



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNDL-S (Landlords)
 FFT, MNSD (Tenant)

Introduction

This hearing was convened by way of conference call in response to cross Applications for Dispute Resolution filed by the parties.

The Landlords filed their application May 14, 2018 (the “Landlords’ Application”). The Landlords applied for compensation for damage caused to the unit, to keep the security deposit and for reimbursement for the filing fee.

The Tenant filed her application May 27, 2018 (the “Tenant’s Application”). The Tenant applied for the return of the security deposit and for reimbursement for the filing fee.

The Landlord appeared at the hearing for both Landlords. The Tenant did not appear at the hearing. I explained the hearing process to the Landlord who did not have questions when asked. The Landlord provided affirmed testimony.

I asked the Landlord for the full legal name of the Tenant as her name is different on the Landlords’ Application and Tenant’s Application. The Landlord was not sure of the Tenant’s full legal name and asked to leave it as is on the Landlords’ Application. I have used the name of the Tenant as indicated on the Tenant’s Application in the style of cause.

Both parties had submitted evidence prior to the hearing. I addressed service of the hearing package and evidence for the Landlords’ Application.

The Landlord testified that the hearing package and evidence were sent by registered mail to the forwarding address of the Tenant on May 25, 2018. He said the forwarding address was provided by letter. The Landlord provided Tracking Number 1 as indicated on the front page of this decision. I looked this up on the Canada Post website with the

permission of the Landlord. The website shows the package was delivered and signed for by the Tenant May 28, 2018.

Based on the undisputed testimony of the Landlord and the Canada Post website information, I find the Landlord served the hearing package and evidence on the Tenant in accordance with sections 88(d) and 89(1)(d) of the *Residential Tenancy Act* (the “Act”). I also find the package was served on the Tenant in sufficient time to allow the Tenant to prepare for, and appear at, the hearing. Further, I note the Tenant would have been aware of the hearing as the Tenant’s Application was scheduled for the same date and time.

As I was satisfied of service, I proceeded with the hearing in the absence of the Tenant.

Rule 7.3 of the Rules of Procedure (the “Rules”) states that an arbitrator can dismiss an application without leave to re-apply if a party fails to attend the hearing. Rule 7.4 of the Rules states that a party must present their evidence at the hearing and that any written submissions submitted may or may not be considered if a party fails to attend the hearing.

Here, the Tenant failed to attend the hearing and present the evidence she submitted. I dismiss the Tenant’s Application without leave to re-apply. I will not consider any evidence submitted by the Tenant given she did not attend the hearing to present it. I do note that the issue of whether the security deposit can be retained by the Landlord or should be returned to the Tenant will be determined on the Landlords’ Application.

The Landlord was given an opportunity to present relevant oral evidence, make relevant submissions and ask relevant questions. I have considered all documentary evidence and oral testimony of the Landlord. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Are the Landlords entitled to compensation for damage caused to the unit?
2. Are the Landlords entitled to keep the security deposit?
3. Are the Landlords entitled to reimbursement for the filing fee?

Background and Evidence

The Landlords requested \$352.25 compensation. This included \$177.25 for carpet cleaning and \$175.00 for cleaning services.

The Landlords had submitted a written tenancy agreement. It is between the Landlords and Tenant regarding the rental unit. The tenancy started May 1, 2016 and was for a fixed term of one year ending April 30, 2017. Rent was \$1,100.00 per month. The Tenant paid a \$550.00 security deposit. The Landlord confirmed the agreement is signed by Landlord D.G. and the Tenant.

The Landlord testified that the Tenant vacated the rental unit April 30, 2018. He confirmed the Landlords still hold the entire security deposit.

The Landlord testified that he received the Tenant's forwarding address in writing two or three days after May 4, 2018 when it was sent by Xpresspost. He said the Landlords did not have an outstanding Monetary Order against the Tenant at the end of the tenancy. The Landlord said the Tenant did not agree in writing at the end of the tenancy that the Landlords could keep some or all of the security deposit.

The Landlord testified as follows in relation to a move-in inspection. Landlord D.G. and the Tenant did one May 1, 2016. The unit was empty at the time. A Condition Inspection Report was not completed.

The Landlord testified as follows in relation to a move-out inspection. The Landlords and the Tenant did one May 3, 2018. The unit was empty at the time. A Condition Inspection Report was completed. He signed the report but the Tenant did not. I understood the Landlord to say that they started the report but then there was a disagreement between the Landlords and Tenant. He said the Tenant left during the inspection and did not come back. The Landlords did not give a copy of the report to the Tenant.

I asked the Landlord if the Condition Inspection Report was included in the evidence package sent to the Tenant. The Landlord was not able to confirm that it was.

In relation to the carpet cleaning, the Landlord testified as follows. The Tenant lived at the rental unit for two years. She had a dog. The carpet required cleaning at the end of the tenancy. The Landlords called the company used because they were offering 20% off carpet cleaning at the time. The Landlords knew the cost was a good deal based on prior experience. The company charged a flat rate, it was not per square foot.

The Landlords had submitted an invoice for the carpet cleaning showing it cost \$177.25.

In relation to the cleaning services, the Landlord testified as follows. During the move-out inspection it was clear all four rooms had to be cleaned. The oven, kitchen cabinets, floors, window ledges and window tracks had to be cleaned. The bathtub was filthy. The walls and exhaust fan in the bathroom had to be cleaned. There were marks on the walls from beverages being spilled. The Tenant had left hangers and papers in the closet. The rental unit is 800 square feet.

The Landlords had submitted a receipt from the woman who did the cleaning showing it cost \$175.00. The woman charged \$25.00 per hour and indicated that 7 hours of cleaning was done. The Landlords had submitted photos of the rental unit upon move-out which support that some cleaning of the rental unit was required.

Analysis

Section 7 of the *Act* states:

(1) If a...tenant does not comply with this Act...or their tenancy agreement, the non-complying...tenant must compensate the [landlord] for damage or loss that results.

(2) A landlord...who claims compensation for damage or loss that results from the [tenant's] non-compliance...must do whatever is reasonable to minimize the damage or loss.

Section 37 of the *Act* sets out tenant's obligations upon vacating a rental unit and states:

(2) When a tenant vacates a rental unit, the tenant must

(a) leave the rental unit reasonably clean...

Policy Guideline 1 outlines the obligations of landlords and tenants in relation to carpet cleaning and states in part at page two:

...Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year...

...The tenant may be expected to steam clean or shampoo the carpets at the end of a tenancy, regardless of the length of tenancy, if he or she, or another occupant, has had pets which were not caged...in the premises.

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Under sections 24 and 36 of the *Act*, landlords and tenants can extinguish their rights in relation to the security deposit if they do not comply with the *Act* and *Regulations*. Further, section 38 of the *Act* sets out specific requirements for dealing with a security deposit at the end of a tenancy.

I accept the undisputed testimony of the Landlord in relation to the move-in inspection and find the Tenant did not extinguish her rights in relation to the security deposit under section 24(1) of the *Act*.

The Landlord testified that the Landlords did not complete a Condition Inspection Report upon move-in and therefore I find the Landlords extinguished their right to claim against the security deposit for damage to the unit under section 24(2)(c) of the *Act*.

Pursuant to section 38(1) of the *Act*, the Landlords were required to repay the security deposit or apply for dispute resolution claiming against it within 15 days of receiving the Tenant's forwarding address in writing. However, here the Landlords had extinguished their right to claim against the security deposit for damage and therefore were required to return the security deposit to the Tenant. The Landlord testified that the Landlords still hold the entire security deposit.

I find that the only option for the Landlords under section 38(1) of the *Act* was to return the security deposit within 15 days of receiving the Tenant's forwarding address. Given the Landlords did not do so, I find section 38(6) of the *Act* applies and the Landlords cannot claim against the security deposit and must pay the Tenant double the amount of the deposit. The Landlords are therefore required to return \$1,100.00 to the Tenant.

I do find that the Landlords are still entitled to make a claim for the \$352.25 compensation and I consider that now.

I do not rely on the Condition Inspection Report. The Landlord testified that a copy of the report was not provided to the Tenant. He could not confirm that it was included in the evidence package.

Rule 3.14 of the Rules requires applicants to serve their evidence on respondents. Rule 3.17 allows me to admit evidence not served on the other party if doing so would not prejudice one party or breach the principles of natural justice. I cannot find that admission of the Condition Inspection Report would not prejudice the Tenant or breach the principles of natural justice when I have no evidence before me that the Tenant ever received a copy of this and the Tenant was not present at the hearing to speak to this issue. In the circumstances, I exclude the Condition Inspection Report.

I accept the undisputed testimony of the Landlord and find as follows. The Tenant lived in the rental unit for two years and had a dog. The carpets required cleaning at the end of the tenancy. The carpet cleaning cost \$177.25.

Further to Policy Guideline 1, I find the Tenant is responsible for the cost of the carpet cleaning. I find the \$177.25 to be reasonable and I award the Landlords compensation for this amount.

I accept the undisputed testimony of the Landlord that the unit was left unclean at the end of the tenancy. This is supported by the photos submitted. I find the Tenant breached section 37 of the *Act* by not leaving the unit reasonably clean.

I accept the undisputed testimony of the Landlord that the unit had to be cleaned. Based on the undisputed testimony of the Landlord and the receipt submitted, I accept the cleaning services cost \$175.00. I find the Landlords minimized their loss by hiring a cleaner that charged \$25.00 per hour which is a reasonable amount. I do have some concerns about the number of hours it took to clean the unit. However, the Tenant did not attend the hearing to dispute the testimony of the Landlord or the amount claimed

and therefore I accept that the cleaning took a reasonable number of hours. I award the Landlords reimbursement for the \$175.00 cleaning cost.

Given the Landlords were successful in this application, I grant them reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

In total, the Landlords are entitled to \$452.25. However, the Landlords must repay the Tenant \$1,100.00. Pursuant to section 72(2)(b) of the *Act*, the Landlords are authorized to keep \$452.25 of the security deposit. Therefore, the Landlords are only required to repay the Tenant \$647.75.

Conclusion

The Landlords are not entitled to keep the security deposit and must repay the Tenant double the deposit being \$1,100.00. The Landlords are entitled to \$352.25 compensation for cleaning costs and \$100.00 for reimbursement for the filing fee. Therefore, the Landlords are only required to repay the Tenant \$647.75.

The Tenant is granted a Monetary Order in the amount of \$647.75. This Order must be served on the Landlords and, if the Landlords do not comply with the Order, it may be filed in the Provincial Court (Small Claims) 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 *Act*.

Dated: July 31, 2018

Residential Tenancy Branch