Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPB, OPN, MNR, MND, MNDC, MNSD, FF

Introduction

This hearing was convened in response to an application for dispute resolution made by the Landlord on September 21, 2017 pursuant to the *Residential Tenancy Act* (the "Act") for Orders as follows:

1. An Order of Possession - Section 55;
2. A Monetary Order for unpaid rent - Section 67;
3. A Monetary Order for damage to the unit - Section 67;
4. A Monetary Order for compensation - Section 67;
5. An Order to retain the security deposit - Section 38; and
6. An Order to recover the filing fee for this application - Section 72.

The Landlords and Tenants were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Landlord confirms that the claim for an order of possession was made in error.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?
Is the Landlord required to repay the Tenants double the security deposit?

Background and Evidence

The following are agreed facts: The tenancy started on June 1, 2016 for a fixed term to end December 31, 2016. Rent of $2,100.00 was payable on the first day of each

month. At the outset of the tenancy the Landlord collected $1,500.00 as a security deposit. No move-in condition inspection was offered by the Landlord. The Tenants moved out of the unit on November 30, 2016. The Landlords received the Tenants' forwarding address on September 13, 2017 as determined in a previous decision dated September 13, 2017 and referenced on the cover page of this Decision. The Parties, with the Landlord represented by an Agent, conducted a visual look of the unit at move-in and move-out with no condition reports completed and copied to the Tenants.

The Tenants do not dispute the Landlord's claim for **$460.00** in relation to strata fines. The Tenants submitted as evidence an email dated December 21, 2016 from the Tenants to the Landlord. In this email the Tenants indicate that they "…are willing to meet on a common ground and pay our portion of the fees/fines, but (they) will not be paying an unjust $2260."

The Landlord states that the Tenants moved out of the unit prior to the end date and that rent is therefore owed for December 2016. The Tenants state that the Landlord agreed that the Tenants could end the tenancy earlier. The Tenants provide an email from the Landlord to the Tenants dated November 18, 2018 that states in part ". . . I have bent over backwards . . . including agreeing to your request to break the lease ahead of our contractual agreement . . . ". The Landlord states that this email was sent following discussions on the Tenants request to sublet the unit and argues that no clear approval was given for the Tenants to move out early.

The Landlord states that during the tenancy there was an altercation between the Tenants and another person that resulted in damage to the patio door. The Landlord provides an email from the Tenants describing the incident. The Landlord states that the door could not be repaired and the Landlord claims the replacement cost of $866.25. The Tenants state that another tenant in the building forced its way into the unit while intoxicated and in a rage and broke the door. The Tenants state that they had

no idea what this person was like in advance of this incident. The Tenants state that the police arrested and removed this person from the unit.

The Landlord states that the Tenants removed the remote control for the operation of a set of blinds. The Landlord states that the blinds were installed four or five years ago. The Landlord was directed to its email evidence indicating that the blinds were installed in 2007 and agrees that this is the correct date for the age of the blinds and remote. The Landlord states that the remote is no longer available for purchase. The Landlord states that the person they spoke to about the remote advised the Landlord that a universal remote would not work. Although asked for clarification, the Landlord does not indicate whether the Landlord tried a universal remote. The Landlord states that without the remote the blinds cannot be operated and that the blinds must therefore be replaced. The Landlord states that the next tenant could not operate the blinds, pays $2,225.00 for monthly rent and was not given any discount for the blinds that could not be operated. The Landlord claims an estimated cost of $300.00. The Landlord provides no estimation from any supply source for the blinds. The Tenants state that there was no remote at the outset of the tenancy and that they wondered how the blinds were ever operated.

The Landlord states that the Tenants were provided with 2 garage fobs at the outset of the tenancy and failed to return one of the fobs at the end of the tenancy. The Landlord claims the replacement cost of $60.00. The Tenants state that they were only given one fob and two sets of keys by the Landlord's agent at the onset of the tenancy and that these were all returned to the Landlord's agent at the end of the tenancy.

The Landlord states that the Tenants failed to leave the unit clean and left minor repairs and garbage for removal. The Landlord claims $900.00 and provides an invoice for this amount dated December 9, 2016. The Tenants state that the unit was not provided clean at their move-in and that the Tenants left the unit clean at move-out. The Tenants state that the Landlord's agent, who conducted the visual inspection with the Tenants at

move-out, agreed that the unit was reasonably clean and undamaged. The Landlord states that they have photos of the unit taken after the end of the tenancy but did not provide them for this hearing.

The Landlord states that the Tenants left two of the dining room chairs broken. The Landlord states that the chairs were new about 9 years prior to the start of the tenancy. The Landlord claims the replacement cost of $242.88. The Tenants state that the chairs were bar stool type chairs that were damaged at the onset of the tenancy. The Tenants states that they simply sat on the two chairs and they broke. The Tenants state that they informed the Landlord's agent when this occurred and were never provided with replacement chairs.

The Landlord states that four metal patio chairs with cushions were provided with the unit and that the Tenants left them broken. The Landlord claims $89.60 as the replacement costs. The Tenant states that the Landlord is giving inconsistent oral evidence about damage as their documentary evidence indicates only that the cushions were stained and that one chair had a broken piece. The Tenant states that no patio chairs were left damaged.

The Landlord states that the Tenants were provided with pillows, pillow protectors, sheets, a mattress protector and a duvet at the onset of the tenancy. The Landlord states that these were all left stained to the extent that they required replacement. The Landlord claims the replacement costs. The Tenants state that none of these items were provided with the unit and that even if they were the Tenants would not have used them as they had and used their own.

Analysis

Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. I consider the Landlord's argument that there was no consent to

end the tenancy before the term to lack validity in the face of the email from the Landlord setting out its agreement for the tenancy to end early. I therefore find on a balance of probabilities that the Landlord agreed to an early end and waived its entitlement to December 2016 rent. I dismiss this claim.

Section 37 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, and give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party. Given the Tenants' direct evidence of the incident where the patio door was broken, supported by its email describing the incident to the Landlord, I accept that the damage occurred as a result of the unanticipated acts of another person who was not allowed into the unit by the Tenants. I therefore find on a balance of probabilities that the Landlord has not substantiated that the Tenants caused the damage either by act or negligence and I dismiss the claim for the replacement of the patio door.

Section 21 of the Residential Tenancy Branch Regulations provides that a duly completed inspection report is evidence of the condition of the rental property, unless either the landlord or tenant has a preponderance of evidence to the contrary. Given the lack of any notation of a remote control for the blinds listed in the items provided with the unit, the lack of a move-in or move-out condition report detailing a remote control and considering the Tenants' evidence that no remote control was present at the onset of the tenancy I find on a balance of probabilities that the Landlord has not substantiated that the Tenants caused any loss of the remote and I dismiss the claim for the replacement of the blinds. Given the lack of any notation on the tenancy agreement or a move-in report of the provision of fobs, considering that the Landlord's evidence of the provision of fobs to the Tenant is not direct evidence and considering the Tenant's

direct evidence that they were only given one fob that was returned I find on a balance of probabilities that the Landlord has not substantiated that the Tenants failed to return one fob and I dismiss the claim for its replacement cost.

Given the lack of any condition reports, the lack of photos and considering the Tenant's direct evidence of the Landlord's agent's agreement that the unit was fine at the end of the tenancy I find that the Landlord has not substantiated on a balance of probabilities that the unit was left unclean and damaged beyond its state at move-in. I dismiss the claim for cleaning and repairs.

Given the lack of any condition reports or photos showing damage to the dining room chairs, given the undisputed evidence of the age of the chairs, and given the Tenants' evidence that the chairs were damaged at the outset and were reported as broken to the Landlord's agent, I find on a balance of probabilities that the Landlord has not substantiated that the Tenants caused the damage to the chairs beyond wear and tear. I dismiss the claim in relation to the chairs. Given the Landlord's indirect and contradictory evidence in relation to the patio chairs, the lack of photos, the lack of condition reports and considering the Tenants direct evidence of no damage to the chairs I find on a balance of probabilities that the Landlord has not substantiated that the Tenants damaged the patio chairs and I dismiss this claim.

Section 24 of the Act provides that the right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord does not make an offer for an inspection at move-in, does not complete a report and does not provide a copy of that report to the tenant. Based on the undisputed evidence that no move-in report was completed and copied to the Tenant I find that the Landlord's right to claim against the security deposit for damage to the unit was extinguished at move-in.

Section 19 of the Act provides that a landlord must not require or accept either a security deposit or a pet damage deposit that is greater than the equivalent of 1/2 of one month's rent payable under the tenancy agreement; and, if a landlord accepts a security deposit or a pet damage deposit that is greater than the amount permitted, the tenant may deduct the overpayment from rent or otherwise recover the overpayment. It is undisputed that the Landlord collected a larger security deposit than allowed under the Act and never returned the amount that they were not allowed to collect. Given this breach and considering the Landlord retained and claimed against more than was allowed, I decline to award recovery of the filing fee. I caution the Landlord from collecting more security deposit than allowed for any future tenancies.

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. Policy Guideline #17 provides as follows:

> Return of double the deposit will be ordered if the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act; or; if the landlord has filed a claim against the deposit that is found to be frivolous or an abuse of the dispute resolution process.

The Landlord's claim for unpaid rent had no merit whatsoever. The Landlord's claims for damages to the unit had no merit and without the completion of a move-in or move-out report appeared somewhat contrived or exaggerated given the short length of the tenancy. The Landlord's right to claim against the security deposit for damage to the unit was extinguished at move-in. Given the Tenant's email dated December 2016 I consider that that the Tenants agreed to pay the fines well over a year ago. For these reasons I find that the Landlord made a frivolous claim against the security deposit. As a result and as the Tenants did not give any evidence that they were waiving any

entitlement to return of double the security deposit I find that the Landlord must now repay the Tenants double the security deposit plus zero interest remaining after the deduction of the agreed fines of $460.00. I calculate this amount to be **$2,080.00** ($1,500.00 - 460.00 = 1,040.00 x 2 = 2,080.00)

Conclusion

I grant the Tenants an order under Section 67 of the Act for **$2,080.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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: April 20, 2018

Residential Tenancy Branch