Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution (the "Application") that was filed by the Landlords under the *Residential Tenancy Act* (the "Act"), seeking compensation for money owed or damage or loss under the *Act*, regulation, or tenancy agreement, recovery of the filing fee, and retention of all or part of the security deposit to offset any amounts owed to them by the Tenants.

The hearing was convened by telephone conference call and was attended by the Landlords, who both provided affirmed testimony. The Tenants did not attend. The Landlords were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure") state that the respondents must be served with a copy of the Application and Notice of Hearing. As the Tenants did not attend the hearing, I confirmed service of documents as explained below.

The Landlords testified that copies of the Application and the Notice of Hearing we sent by registered mail to each of the Tenants at the forwarding address given to them at the end of the tenancy. The Landlords provided a receipt for the purchase of the registered mail and tracking numbers for each of the packages. The Landlords testified that the Tenant J.M. accepted delivery of the registered mail on September 7, 2017, and that the Tenant T.S. refused service. As a result, the Landlords testified that the registered mail was for T.S. was subsequently returned to them. With the consent of the Landlords I logged into the mail service providers website and verified that the Tenant J.M. accepted the registered mail on September 7, 2017, and that the Tenant T.S. refused service on October 5, 2018. Pursuant to section 89 of the *Act*, I find that the Tenant J.M. was served on September 7, 2017, the day he accepted service. Pursuant to section 89 and 90 of the *Act*, I find that the Tenant T.S. was deemed served on October 5, 2017, the date she refused service.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Rules of Procedure. However, I refer only to the relevant facts and issues in this decision.

At the request of the Landlords, copies of the decision and any orders issued in their favor will be mailed to them at the mailing address provided on the Application.

Issue(s) to be Decided

Are the Landlords entitled to a Monetary Order or to keep all or a portion of the security deposit paid by the Tenants for money owed or compensation for damage or loss under the *Act*,

regulation, or tenancy agreement and the recovery of the filing fee pursuant to sections 67 and 72 of the *Act*?

Background and Evidence

The tenancy agreement in the documentary evidence before me indicates that the one year fixed-term tenancy began on October 1, 2016, and was set to end or transition to a month to month tenancy on September 31, 2017. The tenancy agreement indicates that rent in the amount of $1,650.00 was due on the first day of each month and that a security deposit in the amount of $825.00 was paid, which the Landlords still hold.

The Landlords testified that on July 13, 2017, the Tenants gave verbal notice to end their tenancy early, effective August 15, 2017, and provided e-mail correspondence between themselves and the Tenants regarding the early end to the tenancy.

The Landlords testified that the Tenants paid the full $1,650.00 in rent for August 2017, prior to moving out, and that a new tenancy agreement was signed with new occupants effective August 15, 2017, at a monthly rent amount of $1,885.00.

Although a move-out inspection was completed by the Tenants and an agent for the Landlords, the Landlords stated that the move-out inspection report is not accurate as their agent, who was obtained on short notice as the Landlords were temporarily out of the country, believed that the report was only for damage and not for the cleanliness of the apartment. The Landlords stated that although the new occupants paid $925.00 in rent for August 15 - August 31, 2017, this amount was later refunded to them as the apartment was not clean at the time they moved in on August 26, 2017. As a result, the Landlords sought $925.00 for the loss of August rent.

The Landlords also sought $460.00 in cleaning costs, $200.00 for an unpaid elevator reservation/moving fee, $150.00 for the cost of repairing the laundry cabinet door, and $150.00 for the cost of hiring an agent to attend the move-out inspection on the Landlord's behalf.

The Landlords testified that they were out of the country at the time the tenancy ended and as a result, they had to hire an agent to complete the move-out inspection on their behalf at a cost of $150.00. The Landlords sought recovery of this cost and pointed to e-mail correspondence from the Tenants where they agreed to pay this fee. The Landlords acknowledged that it is their responsibility to complete a move-out inspection with the Tenants but stated that the Tenants broke the lease and due to the short notice given and their pre-planned vacation, they were unable to do it themselves. As a result, the Landlords believe that the Tenants should be responsible for the cost of having an agent for the Landlord present at the move-out inspection.

The Landlords provided affirmed testimony that upon their return to the country, they inspected the rental unit on August 26, 2017, and found that the apartment was unclean and that most of the surfaces were covered in as sticky, unsanitary film. The Landlords submitted e-mail correspondence from the new occupants regarding seven hours of work required by each of the two new occupant to bring the apartment to a reasonable state of cleanliness after move-in and an invoice in the amount of $229.00 for six additional hours of professional cleaning. The Landlords stated that the cleaning company charged $33.00 per hours for two cleaners to attend, and that they based their $231.00 claim for the cleaning services rendered by the new

occupants on this hourly rate. The Landlords also submitted photographs of the uncleaned apartment.

Although the Landlords did not submit a photograph of damage to the laundry cupboard door, they testified that there is a hole in the door approximately the size of half of their palm, and that they received a verbal quote from a handy man to repair the hole, and sand and repaint the door at a cost of $150.00. The Landlords pointed to the move-out condition inspection report signed by the Tenants and the agent for the Landlords indicating that there was damage to this door at the end of the tenancy. The Landlords also stated that the cost of replacing the door would be in excess of $250.00 so it is cheaper to repair the door than to replace it.

The Landlords testified that the Tenants were responsible to pay the $200.00 elevator/move-out fee charged by the strata as per section five of the addendum to their tenancy agreement. The landlords provided proof that the strata has charged them this fee and testified that the Tenants have not yet paid it.

Although the condition inspection report for the start of the tenancy indicates that the unit was brand new, the Landlords have not sought any costs related to a chip in the tub, damage to the shelf in the kitchen, or damage to the under sink cabinet. Instead, the Landlords focused their claim on cleaning costs, the unpaid elevator fee, the cost of hiring an agent for the move-out inspection, and the cost of repairing the laundry cupboard door.

Analysis

Section 45(2) of the *Act* states that a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice, is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement. Based on section 45(2), the earliest the Tenants could have ended the fixed-term tenancy under the *Act* was September 31, 2017. Based on the above, I find that the Tenant's breached the fixed-term tenancy when they gave notice and ended the tenancy early.

Residential Tenancy Branch Policy Guideline (the "Policy Guideline") #3 states that the purpose of compensation for loss of rent is to put the landlord in the same position as if the tenant had not breached the fixed-term tenancy agreement by ending the tenancy early. Policy Guideline #3 also states that if a landlord is successful in re-renting the premises at a higher rental rate and as a result, receives more money in rent from the new occupants over the remaining term, the increased amount of rent is set off against any other amounts owing to the landlord for unpaid rent or damages. The Landlords testified that a new tenancy began on August 15, 2017, at a monthly rental rate of $1,885.00. Although the Landlords stated that the new occupants originally paid $925.00 for August 15 - August 31, 2017, this money was later refunded to them due to the state of the apartment at move in. As a result, I find that the Landlords received $0.00 in rent for August and $1,885.00 in rent for September from the new occupants. Under the fixed-term tenancy agreement, the Tenants were responsible to pay $1,650.00 in rent per month for August and September 2017. As the Landlords testified that the Tenants paid the full $1,650.00 in rent for August, 2017, I find that there is no loss of rent for August and I therefore dismiss the Landlords' claim for loss of August rent without leave to reapply. Further to this, as the new

occupants paid $1,885.00 for September, 2017, I find that the Landlords actually received $235.00 more over the remaining term of the Tenants' fixed-term than they otherwise would have received if the Tenants had not ended the tenancy early. As a result, I find that any amounts owed to the Landlords for unpaid rent or damages must be reduced by this amount.

Section 37 of the *Act* 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 and Policy Guideline #1 outlines the responsibilities of tenants to clean and repair the property at the end of the tenancy. Section 21 of the regulation also states that a condition inspection report is evidence of the condition of the rental unit or the residential property on the date of the inspection, unless either party has a preponderance of evidence to the contrary. Although the Landlords have provided some evidence in support of their position that the apartment was not clean when the new occupants moved in on August 26, 2018, this evidence was obtained 11 days after the end of tenancy condition inspection report was completed and after the new occupants had already moved into the rental unit. As a result, I do not find that this constitutes a preponderance of evidence on behalf of the Landlords that the state of the rental unit *on the date of the inspection* was anything other than that shown in the end of tenancy condition inspection report completed and signed by the Tenants and the agent for the landlords. While the Landlord's argued that their agent was unaware of the requirements for the condition inspection, I find that the Tenants are not liable for the Landlord's failure to ensure that the agent they appointed to act on their behalf understood their role and the requirements of the *Act*. As condition inspections are meant to provide both parties with equal opportunity to identify together, any deficiencies in the state of the rental unit, I therefore find that the dispute resolution process is not an opportunity for landlords who were negligent in carrying out their duties regarding condition inspections to rehabilitate their claims. Based on the above, I therefore dismiss the Landlords' claim for $460.00 in cleaning costs.

Based on the testimony and documentary evidence before me I find that the Landlords are entitled to the recovery of the $200.00 moving/elevator fee charged by the strata as the Landlords provided confirmation that they were charged this fee in relation to the Tenant's move-out and the addendum to the tenancy agreement provides for the recovery of this fee under section five. Based on the move-in and move-out condition inspection reports, I am also satisfied that the Tenant's damaged the laundry cupboard door and I therefore find that the Tenants are responsible to pay $150.00 for the cost of repairing this door.

Although the Landlord's submitted evidence that the Tenants agreed to pay $150.00 for an agent for the Landlord to attend the property to complete the end of tenancy condition inspection in the absence of the Landlords, section 35 of the *Act* states that the landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit and that the landlord must complete a condition inspection report in accordance with the regulations. As a result, I find that the Landlords were required under the *Act* to attend the end of tenancy condition inspection and complete the condition inspection report or to appoint an agent to do so on their behalf. As a result, I find that this cost is therefore the responsibility of the Landlord and I dismiss the Landlords' claim for this amount without leave to reapply.

Based on the above I find that the Landlords are entitled to compensation in the amount of $115.00 for money owed or compensation for damage or loss under the *Act*, regulation, of

tenancy agreement; $350.00 for the move out/elevator fee and damage to the laundry cupboard door, less the extra $235.00 the Landlords received in rent for the remaining balance of the Tenant's fixed-term. As the Landlords were only successful in half of their claims, I find that they are only entitled to recover half of the $100.00 filing fee pursuant to section 72 of the *Act*.

As there is no evidence before me that either party extinguished their rights in relation to the security deposit, I authorize and order the Landlords to retain $165.00 from the $825.00 security deposit paid by the Tenants. Pursuant to Policy Guideline #17, I order that the Landlords return the $660.00 balance of the security deposit to the Tenants at the forwarding address provided by them at the end of their tenancy within 15 days of the date of this decision.

Conclusion

Pursuant to section 67 of the *Act*, I authorize and order the Landlords to retain $165.00 from the security deposit paid by the Tenants, the balance of which must be returned to the Tenants within 15 days of the date 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 *Residential Tenancy Act*.

Dated: March 21, 2018

Residential Tenancy Branch