Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, FF
MNDCT, MNSD, FFT

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 and recovery of the filing fee.

This hearing also dealt with a cross-application filed by the Tenants under the *Residential Tenancy Act* (the "*Act*"), seeking a Monetary Order for money owed or compensation for damage of loss under the *Act*, regulation, or tenancy agreement, 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 G.C. and the Landlord, both of whom provided affirmed testimony. The parties were given the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

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 parties, copies of the decision and any orders issued in their favor will be e-mailed to them at the e-mail addresses in the online application system.

Preliminary Matters

Preliminary Matter #1

The Tenant testified that they were never provided with a copy of the condition move-out inspection report. The Landlord disputed this testimony stating that the Tenant took a picture of it on August 30, 2017, the date it was completed, and that copies were sent to the Tenants by registered mail on September 18, 2017, and by e-mail on September 19, 2017. The Landlord also provided me with the registered mail tracking number.

Although the Tenant disputed the receipt of the condition inspection report from the Landlord, the Tenant uploaded a copy of the condition inspection report into the online application system. The upload states "Move-out inspection report, as sent by Mr. Matheson on September 19th, 2017" and indicates that it was uploaded by the Tenant G.C. on October 16, 2017. The attached condition inspection report contains notations for both the move-in and move-out condition inspections. As a result, I find the Tenant's testimony in the hearing that he was not provided with a copy of the condition inspection report contradictory to the documentary evidence he uploaded and I therefore accept the Landlord's testimony that it was sent to the Tenant's by registered mail on September 18, 2018, and by e-mail on September 19, 2018.

The Landlord also testified that the Tenant took a picture of the condition inspection report on October 30, 2017, which the Tenant denied. Given the above finding that other testimony from the Tenant in relation to receipt of the move-out condition inspection report is contradictory and therefore unreliable; I accept the Landlord's testimony that the Tenant took a photograph of the condition inspection report on August 30, 2017.

Based on the above, I accepted the condition-inspection report for consideration in the hearing.

Preliminary Matter #2

The Landlord testified that he missed filing a claim for the replacement of a $300.00 plant, carpet damage, painting required on the top of the fireplace, gas, and mileage and sought an amendment to his Application in the hearing. I advised the parties that pursuant to section 4.2 of the Rules of Procedure, an Application may be amended at the hearing only in circumstances that can reasonably be anticipated, such as when the

amount of rent owing has increased since the time the Application was made. I advised the Landlord that I do not consider monetary claims such as those he described, to be circumstances that could reasonably have been anticipated by the Tenant in advance of the hearing. Further to this, I find that the ability to know the case against you and prepare evidence in your defense are fundamental to the dispute resolution process. As a result, I find that it would be extremely prejudicial to the Tenant and a breach of both the principles of natural justice and the Rules of Procedure to allow the amendment. As a result, the Landlord's request for an amendment was denied and the hearing proceeded as scheduled based on the matters disclosed in both Applications.

Preliminary Matter #3

Although settlement was discussions during the hearing, a settlement agreement could not be reached between them. As a result, I proceeded with the hearing and rendered a decision in relation to this matter under the authority delegated to me by the Director of the Residential Tenancy Branch (the "Branch") under Section 9.1(1) of the *Act*.

Issue(s) to be Decided

Are the Tenants entitled to a Monetary Order for money owed or compensation for damage of loss under the *Act*, regulation, or tenancy agreement?

Are the Tenants 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 Tenants' 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 one-year fixed-term tenancy began on August 1, 2015, and that a security deposit in the amount of $870.00 was paid, which the Landlord still holds. The Tenancy agreement states that rent in the amount of $1,820.00 is due on the first day of each month and includes a base rent amount of $1,740.00, plus an $80.00 fee. In the hearing both parties agreed that the $80.00 fee is for strata fees paid by the Landlord. The move-out condition inspection report in the documentary evidence before me states that the

inspection was completed on August 30, 2017, and the parties agreed that this is the end date for the tenancy.

In his Application the Landlord sought $800.00 for damage to the rental unit and the retention of all or a portion of the Tenants' security deposit to offset any money owed for damage. However, the documentary evidence from the Landlord shows his total monetary claim as $1,159.50 which he broke down as follows: $1,062.50 for his own labour at $50.00 per hour and $97.00 in supplies.

The Landlord testified that the rental unit is a high-end rental unit and that the Tenants failed to leave it in an acceptable state of cleanliness and repair at the end of the tenancy on August 30, 2017. In support of his testimony he submitted photographic evidence of the rental unit at the end of the tenancy and pointed to the move-out condition inspection report which details the damage and lack of cleanliness at move out. Although the Tenant acknowledged that he signed the move-out condition inspection report showing damage to the rental unit and the lack of cleanliness, he stated that he was stressed so he signed the inspection report despite his disagreement with it.

In the hearing the Landlord testified that the Tenant damaged several walls and two toilet paper holders resulting in the need to replace these items and for drywall repair and paint. The Landlord stated that the Tenant failed to leave the rental unit reasonably clean and submitted photographs of the dirty floors, patio, storage room, oven, washing machine, and bathtub. He also stated that the Tenant failed to clean behind the stove and fridge. The Landlord stated that the Tenant failed to replace several burnt-out light bulbs and replaced several others with bulbs in a shade of white and at a level of brightness incongruous with the other light bulbs in the rental unit.

The Tenant acknowledged that he did not clean behind the fridge and stove but stated this is because he was not provided with appliance glides. The Landlord disputed this testimony. The Tenant acknowledged failing to replace several light bulbs and damaging several walls but stated he repaired the walls with permission from the Landlord. The Landlord testified that the Tenant was asked not to repair the walls himself and advised that if he did, he needed to use the appropriate products. The Landlord testified that the product used was incorrect and as a result, needed to be chipped out before the holes could be properly filled, sanded, and repainted.

The Tenant stated that he hired a professional cleaning company to clean the rental unit at the end of the tenancy but admitted that he was not present when the cleaning

occurred. He also stated that the damage to the toilet paper holders is reasonable wear and tear.

The Tenants sought the return of double their security deposit pursuant to section 38(6) of the *Act* because the Landlord failed to provide them with copies of the move-out condition inspection report within 15 days of the completion of the inspection. The Landlord disputed that they are eligible for the return of double their security deposit as the Tenant took a photograph of the move-out condition report the day it was completed.

The Tenant's also sought $2,000.00 for 25 months of strata fees paid to the Landlord at $80.00 per month which they claimed were illegal as they are not listed as either refundable or non-refundable fees which can be charged by a landlord under the regulation. The Landlord testified that he has previous decisions in which he was granted authority to charge this fee and that in any event, the Tenant's agreed to pay this fee in the tenancy agreement. The Tenant did not dispute that they agreed to pay this fee.

Analysis

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.

Although the Tenant stated that he was stressed and signed the move-out condition inspection report despite his disagreement with it, the condition inspection report in the documentary evidence before me shows that the Tenant signed in the section stating that he agrees that the report fairly represents the condition of the rental unit, not in the section which states that he does not agree that the report fairly represents the condition of the rental unit. Section 21 of the regulation states that in dispute resolution proceedings, a condition inspection report is evidence of the state of repair and condition of the rental unit on the date of the inspection, unless either party has a preponderance of evidence to the contrary. Although the Tenant provided testimony and documentary evidence for my consideration in relation to the condition of the rental unit at the end of the tenancy, I find that his testimony and documentary evidence falls short of a preponderance of evidence to the contrary. As a result, I accept that the condition

of the rental unit was as described in the condition inspection report signed by both parties on August 30, 2017.

As the Tenant acknowledged in the hearing that he damaged the walls and failed to replace several light bulbs, I find that the Landlord is entitled to compensation for these costs. Although the Tenant argued that the rental unit was reasonably clean and that the remaining damage claimed by the Landlord is reasonable wear and tear, I do not agree. The Landlord testified that two toilet paper holders, which were affixed to the wall using anchors, were ripped out of the wall. The Landlord submitted photographic evidence of this damage in support of this testimony and this damage is listed in the move-out condition inspection report. As a result, I find that the Landlord is entitled to compensation for the replacement of these fixtures and the repair of this damage.

While the Tenant testified that the rental unit was professionally cleaned, he acknowledged that he was not present for this cleaning. Based on the move-out condition inspection report and the documentary evidence of the Landlord, I accept that the rental unit was not left reasonably clean and I therefore find that the Landlord is entitled to compensation for cleaning costs. While the Landlord sought costs associated with the replacement of light bulbs which he stated were incongruous with other existing bulbs, he acknowledged that they were functional and did not exceed the maximum wattage requirements for the fixtures. There is no evidence before me that the Tenant is required under the *Act,* the regulation or the tenancy agreement to use light bulbs of a specific level of brightness or shade of white. As result, I dismiss the Landlord's claim for the cost of replacing these bulbs without leave to reapply.

Although the Landlord sought 21.25 hours of personal labour for cleaning and repairs, approximately 1.5 of those hours were in relation to the replacement of mis-matched light bulbs and I have already dismissed the Landlord's claim for these costs without leave to reapply. As a result, I find that the Landlord is only entitled to 19.75 hours of labour for repair and cleaning. Although the Landlord sought compensation in the amount of $50.00 per hour for this labour, he did not submit any documentary evidence to support this amount and I find it excessive in nature. I find $20.00 per hour a more reasonable rate and as a result, I find that the Landlord is entitled to $395.00 in labour costs. While the Landlord did not submit any documentary evidence for the $97.00 in supplies required to clean and repair the rental unit, the testimony he provided in the hearing in relation to the costs for these supplies was very reasonable. As a result, I find that the Landlord is entitled to monetary compensation in the amount of $97.00 for these costs.

The Tenants sought the return of double their security deposit pursuant to section 38(6) of the *Act*. The documentary evidence and testimony before me establishes that the tenancy ended on August 30, 2017. Section 35(4) of the *Act* states that both the landlord and tenant must sign the condition inspection report and that the landlord must give the tenant a copy of that report in accordance with the regulations. Section 18(1)(b) of the regulation states that a landlord must give the tenant a copy of the signed condition inspection report promptly, and in any event, within 15 days after the later of either the date the condition inspection is completed or the date the landlord receives the tenant's forwarding address in writing. The Tenant stated that he provided their forwarding address to the Landlord in wiring at the time of the condition inspection and provided a copy of the letter in the documentary evidence before me. The Landlord did not dispute this testimony. As a result, I accept that the Landlord received the Tenants' forwarding address in writing on August 30, 2017.

Based on the above, I find that the Landlord had until September 14, 2017, to give the Tenants a copy of the signed condition inspection report. Although I accept that the Tenant G.C. took a photograph of the condition inspection report on August 30, 2018, I find that allowing the Tenant to take a photograph of the report is not the same as providing each of the Tenants' with a copy himself. As I have already found that the earliest the Tenants were provided sent a copy of the move-out condition inspection report by the Landlord or his agent was September 18, 2017, I find that the Landlord breached section 35(4) of the *Act* and section 18(b) of the regulation when he failed to provide each of the Tenant's with a copy of the signed condition inspection report by September 14, 2017.

Section 36(2)(c) of the *Act* states that unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord, having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations. There is no evidence before me that the Tenants abandoned the rental unit and I have already found above that the Landlord failed to provide the Tenants with copies of the condition inspection report in accordance with the regulation. As a result, I find that the Landlord extinguished his right to claim against the security deposit.

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. There is no evidence before me that sections 38(3) or 38(4)(a) apply, and I have already found above that the Landlord extinguished his right to claim against the Tenant's security deposit. Based on the above, and given that there is no evidence that the Tenants extinguished their right to the return of the security deposit, I find that the Landlord was required to return the Tenants' security deposit to them, in full, no later than September 14, 2018.

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. As a result, I find that the Tenants are entitled to $1,740.00, which is double the amount of their security deposit.

The Tenant's also sought $2,000.00 for 25 months of strata fees paid to the Landlord at $80.00 per month which they claimed were illegal. The Tenancy agreement in the documentary evidence before me, which was signed by the Tenants and the Landlord, states that the Tenants agreed to pay this fee and the Tenant's do not dispute this fact. While I acknowledge that strata fees are not listed as either refundable or non-refundable fees which may be charged by a landlord under either section 6 or section 8 of the regulation, they are also not listed as a prohibited fee under section 5 of the regulation. Based on the documentary evidence and testimony before me that the Tenants agreed to pay this fee and the fact that it is not listed as a prohibited fee under section 6 of the regulation, I find that it was not unlawful for the Landlord to have charged this fee and I therefore dismiss the Tenants' claim for the return of $2,000.00 paid for these fees without leave to reapply.

As both parties were partially successful, I decline to grant either party recovery of the filing fee.

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, I find that the Tenants' are entitled to a Monetary Order in the amount of $1,248.00; $1,740.00 for double their security deposit, less the $492.00 owed to the Landlord for cleaning and repairs.

Conclusion

Pursuant to section 67 of the *Act*, I grant the Tenants a Monetary Order in the amount of $1,248.00. The Tenants are 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 4, 2018

Residential Tenancy Branch