing bathroom faucets, painting cabinet doors; installing cabinetry; and installing doors and door knobs.

The Landlord then referred to a document dated May 2017 which appears to be an invoice for $1,800.00 for work undertaken to the rental unit. The Landlord explained the costs detailed within that document for work done to the balcony were not being claimed from the Tenant. However, the remaining work which comprised of: $200.00 for cleaning; $300.00 for painting; and $100.00 for repairs, was what the Tenant was responsible for. The Landlord stated that he only wanted to keep the Tenant's Deposits in full satisfaction of all the damages to the rental unit caused by the Tenant.
The May 2017 document refers mainly to painting and includes washing and sanding kitchen cabinets, removing baseboards, replacing flooring, mudding bathrooms walls, and removing old drawers.

The Tenant testified that she left the rental unit clean and undamaged and that the Landlord's documents he was referencing for work done at the end of the tenancy was for renovations to the rental unit rather than alleged repairs.

At the end of the hearing, I attempted to mediate a resolution to this dispute between the parties. In that discussion, I informed the Landlord of his requirement to follow the reporting requirements of the *Residential Tenancy Act* (the "Act") and the consequences of not doing so, which are referenced below. However, the Landlord became irate and abruptly hung up from the telephone conference call without the hearing being properly concluded. As a result, I was unable to confirm or ratify any mutual agreement with the parties. Therefore, I must now make legal findings in this matter based on the evidence before me.

After the Landlord left the hearing, the Tenant informed me that the only relief she was seeking from this hearing was the return of her security deposit and did not want to recover any other penalties that may be imposed by the Act. In addition, the Tenant also advised of the correct spelling of her last name. The last name she provided was consistent with that appearing on the move-in CIR. Therefore, in the absence of the Landlord to confirm this, I amended the spelling of the Tenant's last name on the Application pursuant to my authority under Section 64(3) (c) of the Act.

Analysis

I accept the undisputed evidence that this tenancy ended on April 30, 2017 and the Landlord was provided with the Tenant's forwarding address on May 8, 2017. Therefore, pursuant to the 15 day time limit set by Section 38(1) of the Act, I find the Landlord correctly filed the application within that time period.

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 offer the tenant at least two opportunities, as prescribed, for the condition inspection. The Residential Tenancy Regulation (the "Regulations") provided for further requirements when complying with the reporting requirements of the Act. The Regulations state:

Scheduling of the inspection

> ***16*** *(1) The landlord and tenant must attempt in good faith to mutually agree on a date and time for a condition inspection.*

(2) A condition inspection must be scheduled and conducted between 8 a.m. and 9 p.m., unless the parties agree on a different time.

Two opportunities for inspection

17 *(1) A landlord must offer to a tenant a first opportunity to schedule the condition inspection by proposing one or more dates and times.*

(2) If the tenant is not available at a time offered under subsection (1),

(a) the tenant may propose an alternative time to the landlord, who must consider this time prior to acting under paragraph (b), and

(b) the landlord must propose a second opportunity, different from the opportunity described in subsection (1), to the tenant by providing the tenant with a notice in the approved form.

(3) When providing each other with an opportunity to schedule a condition inspection, the landlord and tenant must consider any reasonable time limitations of the other party that are known and that affect that party's availability to attend the inspection.

[Reproduced as written]

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 of the Act.

In this case, I find the Landlord failed to provide the Tenant with a final opportunity to conduct the move-out condition inspection and failed to notify the Tenant with a notice in the approved form, namely the Notice of Final Opportunity to Schedule a Condition Inspection (form RTB-22). 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 Deposits for damage to the rental unit was extinguished and therefore, the Landlord was obligated to return the Tenant's Deposits after the tenancy had ended to the Tenant's forwarding address.
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 the Landlord must pay the Tenant double the Deposits in the amount of $900.00.

However, as the Tenant waived her right to this doubling provision through her instructions to me at the end of the hearing, the Landlord is now ordered to return back to the Tenant $450.00 forthwith.

I now turn my mind to the Landlord's claim for damages to the rental unit. 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.

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due.

In order to determine whether compensation is due, an Arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

In this case, I find the Landlord's disputed evidence of alleged damages to the rental unit to be weak. In the absence of a completed move-out CIR, I find the Landlord's comparative evidence of the state of the rental unit at the end of the tenancy does not convince me that the Tenant failed to clean the rental unit and left it damaged.

This is because the Landlord relies on an invoice document showing work completed at the end of the tenancy to the rental unit as proof of damage caused by the Tenant. The invoice lacks sufficient information about cleaning done to the rental unit that can be attributed to a breach by the Tenant, such as a failure to clean an appliance.
I concur with the Tenant's submissions and find that the invoice evidence relied upon by the Landlord indicates work that is more consistent and reflective of renovation work than that of repairs required to remedy the Tenant's alleged breach.

Furthermore, the Landlord testified to the “extensive” amount of cleaning and damages left by the Tenant at the end of the tenancy. In this respect, I find it would be reasonable to expect that the Landlord would have been in possession of more corroborative evidence, such as photographs; to demonstrate the extent of repairs alleged.

After applying the above test to the evidence provided at this hearing, I conclude on the balance of probabilities, the Landlord has failed to meet the burden to prove his claim for damages to the rental unit.

Conclusion

The Landlord has failed to prove that the Tenant caused damage to the rental unit. The Landlord also failed to comply with the reporting requirements of the Act. Therefore, the Tenant is awarded the return of her security deposit in the amount of $450.00.

The Tenant is issued with a Monetary Order for this amount which may be enforced through the Small Claims Division of the Provincial Court as an order of that court. Copies of this order are attached to the Tenant’s copy of this Decision.

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: September 27, 2017

Residential Tenancy Branch