Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNDCL-S, FFL, MNSD, FFT

Introduction

This was a cross application hearing that dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for the return of the security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

This hearing also dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for damages, pursuant to section 67;
- a Monetary Order for damage or compensation under the Act, pursuant to section 67;
- authorization to retain the tenants' security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants, pursuant to section 72.

At the beginning of the hearing tenant M.S. testified that she is in the process of changing her last name from her maiden name to her married name. Pursuant to section 64 of the *Act*, I amended the applications to include both tenant M.S.'s maiden and married last names.

The tenants testified that that the landlord was served the notice of dispute resolution package by registered mail on March 8, 2018. The tenants provided the Canada Post Tracking Number to confirm this registered mailing. The landlord confirmed receipt of the dispute resolution package but did not know on what date. I find that the landlord

was deemed served with this package on March 13, 2018, five days after its mailing, in accordance with sections 89 and 90 of the *Act.*

The landlord testified that the tenants were served with her dispute resolution application in May of 2018 and provided the Canada Post Tracking Number to confirm this registered mailing. The tenants testified that they received the landlord's evidence on August 20, 2018, but that they never received the landlord's application for dispute resolution. I looked up the tracking number provided by the landlord on the Canada Post website which stated that the package was mailed on August 17, 2018. The landlord recanted her earlier testimony and testified that she mailed both the notice of dispute resolution package and the evidence package to the tenants on August 17, 2018.

The tenants testified that they had an opportunity to review and respond to the evidence provided by the landlord and that they could determine what claims the landlord filed against them from the evidence they received. The tenants testified that they did not want the landlord's claim dismissed with leave to reapply and that they wanted their application and the landlord's application to be dealt with during this hearing. The landlord also consented to hear both matters at today's hearing. Pursuant to section 71 of the *Act*, I find that the landlord's application for dispute resolution has been sufficiently served for the purposes of this *Act*.

Issue(s) to be Decided

1. Are the tenants entitled to a Monetary Order for the return of the security deposit, pursuant to section 38 of the *Act*?
2. Are the tenants entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?
3. Is the landlord entitled to a Monetary Order for damages, pursuant to section 67 of the *Act*?
4. Is the landlord entitled to a Monetary Order for damage or compensation under the Act, pursuant to section 67 of the *Act*?
5. Is the landlord entitled to retain the tenants' security deposit, pursuant to section 38 of the *Act*?
6. Is the landlord entitled to recover the filing fee for this application from the tenants, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on February 1, 2016 and ended on January 14, 2018. Monthly rent in the amount of $1,100.00 was payable on the first day of each month. A security deposit of $550.00 and a pet damage deposit of $300.00 was paid by the tenants to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The landlord testified that a move in condition inspection and inspection report was conducted on February 1, 2016. The move in condition inspection report was entered into evidence.

The tenants testified that a move in condition inspection and inspection report were never completed and that the first time they saw the move in condition inspection report entered into evidence was on August 20, 2018 when the landlord provided them with her evidence for today's hearing.

Tenant M.S. testified that her signature on the move in condition inspection report was forged and that she did not sign this document. In support of this testimony, tenant M.S. entered into evidence a copy of the signature pages on her current and past passports. The signatures on the passports are markedly different than the signature on the move in condition inspection report. The signature of tenant M.S. on the tenancy agreement matches those on her passports.

The landlord testified that on January 8, 2018 she left a telephone message on the tenants' voicemail requesting that a move out condition inspection and inspection report be completed on January 14, 2018. The landlord testified that this telephone call was not returned. The tenants denied receiving this voicemail.

The landlord testified that she texted the tenants about completing the move out condition inspection and inspection report on January 14, 2018. The tenants denied receiving these text messages. The landlord did not enter the text messages into evidence.

The landlord testified that she posted a Notice of Final Opportunity to Schedule a Condition Inspection (the "Notice") on the tenants' door on January 14, 2018 at approximately 2 p.m. The Notice stated the proposed date and time of inspection to be January 14, 2018 at 2 p.m.

The tenants testified that they were moving out of the subject rental property on January 14, 2018 and were at the subject rental property until 7 p.m. The tenants testified that the landlord never came to the subject rental property on January 14, 2018. The tenants testified that the first time they say the Notice was in the landlord's evidence package. The tenants entered into evidence text message between themselves and the landlord dated January 14, 2018, the text messages do not mention a move out condition inspection or inspection report.

Both parties agree that a move out condition inspection and inspection report were not completed together by the parties. The landlord entered into evidence the move out condition inspection report she completed by herself. The tenants testified that they do not agree with this report and were not provided with a copy of it until the landlord provided them with her evidence package for this hearing.

The tenants testified that they e-mailed the landlord with their forwarding address on February 8, 2018. The landlord testified that she received that e-mail, likely on the same day it was sent. The February 8, 2018 e-mail was entered into evidence. The landlord filed an application with the Residential Tenancy Branch on April 6, 2018 to retain the tenants' security deposit.

The landlord testified that the tenants' damaged the following:

- the trim and drywall around the entrance door;
- two sets of blinds; and
- the baseboards in the entrance way and the kitchen.

The landlord testified that the tenants also removed the range hood filter. The landlord testified that the drywall had to be repaired, new blinds installed, a range hood filter installed, new door trim installed, and the baseboards required re-painting. The landlord entered into evidence a combined receipt for all of the above listed work totaling $1,113.00. The receipt was not itemized.

The landlord testified that the subject rental property was last painted in January of 2016. The landlord testified that the door trim, drywall and baseboards were original to

the house and were approximately 10 years old. The landlord testified that the blinds were approximately 8 years old and that the filter was last replaced in January of 2016, just before the tenants moved in. Photographs of the damages to the rental unit were entered into evidence.

The tenants testified that their dog did damage the trim around the entrance door and two sets of blinds but that they did not damage the drywall. The tenants testified that the drywall was damaged when the landlord tried to remove the baseboards and trim herself. The tenants agreed that they owed some money to the landlord and had asked the landlord to provide receipts for any repair work done but that prior to receiving the landlord's evidence package the landlord had not supplied them with any. The tenants testified that they do not believe the required repairs would have been more than $300.00. The tenants entered into evidence e-mails between the landlord and the tenant from December 12, 2018 – March 1, 2018 showing their discussions regarding the repairs.

The landlord testified that the tenants left the property dirty and that she hired a cleaner to come in and do a move out clean after the tenants left. The landlord entered into evidence a cleaning receipt in the amount of $280.00. The tenants testified that they thought $280.00 to be an excessive cost to clean the subject rental property.

The landlord is claiming $30.00 in postage for sending the tenants two registered letters in preparation for today's hearing. The landlord is also claiming $9.85 in photocopying fees in preparation for today's hearing. Receipts for the above listed items were entered into evidence.

Analysis

Condition Inspection Reports

Sections 23, 24, 35 and 36 of the *Act* establish the rules whereby joint move-in and joint move-out condition inspections are to be conducted and reports of inspections are to be issued and provided to the tenants. When disputes arise as to the changes in condition between the start and end of a tenancy, joint move-in condition inspections and inspection reports are very helpful. These requirements are designed to clarify disputes regarding the condition of rental units at the beginning and end of a tenancy.

Section 24(2) of the *Act* states 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 offer the tenant two opportunities to complete the condition inspection. Pursuant to section 17 of the *Residential Tenancy Act Regulations* (the "Regulations"), the second opportunity must be in writing.

Upon review of tenant M.S.'s signature on the move in condition inspection report and tenant M.S.'s signatures on her passports and the tenancy agreement, I find that the signature on the move in condition inspection report is not that of Tenant M.S. I accept the tenants' evidence that a move in condition inspection report was not completed and that the landlord did not provide two opportunities to complete the inspection. Responsibility for completing the move in inspection report rests with the landlord. I find that the landlord did not complete the condition inspection and inspection report in accordance with the Regulations, contrary to sections 23 and 24 of the *Act.*

Since I find that the landlord did not follow the requirements of the *Act* regarding the joint move-in inspection and inspection report, I find that the landlord's eligibility to claim against the security deposit and pet damage deposit for damage arising out of the tenancy is extinguished.

As I have determined that the landlord is ineligible to claim against the security deposit and pet damage deposit pursuant to section 24 of the *Act,* I find that I do not need to consider whether the move out inspection or inspection report were completed in accordance with sections 35 and 36 of the *Act*.

Security Deposit Doubling Provision

Section 38 of the Act requires the landlord to either return the tenants' security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the Act, equivalent to double the value of the security deposit.

However, this provision does not apply if the landlord has obtained the tenants' written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has

previously ordered the tenants to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

Section C(3) of Policy Guideline 17 states that unless the tenants have specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit 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.

In this case, the landlord did not make an application to retain the tenants' security deposit within 15 days of receiving the tenants' forwarding address in writing. While the tenants' forwarding address was not served on the landlord in accordance with section 88 of the *Act*, I find that the landlord was sufficiently served for the purposes of this *Act,* pursuant to section 71 of the *Act* because the landlord confirmed receipt of the tenants' forwarding address via e-mail on or about February 8, 2018. Therefore, the tenants are entitled to receive double their security deposit and pet damage deposit as per the below calculation:

$550.00 (security deposit) + $300 (pet damage deposit) = $850.00 (deposits total)
$850.00 (deposits total) X 2 (doubling provision) = $1,700.00

Monetary

Policy Guideline 16 states that 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.

Section 37 of the *Act* states that when tenants vacate a rental unit, the tenants must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

I find that both parties acknowledged that some cleaning was required when the tenants' moved out of the subject rental property. I find that cleaning was required and that the tenants' are responsible for the cleaning charge in the amount of $280.00.

The testimony of the parties is conflicting regarding the condition of the subject rental property when the tenants moved in and out. The onus or burden of proof is on the party making the claim. When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails.

I find that the landlord has not met the required burden of proof to prove that the tenant damaged the drywall or removed the range hood filter. I further find that the receipt for the work completed in the subject rental property is unhelpful in quantifying the landlord's loss as the receipt is not itemized. It is not possible to determine how much the repairs for each item cost. Each item repaired has its own useful life and the landlord is only permitted to be reimbursed for the percentage of useful life remaining on that item if it is determined that the tenant is responsible for the damage to that item. Since the work done on the receipt is not itemized, it is not possible to determine what costs may be owed to the landlord.

I accept the testimony of both parties that the blinds and door trim were damaged by the tenants; however, the landlord failed to quantify her claim for each item individually. Pursuant to Policy Guideline 16, I find that the landlord is only entitled to nominal damages in the amount of $200.00 for the blinds and door trim.

I do not find the move in and out condition inspection reports to be helpful in determining how the condition of the property changed from the beginning of the tenancy to the end of the tenancy as the contents of the reports are contested by the parties and I have found that the signature on the move in inspection report is not that of tenant M.S.

The dispute resolution process allows an applicant to claim for compensation or loss as the result of a breach of the Act. With the exception of compensation for filing the application, the Act does not allow an applicant to claim compensation for costs associated with participating in the dispute resolution process. I dismiss the landlord's claim for postage and photocopying charges incurred when preparing for these proceedings.

As both parties were successful in their application I find that they are each entitled to recover the $100.00 filing fee from the other, pursuant to section 72 of the *Act.*

Section 72(2) 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. This provision applies even though the landlord's right to claim from the security deposit has been extinguished under sections 24 and 36 of the *Act*.

Conclusion

I issue a Monetary Order to the tenants under the following terms:

Item	**Amount**
Doubled deposits	$1,700.00
Less cleaning fee	-$280.00
Less nominal damages	-$200.00
Filing fee due to tenants	$100.00
Less filing fee due to landlord	-$100.00
TOTAL	**$1,220.00**

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: October 02, 2018

Residential Tenancy Branch