Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes For the landlord: MNDL-S, FFL
For the tenants: MNSD, FFT

Introduction

This hearing dealt with cross applications for dispute resolution filed by the parties under the *Residential Tenancy Act* (the "Act").

The landlord's application for dispute resolution was made on June 21, 2018 (the "landlord's application"). The landlord applied for (1) a monetary order for compensation related to damage caused to the rental unit, pursuant to section 67 of the Act, and (2) a monetary order for recovery of the filing fee, pursuant to section 72(1) of the Act.

The tenants' application for dispute resolution was made on July 17, 2018, (the "tenants' application"). The tenants applied for (1) a monetary order for compensation for the return of their security deposit, pursuant to section 38(1)(c) of the Act, and (2) a monetary order for recovery of the filing fee, pursuant to section 72(1) of the Act.

The landlord attended the dispute resolution hearing convened before me on October 15, 2018, and was given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses. The tenants did not attend. I note that one of the tenants' last name varies between the landlord's spelling of the last name on the landlord's application and the spelling of the tenant's last name on the tenants' application. It is reasonable to conclude that the tenants submitted their correct legal names and as such I amend their names to be correctly reflected on this decision.

While I have reviewed all oral and documentary evidence submitted, only relevant evidence pertaining to the issues of this application is considered in my decision.

This is my decision in respect of the landlord's and tenants' applications.

Issues

For these applications, I must decide the following:

1. Is the landlord entitled to a monetary order for compensation related to damage caused to the rental unit?
2. Is the landlord entitled to a monetary order for recovery of the filing fee?
3. If the answer is "yes" to one or both of the above-noted claims, is the landlord entitled to retain any or all of the tenants' security and pet damage deposits in full or partial satisfaction of the above-noted claims?
4. Are the tenants entitled to a monetary order for the return of their security and pet damage deposits?
5. If the answer is "yes", are they entitled to a doubling of the amount of the security and pet damage deposits, pursuant to section 38(6) of the Act?

Background and Evidence

The landlord testified and confirmed that the tenancy commenced on September 1, 2016 and ended on June 1, 2018. Monthly rent was $950.00, due on the first of the month, and the tenants paid a security deposit of $475.00 and a pet damage deposit of $200.00. A copy of the written tenancy agreement was submitted into evidence.

The parties completed a Condition Inspection Report (the "Report") for a move-in inspection date of August 28, 2016, and for a move-out inspection date of June 1, 2018. The Report noted, on page 3, the following: "countertop by sink burnt – landlord will fix with damage deposit money and let tenants know amount."

The tenant L.L. signed the section of the Report in which the tenants agreed to a full deduction from the security and pet damage deposits.

A text message (submitted into evidence by the landlord) dated June 15, 2018, from the landlord to one of the tenants reads as follows, and confirms that the tenants agreed to the deduction:

Landlord: Hey [Tenant]. With my work schedule I am only able to get someone to come in next week to fix the countertop. As agreed I am keeping the security/pet deposit till it is fixed. I will let you know asap when it is done. [. . .]

Further screenshots of text messages between the parties reflects the landlord's attempts to settle on an amount in anticipation of repairing the countertop. In one exchange, which appears to be dated June 20, 2018, the following conversation occurs:

Tenant: And it's not about the quote- I'm sorry there was an accident- but we legally aren't responsible for the countertop accident.

Landlord: It was agreed that you and [L.L.] would pay for the repair. If we agree on a number for the repair, I can give you the difference back. If we cannot I'll wait till it is fixed as previously agreed on.

Tenant: I would like to agree on a number, yes, The burn mark is aesthetic and everything is functional with the countertop…. so I'd like that to be taken into account. If we can agree on a number and get our pet deposit back then I think that would be a great thing.

Landlord: For me to fix the countertop I have to replace the whole thing aesthetic looking or not. [. . .]

In the landlord's application, the landlord seeks compensation in the amount of $525.00. I further note that the landlord attempted to return the pet damage damage deposit of $200.00, but the tenants refused to accept the e-transfer.

In support of her application, the landlord submitted e-transfer documentation, a Monetary Order Worksheet, copies of different estimates to replace the countertop, and photographs of the damage. Finally, I note that the Report includes the tenants' forwarding address, which the landlord testified and confirmed that she had the tenants' forwarding address on June 1, 2018.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

The landlord seeks a monetary order for compensation for repairs to the kitchen countertop. The purpose of compensation is to put the person who suffered the damage or loss into the same position as if the damage or loss had never occurred. The party claiming compensation must provide evidence establishing that they are entitled to compensation.

Section 67 of the Act states that if damage or loss results from a party not complying with the Act, the regulations or a tenancy agreement, an arbitrator may determine the amount of, and order that party to pay, compensation to the other party.

In deciding whether compensation is due, I must determine the following:

1. Has a party to a tenancy agreement failed to comply with the Act, the regulation, or the tenancy agreement?
2. If yes, did loss or damage result from that non-compliance?
3. Has the party who suffered loss or damage proven the amount or value of that damage or loss?
4. Has the party who suffered the loss or damage acted reasonably in minimizing the loss or damage?

Subsection 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. In this case, the tenants did not leave the rental unit—specifically, the kitchen countertop—undamaged, and I do not find that the burn mark is reasonable wear and tear. In support of her claim, the landlord submitted a Condition Inspection Report, photographs, and text messages between the parties, all of which confirm that the tenants caused the damage.

The tenant advised the landlord that they “legally aren’t responsible for the countertop accident.” I disagree. Tenants are responsible for ensuring that a rental unit is not damaged except for reasonable wear and tear. That it may have been an accident is a moot point. Indeed, that the tenants attempted to come to a final dollar amount, and that the tenants agreed to the landlord withholding the security and pet damage deposits, implies that they accepted legal responsibility for the damage. Give the above, I find that the tenants failed to comply with the Act and that the damage to the rental unit resulted from that non-compliance.

In support of the amount or dollar value of the damage, the landlord submitted two estimates to replace and therefore repair the kitchen countertops. The dollar amounts appear reasonable, and I accept the amount claimed in the amount of $525.00.

Finally, I must ask, has the landlord acted reasonably in minimizing the loss or damage? I find that she did. She obtained two estimates in an effort to reduce overall costs and went with the lower of the two, she attempted to negotiate an amount with the tenants,

and she completed the Report in such a manner that reflects the damage to the rental unit.

Taking into consideration all of the documentary evidence and unchallenged testimony of the landlord presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving her claim for compensation related to the damaged kitchen countertop. As such, I grant her a monetary award in the amount of $525.00.

As the landlord was successful in her application, I further grant her a monetary award in the amount of $100.00 for recovery of the filing fee.

While the tenants failed to attend the hearing, I will, however, address section 38 of the Act, which addresses the subject of security and pet damage deposits, and which the application of may have a bearing on the total amount awarded to the landlord. Section 38 is lengthy, but I will reproduce most of this section in full for the parties' benefit:

> 38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of
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> (a) the date the tenancy ends, and
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> (b) the date the landlord receives the tenant's forwarding address in writing,
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> the landlord must do one of the following:
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> (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
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> (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.
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> (2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.
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> (3) A landlord may retain from a security deposit or a pet damage deposit an amount that
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> (a) the director has previously ordered the tenant to pay to the landlord, and
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> (b) at the end of the tenancy remains unpaid.

> (4) A landlord may retain an amount from a security deposit or a pet damage deposit if,
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> (a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or
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> (b) after the end of the tenancy, the director orders that the landlord may retain the amount.
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> (5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.
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> [. . .]
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> (7) If a landlord is entitled to retain an amount under subsection (3) or (4), a pet damage deposit may be used only for damage caused by a pet to the residential property, unless the tenant agrees otherwise.

In this case, the evidence establishes, on a balance of probabilities, that the tenants agreed in writing that the landlord could retain the security and pet damage deposits to pay for a liability or an obligation. The tenants agreed in writing to this within the Report. As such, I find that the landlord complied with sections 38(4) and 38(7) of the Act, and was entitled to retain the security and pet damage deposits.

I further find, because of the landlord’s compliance with the Act, that the tenants are not entitled to a doubling of the security and pet damage deposits pursuant to section 38(6) of the Act.

Given the above, the landlord is entitled to retain $525.00 of the security and pet damage deposits in full satisfaction of her claim for damage to the countertop, and is further entitled to retain $100.00 of the security and pet damage deposits in full satisfaction of her claim for the filing fee.

As a result, I grant the tenants a monetary order in the amount of $50.00, which represents the difference now owed by the landlord to the tenants.

This monetary order is calculated as follows:

CLAIM	AMOUNT
Repair of damaged kitchen countertop	$525.00
Filing fee	$100.00
LESS security deposit	($475.00)
LESS pet damage deposit	($200.00
Total:	- $50.00

Conclusion

I grant the landlord a monetary award in the amount of $625.00.

I grant the tenants a monetary order in the amount of $50.00. This order must be served by the tenants on the landlord, and the order may be filed in, and enforced as an order of, the Provincial Court of British Columbia (Small Claims).

I dismiss the tenants' application in its entirety, without leave to reapply.

This decision is final and binding on the parties, unless otherwise provided under the Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: October 15, 2018

Residential Tenancy Branch