Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT
MND, MNDC, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution (the "Application") filed by the Landlord under the *Residential Tenancy Act* (the "*Act*"), seeking a Monetary Order and retention of the security deposit for damage to the rental unit, recovery of the filing fee, and money owed or damage or loss under the *Act*, regulation, or tenancy agreement.

This hearing also dealt with a cross-application filed by the Tenant under the *Residential Tenancy Act* (the "*Act*"), seeking a Monetary Order for the return of double their security deposit and recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by the Tenant and the agent for Landlord (the "Agent"), both of whom provided affirmed testimony. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. Neither party raised any concerns regarding the service of documentary evidence.

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

At the request of the Agent, copies of the decision and any orders issued in favor of the Landlord will be mailed to them at the address listed in their Application. At the request of the Tenant, copies of the decision and any orders issued in their favor will be e-mailed to them at the e-mail address provided by them in the online application system.

Issue(s) to be Decided

Is the Tenant entitled to the return of double their security deposit pursuant to section 38(6) of the *Act*?

Is the Landlord entitled to a Monetary Order and retention of the Tenant's security deposit for damage to the rental unit?

Is either party entitled to the recovery of the filing fee pursuant to section 72 of the *Act*?

Background and Evidence

The tenancy agreement in the documentary evidence before me states that the month-to-month tenancy began on December 1, 2012, at a monthly rental amount of $1,250.00. Both parties agreed that a $625.00 security deposit was paid and while the parties disagreed about why two separate $200.00 payments were made for a pet damage deposit, they agreed that a total of $400.00 was paid by the Tenant for this purpose. In the hearing the Agent confirmed that the Landlord still holds the above noted $1,025.00 in deposits.

The move-in condition inspection report is dated December 1, 2012, and is signed by both parties. The move-out condition inspection report in the documentary evidence before me is signed by both parties and states that the move-out inspection was completed on August 31, 2017, and both parties agreed that this is the date the tenancy ended. The Tenant submitted a copy of her notice to end tenancy, dated July 25, 2017, in which she provided her forwarding address. In the hearing the Agent acknowledged receiving this letter on July 25, 2017. Both parties also agreed that at the end of the tenancy, there was no written or verbal agreement for the Landlord or Agent to retain any amount from the pet damage deposit or the security deposit.

The Tenant argued that she is entitled to the return of double her pet damage deposit and security deposit as the Landlord did not either return the deposits to her or file a claim against them with the Residential Tenancy Branch (the "Branch") by
September 15, 2017, pursuant to section 38(1) of the *Act*. The Agent testified that she filed the Application and paid the prescribed fee at a Service BC Office on
September 15, 2017, and provided a copy of the payment receipt, the Application, and the fax cover page from Service BC to the Branch dated September 15, 2017. As a result, the Agent stated that she filed the Application on-time and therefore does not owe the Tenant double the pet damage deposit or security deposit.
The Agent stated the Tenant failed to leave the rental unit in a reasonable state of cleanliness and repair at the end of the tenancy and sought $959.30 in cleaning and repair costs; $90.00 for the replacement of 10 light bulbs and a sink stopper, $90.00 for three hours of cleaning required to bring the rental unit to a reasonable state of cleanliness, $147.00 for carpet cleaning, and $632.30 for carpet replacement. The Tenant disputed that any damage was caused to the carpet by her or her pets and stated that the rental unit was reasonably clean at the end of the tenancy.

The Agent testified that the carpets in the rental unit were only 2-3 years old at the start of the tenancy and that the Tenant's pets urinated on the living room carpet. The Agent stated that despite professional carpet cleaning by both the Tenant and her, the smell of urine could not be

removed and the carpets needed to be replaced. In support of her testimony the Agent submitted substantial photographic evidence of staining on the surface and underpadding of the carpet and cleaning and carpet replacement invoices. The Agent also pointed to the move-in condition inspection report which indicates that there was no staining on the living room carpets at the start of the tenancy. The Tenant stated that to her knowledge, her pets never urinated on the carpets and that the damage could have been caused by the previous occupants, who also had pets. The Agent denied that the previous occupants had pets but neither party provided any documentary evidence in support of their testimony on this point. The Tenant also stated that the carpet was not new at the start of the tenancy and pointed to the move-in condition inspection report that indicates the living room carpet had reasonable wear and tear at the start of the tenancy.

The Tenant stated that the majority of the rental unit was left reasonably clean at the end of the tenancy but acknowledged that she did not remove and clean the stove burners or the stove fan. The Tenant stated that she swept and vacuumed the deck but that it is carpeted and wet due to the weather which made it impossible to clean any further. In any event, she stated that there was no more than one hour of cleaning required in the rental unit, if any, at the end of the tenancy and submitted several photographs showing a portion of the kitchen and bathroom, the interior of the fridge, a section of damaged carpet, the fireplace in the living room, and the ceiling above a window. The Agent stated that the oven, stove burners, hood fan, bathroom, and deck were not cleaned and submitted photographic evidence in support of her testimony. The Agent stated that it took three hours of cleaning to bring the above noted areas to a reasonably clean standard and submitted a copy of a move-out information sheet given to the Tenant advising her that carpet cleaning will be charged at $147.00 and cleaning will be charged at $30.00 per hour.

The Tenant acknowledged that she failed to replace burnt out light bulbs and the Agent testified that there were 10 in total, which the Tenant did not dispute. However, the Tenant argued that the Agent has failed to establish the cost for the replacement of the light bulbs as she did not submit any documentary evidence of these costs. The Agent acknowledged that she has not submitted any documentary evidence for these costs and when asked, she could not provide an exact cost for each bulb as she stated that different light bulbs have different costs. In any event, she stated she is only seeking $10.00 for these costs, which she stated is very reasonable. The Tenant also disputed that a sink stopper was damaged or missing and argued that even if it was, the Agent has failed to establish the cost for the replacement of the sink stopper as she did not submit any documentary evidence of this cost. The Agent acknowledged that she did not provide any documentary evidence for the replacement cost of the sink stopper but stated that she maintains 11 properties and therefore has a very good idea of the costs associated with routine maintenance and repair. She stated that the she looked up the cost of the sink stopper, which would be approximately $40.00 and that the cost of having it installed would also be $30.00-$40.00.

Analysis

Damage and Cleaning Costs

Section 37(2) 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. Policy Guideline #1 defines reasonable wear and tear as natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. Policy Guideline #1 also states that the tenant is responsible for replacing light bulbs in the rental unit during the tenancy.

Rule 6.6 of the Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities and that the onus to prove their case is on the person making the claim. Residential Tenancy Policy Guideline (the "Policy Guideline") #16 states that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due and the value of any damage or loss. Pursuant to Policy Guideline #1, and as the Tenant admitted that she did not replace 10 burnt-out light bulbs, I find that the Landlord is entitled to compensation for these costs. Although the Agent did not provide documentary evidence for the cost of light bulb replacement, she only sought $10.00 for the replacement of 10 light bulbs, which I find very reasonable at an individual cost of $1.00 per bulb. As a result, I find that the Landlord is entitled to $10.00 for the cost of replacement light bulbs.

However, the Agent failed to provide any documentary evidence in support of her claim for $80.00 for the replacement of a sink stopper. Pursuant to Policy Guideline #16, I find that it was incumbent upon the agent to satisfy me, on a balance of probabilities, that the $80.00 sought for the replacement of a sink stopper is legitimate and reasonable. While I understand that the agent may have substantial knowledge of the costs of routine maintenance and repairs, I do not possess this same knowledge. As a result, I am not satisfied based on the Agent's testimony alone, that the $80.00 sought is a reasonable and necessary cost for the replacement of the sink stopper and the Landlord's claim for this amount is therefore dismissed without leave to reapply.

While the Tenant argued that the rental unit was reasonably clean, the Landlord submitted substantial persuasive documentary evidence in the form of photographs to establish that the stove, sections of the bathroom, and a window sill and track were not cleaned at the end of the tenancy. Further to this, the Tenant admitted that she failed to clean the stove burners and hood fan. As a result, I find that the Landlord is entitled to two hours of cleaning costs for these items. Although the Landlord also sought costs for cleaning the exterior deck, I accept the Tenant's testimony that the deck was cleaned as reasonably as possible, given that the deck is outdoors and is carpeted, making it susceptible to dirt and moisture damage and difficult to clean. As a result, I dismiss the Landlord's claim for the cleaning costs associated with the deck.

Based on the above, I find the Landlord is entitled to Two hours of cleaning costs. Although the Landlord sought $30.00 per hour for cleaning, I find $15.00 per hour a more reasonable cost for a single non-professional cleaner to complete this work. As a result, I find that the Landlord is entitled to $30.00 in cleaning costs.

Further to this, while the Tenant argued that the living room carpet damage could have been from the previous occupants, I do not agree. The move-in condition inspection report signed by both parties indicates that although the carpet had reasonable wear and tear at the start of the tenancy, it does not indicate any staining. The Agent submitted substantial photographic evidence of large stains in many areas of the carpet and while the Tenant alleged that the carpet was clean and unstained at the end of the tenancy, she did not provide photographic or other documentary evidence to establish that the state of the carpet was anything other than that shown in the Agent's photographs. The Agent testified that despite the fact that the Tenant had the carpet professionally cleaned, there was still substantial staining and a smell of urine. As a result, I find the Landlord is entitled to the $147.00 sought for carpet cleaning.

I also find that the Landlord is entitled to the $632.30 sought for carpet replacement as the Agent testified the staining and the smell of urine could not be removed despite the additional professional carpet cleaning. Although the Tenant stated that the carpet was worn at the start of the tenancy, the Agent testified that it was only two-three years old. Policy Guideline #40 states that the useful life of carpet is 10 years. As the tenancy was approximately four and a half years in length, I find that the carpet was no more than seven and a half years old, which is well within the useful lifespan of carpet. Further to this, I find that damage caused by the defecation of pets on the carpet is not reasonable wear and tear.

Return of the Pet Damage Deposit and Security Deposit

The Tenant also sought the return of double her security deposit pursuant to section 38 of the *Act*. Section 38(1) of the *Act* states that except as provided in subsection (3) or (4)(a), 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, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations or make an application for dispute resolution claiming against the security deposit or pet damage deposit. Section 38(6) of the *Act* states that if a landlord does not comply with subsection (1), the landlord may not make a claim against the security deposit or any pet damage deposit, and must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

There is no evidence before me that sections 38(3) or 38(4) apply. The documentary evidence before me and testimony from both parties also establishes that the Tenant provided her forwarding address to the Landlord in writing on July 25, 2017, in advance of the end of the Tenancy on August 31, 2017. Based on the above, and pursuant to section 38(1) of the *Act*, I find that September 15, 2017, was the latest date by which the Landlord was required to have

either returned the pet damage deposit and security deposit to the Tenant or filed a claim against it with the Branch.

While the Tenant argued that the Landlord did not file the Application seeking to retain all or a part of the security deposit and pet damage deposit until September 19, 2017, the documentary evidence and testimony before me establishes that the Landlord filed the Application and paid the prescribed fee at a Service BC Office on
September 15, 2017. Section 59(2) of the *Act* states that an Application must be in the approved form, include full particulars of the dispute and be accompanied by the fee prescribed in the regulations. Rule 2.6 of the Rules of Procedure states that an application has been made when it has been submitted and either the fee has been paid or when all the documents for a fee waiver have been submitted to the Branch directly or through a Service BC Office. Although I acknowledge that the Branch may not have processed the Landlord's Application until September 19, 2018, the documentary evidence and testimony before me establishes that the Landlord filed the Application and paid the prescribed fee at a service BC Office on September 15, 2017. As a result, I find that the Landlord complied with the timelines provided in section 38 of the *Act*. As a result, I dismiss the Tenant's Application for the return of double her pet damage deposit and security deposit without leave to reapply.

Section 72(2) of the *Act* states that if the director orders a party to a dispute resolution proceeding to pay any amount to the other, the amount may be deducted, in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant. As I have already found that the Tenant owes the Landlord $819.30 for cleaning and repairs, I find that the Landlord is therefore entitled to deduct $819.30 from the $1,025.00 in deposits held by the Landlord.

Policy Guideline # 17 states that where a landlord applies for a monetary order and a tenant applies for a monetary order and both matters are heard together, and where the parties are the same in both applications, the arbitrator will set-off the awards and make a single order for the balance owing to one of the parties. Based on the above, and as there is no evidence before me to establish that the Tenant extinguished their rights in relation to the security deposit or the pet damage deposit, I find that the Tenant is therefore entitled to a Monetary Order in the amount of $205.70 pursuant to section 67 of the *Act*; $1,025.00, less the $819.30.00 owed to the Landlord for cleaning and repairs.

As neither party was fully successful, I decline to grant either party recovery of the filing fee.

Conclusion

The Tenant's Application is dismissed without leave to reapply and pursuant to section 72 of the *Act*, the Landlord is entitled to retain $819.30 from the pet damage deposit and the security deposit paid by the Tenant.

Pursuant to section 67 of the *Act*, I grant the Tenant a Monetary Order in the amount of $205.70. The Tenant is provided with this Order in the above terms and the Landlord must be served with **this Order** as soon as possible. Should the Landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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: May 8, 2018

Residential Tenancy Branch