Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution (the "Application") that was filed by the Landlords under the *Residential Tenancy Act* (the "Act"), seeking compensation for damage to the rental unit, money owed, or other damage or loss under the *Act*, regulation, or tenancy agreement, retention of the Tenant's security and pet damage deposits, and recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by the Landlords, who both provided affirmed testimony. The Tenant did not attend. The Landlords were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure") state that the respondent must be served with a copy of the Application and Notice of Hearing. As the Tenant did not attend the hearing, I confirmed service of these documents as explained below.

The Landlords testified that the Application, the Notice of Hearing, and the documentary evidence before me was sent to the Tenant, by registered mail, on March 7, 2018, at the forwarding address provided by her at the move-out inspection on February 28, 2018. The Landlords stated that the Tenant never picked up the registered mail and it was subsequently returned to them. In support of their testimony, they provided me with copies of the move-out condition inspection report with the Tenant's forwarding address, the registered mail receipt, the registered mail envelope label, and the tracking number. Canada Post shows that the registered mail was sent as described above, that notice cards were left on March 9, 2018, and March 14, 2018, before the mail was subsequently returned to sender on April 3, 2018.

Although it is clear that the Tenant never picked up the registered mail, the address used by the Landlords was the one provided by the Tenant herself on the move-out condition inspection report in the documentary evidence before me as her forwarding

address approximately one week prior to the date the mail was sent. Section 90 of the *Act* states that documents sent by mail are deemed received five (5) days later, unless earlier received. Further to this, Residential Tenancy Policy Guideline (the "Policy Guideline") #12 states that where a document is served by Registered Mail, the refusal of the party to accept or pick up the Registered Mail, does not override the deeming provision.

As a result, I find that the Tenant has been deemed served with the Application, the Notice of Hearing, and the documentary evidence before me on March 12, 2018, five (5) days after the registered mail was sent.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Rules of Procedure; however, I refer only to the relevant facts and issues in this decision.

At the request of the Landlords, copies of the decision and any orders issued in their favor will be e-mailed to them at the e-mail addresses confirmed in the hearing.

Issue(s) to be Decided

Are the Landlords entitled to compensation for damage to the rental unit, money owed, or other damage or loss under the *Act*, regulation, or tenancy agreement?

Are the Landlords entitled to recovery of the filing fee and retention of the Tenant's security and pet damage deposits pursuant to section 72 of the *Act*?

Background and Evidence

The tenancy agreement in the documentary evidence before me states that the tenancy began May 31, 2017, that rent in the amount of $2,495.00 is due on the first day of each month and that a security deposit and pet damage deposit were paid by the Tenant in the amount of $1,247.50 each. The Landlords confirmed that the tenancy agreement was as stated above and that they still hold both the security deposit and the pet damage deposit. Further to this, they stated that there was to be no smoking in the rental unit.

The Landlords testified that the tenancy ended on February 28, 2018, when the Tenant vacated the rental unit and provided her forwarding address in writing. The Landlords also stated that condition inspections were completed with the Tenant at both the start

and the end of the tenancy, and that copies of the condition inspection reports were provided to the Tenant either the same day or the following day on both occasions.

The Landlords stated that the Tenant failed to leave the rental unit reasonably clean and undamaged, except for reasonable wear and tear, and sought $2,495.90 for damage caused by the Tenant and her pets, as well as cleaning and light bulb replacement costs. In support of their claim, the Landlords provided photographs of the damage, the condition inspections reports, copies of the tenancy agreements, and receipts and quotes for cleaning, repair and replacement costs. The Landlords stated that the Tenant destroyed an expensive air filtration fan by clogging it with dirt and ash from cigarettes and sought $446.88 for its replacement. They stated that the Tenant smoked in her non-smoking rental unit causing staining and strong odours in the rental unit and as a result, the walls needed to be sealed with an odour sealant and painted. Although the Landlords initially sought $939.75 for this service, in the hearing they stated this was based on a quote from a painting company and that they were able to purchase the supplies and painted the rental unit themselves over three full days for a reduced cost of only $873.00.

The Landlords sought $557.50 for blind and other cleaning costs incurred by them through their own labour and the hiring of professionals, $129.00 for upholstery cleaning costs and devaluation of furniture due to smoke and pet odours and damage, $22.71 for the replacement of light bulbs which burnt out during the tenancy and were not replaced by the Tenant, $138.23 for replacement of an air conditioner tube damaged by the Tenant, and $125.40 for the cost of replacing other decor items and furnishings either damaged by the Tenant or not returned at the end of the tenancy.

Further to this the Landlords sought $83.17 per day ($2,495.00 divided by 31 days) for the two days the rental unit could not be re-occupied by them in March due to its state at the end of the tenancy for a total of $166.33.

The Tenant did not appear in the hearing to provide any evidence or testimony for my consideration.

Analysis

Based on the documentary evidence and testimony before me, I find that the Landlords' Application seeking retention of the security deposit and pet damage deposit was filed within 15 days of the date the tenancy ended, which is also the date the Tenant's forwarding address was received in writing, as required by section 38(1) of the *Act*. I

also find that that the Landlords have complied with the *Act* and the regulation with regards to completion of the condition inspections, the condition inspection reports, and the service of these reports on the Tenant. As a result, I find that the Landlords have not extinguished their rights to hold or claim against the security or pet damage deposits.

Section 37 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. Residential Tenancy Policy Guideline (the "Policy Guideline") # 1 states that reasonable wear and tear refers to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion.

Section 7 of the *Act* states that if a landlord or tenant does not comply with the *Act*, regulation, or tenancy agreement the non-complying party must compensate the other for the damage or loss that results. Section 7 also states that a landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with the *Act*, regulation, or tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Section 65(1)(d) of the *Act* states that if the director finds that a landlord or a tenant has not complied with the *Act*, regulation, or tenancy agreement, the director may order that any money owing by a tenant or a landlord be repaid.

I do not find that any of the damage detailed by the Landlords constitutes reasonable wear and tear and I find that the Landlords have acted reasonably to minimize the damage or loss suffered, even completing things such as cleaning and painting of the rental unit when it was more cost effective to do so.

Based on the above, I find that the Landlords are entitled to compensation for money owed or damage or loss under the *Act*, regulation or tenancy agreement in the amount of $2,459.05. Pursuant to section 72 of the *Act*, I also find that the Landlords are entitled to the recovery of the $100.00 filing fee and to retain, in full, the $2,495.90 in security and pet damage deposits paid by the Tenant, in partial satisfaction of the above noted costs. As a result, the Landlords are entitled to a Monetary Order in the amount of $64.05; $2,559.05 owed for damage or loss and recovery of the filing fee, less the $2,495.00 in deposits held.

Conclusion

Pursuant to section 67 of the *Act*, I grant the Landlords a Monetary Order in the amount of $64.05. The Landlords are provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible. Should the Tenant 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 1, 2018

Residential Tenancy Branch