



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNDL-S (Landlord)
 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 Tenants filed their application July 17, 2018 (the “Tenants’ Application”). The Tenants applied for return of the security deposit and reimbursement for the filing fee.

The Landlord filed his application August 27, 2018 (the “Landlord’s Application”). The Landlord applied for compensation for damage to the rental unit, to keep the security deposit and for reimbursement for the filing fee.

The Landlord and Tenant appeared at the hearing. I explained the hearing process to the parties who did not have questions when asked. Both parties provided affirmed testimony.

The Tenant confirmed the Tenants are only requesting the original amount of their security deposit back and not requesting double the security deposit back.

During the hearing, the Landlord said he wanted \$1,100.00 because the Tenants were not supposed to have pets but did. I am not considering this claim as it was not clear in the Landlord’s Application that he sought this amount.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing packages and evidence and no issues arose in this regard.

The parties were 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 parties. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Are the Tenants entitled to the return of the security deposit?
2. Are the Tenants entitled to reimbursement for the filing fee?
3. Is the Landlord entitled to compensation for damage to the rental unit?
4. Is the Landlord entitled to keep the security deposit?
5. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. It is between the Landlord and Tenants in relation to the rental unit. The tenancy started August 1, 2015 and was a month-to-month tenancy. Rent was \$2,200.00 per month due on the first day of each month. The Tenants paid a \$1,100.00 security deposit.

The parties agreed the Tenants vacated the rental unit June 30, 2018. The Landlord confirmed he still holds the \$1,100.00 security deposit.

The Tenant testified that the Tenants provided the Landlord with their forwarding address by email but that this did not go through. She said the forwarding address was also sent by text to the Landlord on June 30, 2018 and that the Landlord replied the same day. She testified that the forwarding address was also sent by letter the same week.

The Landlord could not recall receiving a text with the Tenants' forwarding address. The Landlord acknowledged receiving the letter with the Tenants' forwarding address around July 11, 2018.

The Tenant testified that a move-in inspection was done August 1, 2015 but was not completed because the Landlord had to leave. She said the Landlord's friend was going to complete the inspection but that the Condition Inspection Report was never signed.

In response to my question about a move-in condition inspection, the Landlord said he was not there so does not know. He then said a representative of his did the inspection. The Landlord did not take issue with the fact that the Tenants did a move-in inspection.

The Tenant testified that she, the Landlord and the Landlord's friend did a move-in Condition Inspection Report over two different days. The Landlord said the Tenant and his representative did the report. Both parties agreed that neither party signed the move-in Condition Inspection Report.

The Tenant testified that the Landlord's friend left the original move-in Condition Inspection Report with her when the friend returned to complete the inspection.

The Tenant testified that the Tenants and the Landlord's realtor did a move-out inspection. The Landlord agreed that the Tenants and his realtor did a move-out inspection. The parties agreed there was no move-out Condition Inspection Report completed.

The Landlord sought the following compensation:

| Item | Description | Amount |
|------|-----------------------|-------------------|
| 1 | Carpet cleaning | \$293.32 |
| 2 | Cleaning | \$225.00 |
| 3 | Cleaning | \$300.00 |
| 4 | Hardwood floor repair | \$2,730.00 |
| | TOTAL | \$3,548.32 |

Carpet cleaning

The Landlord submitted that the Tenants were responsible for steam cleaning the carpets in the rental unit given the tenancy lasted more than a year. He relied on the Policy Guidelines in relation to this. The Landlord testified the Tenants had dogs and there was odour from them. The Landlord testified the carpets were dirty at the end of the tenancy.

The Tenant testified that the carpets were dirty when the Tenants moved in. She said the carpets were not steam cleaned upon move-out. She said the Tenants rented a carpet cleaning machine at the end of the tenancy and cleaned the carpets with it. She said the carpets were still dirty because they were stained.

In reply, the Landlord disputed that the Tenants cleaned the carpet and said there was dog hair everywhere and there was still an odour.

The Condition Inspection Report submitted shows the floors and carpets were stained and dirty upon move-in.

The Landlord submitted an invoice for the carpet cleaning. The invoice states that the service was more like carpet restoration and that there were pet stains throughout. It states that the carpet is in poor condition and that little to no maintenance of the carpet had been done.

Cleaning

The Landlord said the Tenants did not clean the rental unit and he had to have a professional come and clean the rental unit upon move-out. The Landlord testified that the cleaning took more than one day. The Landlord did not know what the cleaner charged per hour.

The Tenant testified that the Tenants did clean the rental unit and that the rental unit was clean upon move-out.

The Landlord submitted an invoice for the cleaning. It does not state what was cleaned, how long the cleaning took or what the cost of the cleaning per hour was.

Hardwood floor repair

The Landlord testified that the Tenants' dogs destroyed the floor in the rental unit. The Landlord said he got three quotes for the floor repair and went with the cheapest one. He said he asked the company to repair the floors and re-do them. The Landlord said the flooring was new in 2007. The Landlord agreed with the Tenant that the hardwood was in the entry, kitchen, living room, dining room and den of the rental unit.

The Tenant testified that the floors were badly damaged when the Tenants moved in. The Tenant pointed to photos she had submitted of the floors when her dog was a puppy. She said the photos show the floor was damaged when the Tenants moved in. I understood her to say that the Tenants had lived at the rental unit for a couple of months when the photos were taken.

The Condition Inspection Report submitted shows the hardwood floor in the rental unit was “fair” in the entry, “good” in the living room and “worn” in the dining room upon move-in.

The Landlord submitted an invoice for the floor repair. It states that the flooring has been damaged with “dog scratches/wear”. It states that the damage caused floor discolouration and indents and gouging.

The Landlord submitted three photos, one of the floor in 2015 and two of the floor upon move-out in 2018.

The Tenant submitted two photos showing the floor with numerous scratches.

Analysis

Section 7 of the *Residential Tenancy Act* (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.

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 *Residential Tenancy Regulations*. Further, section 38 of the *Act* sets out specific requirements for dealing with a security deposit at the end of a tenancy.

Section 37(2) of the *Act* states:

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

(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear...

Pursuant to rule 6.6 of the Rules of Procedure, it is the Landlord as applicant who must prove that he is entitled to the compensation sought.

I accept that the Tenants participated in a move-in inspection as stated by the Tenant as the Landlord did not dispute this. Therefore, I find the Tenants did not extinguish their rights in relation to the security deposit under section 24 of the *Act*.

The parties agreed that the Tenants and Landlord's realtor did a move-out inspection. Therefore, I find the Tenants did not extinguish their rights in relation to the security deposit under section 36 of the *Act*.

The parties agreed the Landlord did not do a move-out Condition Inspection Report. Therefore, I find the Landlord did extinguish his rights in relation to the security deposit under section 36 of the *Act*.

There was no issue that the Tenants vacated the rental unit June 30, 2018. I accept the testimony of the Landlord that he received the Tenants' forwarding address by letter around July 11, 2018.

Pursuant to section 38(1) of the *Act*, the Landlord was required to repay the security deposit or apply for dispute resolution claiming against it within 15 days of receiving the Tenants' forwarding address in writing around July 11, 2018. I note that the Landlord had extinguished his right to claim against the security deposit for damage to the rental unit. There is no issue that the Landlord did not repay the security deposit. The Landlord filed the Landlord's Application August 27, 2018, well outside the 15-day time limit set out in section 38(1) of the *Act*.

I find the Landlord failed to comply with section 38(1) of the *Act*. This would usually entitle the Tenants to double the security deposit back pursuant to section 38(6) of the *Act*; however, the Tenants waived this right and therefore the Landlord is only required to return the original \$1,100.00 to the Tenants. I note that there is no interest owed on the security deposit as the amount of interest owed has been 0% since 2009.

The Landlord is still entitled to seek compensation and I consider that now.

Carpet cleaning

Policy Guideline 1 states as follows:

3. The tenant is responsible for periodic cleaning of the carpets to maintain reasonable standards of cleanliness. 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. Where the tenant has deliberately or carelessly stained the carpet he or she will be held responsible for cleaning the carpet at the end of the tenancy regardless of the length of tenancy.
4. 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 or if he or she smoked in the premises.

The Tenant testified that the Tenants rented a carpet cleaning machine and cleaned the carpet at the end of the tenancy. The Landlord disputed this stating there was dog hair everywhere and an odour. However, the Landlord did not submit evidence to support this such as photos. Nor did the Landlord complete a move-out Condition Inspection Report which would have indicated the state of the carpet upon move-out. In the circumstances, I am not satisfied that the Tenants failed to clean the carpet with a carpet cleaning machine upon move-out which is what Police Guideline 1 requires.

I do accept that the carpet was stained on move-out based on the invoice submitted by the Landlord. However, I also accept that the carpet was stained on move-in based on the Condition Inspection Report submitted by the Tenant. Therefore, I am not satisfied that the stains noted in the invoice are the responsibility of the Tenants and am not satisfied that the Landlord is entitled to reimbursement for the carpet cleaning.

Cleaning

The Landlord testified that the Tenants did not clean the rental unit. The Tenant testified that the Tenants did clean the rental unit and that it was clean upon move-out. The Landlord provided no evidence to support his position that the rental unit was not clean upon move-out such as photos or a completed Condition Inspection Report. Therefore, I am not satisfied that the rental unit was dirty upon move-out and am not satisfied the Landlord is entitled to reimbursement for the cleaning cost.

Hardwood floor repair

I accept that the hardwood floor was damaged upon move-out based on the comments on the invoice submitted by the Landlord. However, I am only satisfied that the hardwood floor in the living room was in good condition upon move-in given the Condition Inspection Report. The invoice does not give further information about where in the rental unit the scratches and wear were noted. The Landlord provided photos; however, these are not helpful given that they show no details of the flooring in the rental unit. The photos are such that I cannot tell whether the floor needed repairing or simply needed to be wiped and polished at the end of the tenancy. The Landlord did not do a Condition Inspection Report which would have documented the state of the flooring upon move-out. Upon a review of the evidence, I am not satisfied that the Landlord has met his onus to prove that the Tenants damaged the hardwood floor beyond reasonable wear and tear and that he is therefore entitled to reimbursement for the floor repair.

In summary, I am not satisfied that the Landlord is entitled to the compensation claimed.

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

Given the Landlord was not successful in his application, I decline to award him reimbursement for the filing fee.

In summary, the Landlord must repay the \$1,100.00 security deposit plus the \$100.00 filing fee to the Tenants. The Tenants are issued a monetary order for \$1,200.00.

Conclusion

The Tenants' Application is granted.

The Landlord's Application is dismissed.

The Landlord must repay the \$1,100.00 security deposit plus the \$100.00 filing fee to the Tenants. The Tenants are issued a monetary order for \$1,200.00. This Order must be served on the Landlord and, if the Landlord does 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: December 19, 2018

Residential Tenancy Branch