Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, MNDL-S, MNRL-S, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution (the "Application") that was filed by the Landlord under the *Residential Tenancy Act* (the "*Act*"), seeking a Monetary Order for unpaid rent, damage to the rental unit, other money owed, and recovery of the filing fee, as well as authorization to retain all or a portion of the security deposit and pet damage deposit against these amounts.

The hearing was convened by telephone conference call and was attended by the Landlord and the Tenant D.K., 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.

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 provided in the hearing.

Preliminary Matters

Preliminary Matter #1

At the outset of the hearing the Landlord withdrew her monetary claim for $316.30 in outstanding utilities as both parties agreed this amount has been paid.

Preliminary Matter #2

Although the Tenant acknowledged receipt of the Landlord's documentary evidence, the Landlord stated that she did not receive any evidence from the Tenant. The Tenant stated that he sent his evidence by courier to the Landlord on May 11, 2018, which should have been received by her by May 14, 2018. The Tenant provided the address to which the mail was sent and the Landlord confirmed that it is her correct mailing address. The Tenant did not provide any documentary evidence in support of his testimony.

Rule 3.16 of the Rules of Procedure states that at the hearing, the respondent must be prepared to demonstrate to the satisfaction of the arbitrator that the applicant was served with all their evidence as required by the *Act* and the Rules of Procedure. Given the Landlord's testimony that she did not receive the Tenant's evidence and the lack of documentary evidence to corroborate the Tenant's testimony, I find that the Tenant has failed to satisfy me, on a balance of probabilities that the Landlord was served with his evidence in accordance with the *Act* and the Rules of Procedure.

The ability to know the case against you and to provide evidence in your defense is fundamental to the dispute resolution process. As a result, I find that it would be a breach of both the principles of natural justice and the Rules of Procedure to accept the Tenant's documentary evidence for consideration in this matter as I am not satisfied it was served on the Landlord. As a result, the hearing proceeded based only on the documentary evidence before me from the Landlord and the oral testimony of both parties.

Preliminary matter #3

Although both D.K. and T.M. are listed as respondents in the Application, only the Tenant D.K appeared at the hearing. Further to this, he testified that the respondent T.M. is no longer a Tenant as she moved out some time ago. Policy Guideline #16 states that co-tenants are jointly responsible for meeting the terms of the tenancy agreement and are jointly and severally liable for any debts or damages relating to the tenancy. Policy Guideline #16 goes on to say that where one tenant moves out, that tenant may be held responsible for any debt or damages relating to the rental unit until the tenancy agreement has been legally ended. As there is no evidence before me indicating that T.M. was removed from the tenancy agreement when she moved out or that a new tenancy agreement was entered into between only D.K. and the Landlord, I

find that T.M. remains jointly responsible for any debt or damages relating to the rental unit until the tenancy legally ended on September 30, 2018.

Issue(s) to be Decided

Is the Landlord entitled to a Monetary Order for damage to the rental unit, outstanding rent, and other money owed, as well as recovery of the filing fee pursuant to sections 67 and 72 of the *Act*?

Is the Landlord entitled to withhold all or a portion of the Tenants' security deposit and pet damage deposit in recovery of any money owed pursuant to section 72 of the *Act*?

Background and Evidence

Both parties agreed that the month-to-month tenancy ended on September 30, 2017, when D.K. vacated the rental unit and that at the time the tenancy ended, rent in the amount of $1,575.00 was due on the first day of each month. The parties also agreed that the Tenants paid a security deposit and a pet damage deposit to the Landlord at the start of the tenancy in the amount of $787.50 each, which the Landlord still holds. Although the parties disagreed about the number of pets in the rental unit, both parties agreed that several pets, including both dogs and cats, resided in and frequented the rental unit at various points during the tenancy.

Both parties agreed that a One Month Notice to End Tenancy for Cause (the "One Month Notice") and a Two Month Notice to End Tenancy for Landlord's use of Property (the "Two Month Notice") were served, both of which had effective vacancy dates of September 30, 2018.

The Landlord stated that at the time the tenancy ended, the carpets and flooring were so damaged by pet urine and vomit that the carpets needed to be removed and replaced, the floors under the carpet needed to be sealed with a pet odour sealant, and the linoleum needed to be scrubbed. The Landlord stated that she approached three companies regarding the removal and replacement of the flooring, all of whom refused to do the work due to HAZMAT concerns. As a result, the Landlord stated that she was required to do the work herself, with the help of two other people. As a result, the Landlord is seeking $776.67 for the cost of the tools, materials, and labour; $486.20 for labour to remove damaged flooring and seal the subfloor at (approximately 10 hours of

work charged at $0.55 per square foot), $88.46 for the cost of pet odour remover, $125.38 for pet odour floor sealant, and $76.63 for tools and materials.

In support of her testimony the Landlord provided a condition inspection report, a move-out instruction sheet provided to the Tenant, photographs of the rental unit, receipts for the materials purchased, and quotes for the removal of the carpets and baseboards, upon which she based her claim these costs. Further to this the Landlord stated that although the carpets were only five years old, she is not seeking replacement costs for the flooring. The Landlord also sought $1,575.00 in outstanding rent for September 2017, and $45.57 in registered mail costs.

Although the Tenant acknowledged that his dog urinated on a laminate floor, he disputed that this caused any damage or that any of the pets urinated elsewhere in the house. The Tenant argued that the Landlord had always intended to replace the carpeting at the end of the tenancy and is simply trying to seek this cost from the Tenant. The Tenant also stated that the carpets were stained at the start of the tenancy and that the Landlord specifically requested that he not shampoo the carpets at the end of the Tenancy. The Landlord acknowledged that there were stains on the carpet at the start of the tenancy but testified that they were not pet related stains. She also acknowledged that she requested that the Tenant not shampoo the carpet as she was afraid it would sink the urine further into the subfloor.

Analysis

Although the Tenant disputed that damage was caused to the rental unit by his pets, he acknowledged that his dog has in fact urinated on the floor in one area of the rental unit. As a result, I do not find his testimony that his pets have never urinated elsewhere in the rental unit reliable. While the Tenant stated that the urine could not have damaged the flooring as he cleaned it up when he came home, I am not satisfied that the urine could not have soaked into the laminate flooring, or through any cracks that might exist or have been soaked up by the baseboards. Further to this, as stated above, I am not satisfied, based on the documentary evidence and testimony before me, that this is the only time or the only place in which his pets have urinated.

Ultimately I find the substantial documentary evidence before me from the Landlord that the Tenant’s pets caused damage to the flooring in the rental unit more reliable than the Tenant’s unsupported testimony that they did not. Further to this, I also find that the Landlord made every effort to mitigate the costs associated with the removal of damaged flooring and the remediation of the pet odours by purchasing her own supplies

and completing the work on her own. Based on the above, I therefore find that the Landlord is entitled to the $776.67 sought by her for the costs of removing damaged flooring and pet odours from the rental unit.

Although the Landlord argued that the Tenant owes $1,575.00 in rent for September, 2018, I do not agree. Both parties agreed that a Two Month Notice to End Tenancy was served on the Tenant and section 51(1) of the *Act* states that a tenant who receives a notice to end a tenancy under section 49 *[landlord's use of property]* is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement. The Tenant testified that he withheld September rent pursuant to section 51(1) of the *Act* and both parties agreed that no other compensation has been provided to the Tenant for this purpose. Although the Landlord argued that the Tenant was not entitled to this compensation or to withhold September rent as she also served a One Month Notice on the Tenant, which he did not dispute, I accept the Tenant's testimony that he did not dispute the One Month Notice as the tenancy was already ending at the same time as a result of the previously served Two Month Notice. In any event, I find that section 51(1) of the *Act* is non-discretionary and as a result, I find that the Tenant was entitled to the equivalent of one month's rent payable under the tenancy agreement as the Landlord served him with a Two Month Notice. Based on the above, I find that the Tenant was therefore entitled to withhold rent for September 2017, in accordance with section 51(1) of the *Act* and the Landlord's claim for this amount is therefore dismissed without leave to reapply.

I also dismiss the Landlord's monetary claim for $45.57 in registered mailing fees as the *Act* provides several free methods of service. Further to this, parties are required by the *Act* to serve their evidence on one another and I therefore find that these costs are the responsibility of the Landlord.

As the Landlord was only partially successful in her claim, I award her only $50.00 for partial recovery of the $100.00 filing fee, pursuant to section 72 of the *Act*. Based on the above, the Landlord is therefore entitled to compensation in the amount of $826.67, which she is entitled to retain from the Tenants' security deposit and pet damage deposit.

Pursuant to Policy Guideline #17(c), I order that the Landlord return the remaining balance of the deposits, $748.33, to the Tenants. The Tenants are therefore entitled to a Monetary Oder in this amount.

Conclusion

The Landlord is entitled to retain $826.67 from the Tenants' pet damage deposit and security deposit, the balance of which is to be returned to the Tenants in accordance with the Monetary Order described below.

Pursuant to section 67 of the *Act*, I grant the Tenants a Monetary Order in the amount of $748.33. 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 June 15, 2018

Residential Tenancy Branch