Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD
MNDCL-S, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution (the "Application") that was filed by the Tenant under the *Residential Tenancy Act* (the "*Act*"), seeking the return of double her security and pet damage deposits.

This hearing also dealt with a cross-Application that was filed by the Landlords under the *Act* seeking compensation for monetary loss and other money owed, authorization to withhold the security and pet damage deposits, and recovery of the filing fee.

The hearing was originally convened by telephone conference call on October 15, 2018, at 1:30 P.M. and was attended by the Tenant and the Landlord J.W., both of whom provided affirmed testimony. The hearing was subsequently adjourned due to the complexity of the matters and time constraints. An interim decision was made on October 15, 2018, and the reconvened hearing was set for November 29, 2018, at 11:00 A.M. A copy of the interim decision and the Notice of Hearing was sent to each party by the Residential Tenancy Branch (the "Branch") in the manner requested by them in the original hearing. For the sake of brevity I will not repeat here any matters discussed or findings of fact made in the interim decision. As a result, the interim decision should be read in conjunction with this decision.

The hearing was reconvened by telephone conference call on November 29, 2018, at 11:00 AM. The Tenant and the Landlord J.W. both attended at the scheduled time, ready to proceed. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure"). However, I refer only to the relevant facts and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be sent to them by e-mail.

Preliminary Matters

Preliminary Matter #1

Although both parties acknowledged receipt of the majority of the documentary evidence before me for consideration, the Landlord testified that the USB received by them only contained one photograph of a document dated March 3, 2018, not videos and numerous photographs as the Tenant asserts. The Tenant also testified that she never received any videos from the Landlord and although the Landlord testified that they were indeed sent to the Tenant, they never received confirmation from the Tenant that they either received or could access this video evidence.

Despite the foregoing, the parties both agreed that a text conversation had occurred between them and that they both had copies of the tenancy agreement, copies of which were submitted by the Tenant to the Branch in image format. As it was agreed by the parties in the hearing that these particular documents were accurate and that both parties had copies in various forms, they were therefore accepted by me for consideration in this matter.

Rule 3.10 of the Rules of Procedure states that digital evidence may include photographs, audio recordings, video recordings or electronic versions of printable documents in an accepted format. Rule 3.10.5 goes on to state that before the hearing, a party providing digital evidence to the other party must confirm that the other party has playback equipment or is otherwise able to gain access to the evidence and that if a party or the Branch is unable to access the digital evidence, the arbitrator may determine that the digital evidence will not be considered.

In the hearing the Landlord J.W. testified that they never received confirmation from the Tenant that they either received or could access the video evidence sent to them. The Tenant likewise did not provide any evidence or testimony that they confirmed receipt and access to their digital evidence, including photographs, as required by the Rules of Procedure.

The ability to know the case against you and to provide evidence and testimony in your defense are fundamental to the dispute resolution process. Based on the above, I am not satisfied that either party fulfilled their obligations under the *Act* and the Rules of

Procedure with regards to the service of digital evidence. As a result, I am not satisfied that the Landlord received the pictures and videos submitted to the Branch by the Tenant, with the exception of the above noted photographs of a document dated March 3, 2018, the tenancy agreement, and several text messages, or that the Tenant received the videos submitted to the Branch from the Landlord. As I am not satisfied that the parties received the remaining digital evidence in compliance with the *Act* and the Rules of Procedure, I find that it would be administratively unfair and a breach of both the Rules of Procedure and the principles of natural justice to accept this evidence for consideration. As a result, I have excluded the Landlord's video evidence and the Tenant's video and photographic evidence, with the exception of photographs of a document dated March 3, 2018, the tenancy agreement, and several text messages, from consideration in this matter.

Preliminary Matter #2

In their Application, the Landlord's only sought $1,484.83 in compensation for monetary loss of other money owed. Specifically, the Landlords sought the $589.23 they state remains unpaid from the security deposit refund form ($1,489.23, less the $900.00 in deposits retained), $297.09 in costs related to mice, $50.00 in compensation for late move-out and overholding the rental unit, $226.42 in costs for lost work in order to clean the rental unit and $322.09 in lost work to attend the hearing. However, the Monetary Order Worksheet submitted by the Landlords states that they are in fact seeking $1,786.32.

Rule 4.1 of the Rules of Procedure provides information on how parties may add, alter, or remove claims made in the original application prior to the commencement of the hearing and rule 6.2 of the Rules of Procedure states that the hearing is limited to the matters claimed in the application unless the arbitrator allows a party to amend the application. Rule 4.2 states that an arbitrator may amend an application in the hearing in circumstances that could reasonably have been anticipated, such as when the amount of rent owing has increased since the time the application was filed.

No Amendment to an Application for Dispute Resolution form was filed by the Landlords in compliance with rule 4.1 increasing their monetary claim from $1,484.83 to $1,786.32 and I find that simply submitting documentary evidence, including a Monetary Order Worksheet, does not constitute an Amendment under the *Act* or the Rules of Procedure. Given the nature of the claims, and the Tenant's objection to amending the Application at the time of the hearing, I also do not find it reasonable to amend the application at the hearing as the Landlord easily could have amended their Application in compliance with

the *Act* and the Rules of Procedure, should they have wished to do so. As a result, the hearing proceeded on the basis that the Landlords were only claiming the $1,484.83 in compensation for monetary loss of other money owed as stated in the Application, plus the $900.00 in deposits already retained towards the $1,489.23 claimed in the security deposit refund form for painting, cleaning, and damage to a tap and bathroom door.

Issue(s) to be Decided

Is the Tenant entitled to the return of double their security deposit and pet damage deposit?

Is the Landlord entitled to compensation for monetary loss or other money owed and to retain the security and pet damage deposits paid by the Tenant?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The tenancy agreement in the documentary evidence before me states that the one year fixed term tenancy began on July 1, 2016, and that rent in the amount of $900.00 is due on the first day of each month. The Tenancy agreement also states that both a security deposit and a pet damage deposit were paid, each in the amount of $450.00. In the hearing the parties agreed that these are the correct terms of the tenancy agreement and that as of the date of the hearing, no amount of the security deposit or the pet damage deposit have been repaid to the Tenant.

While the parties disagreed about whether the tenancy ended at or after midnight on February 28, 2018, they were both in agreement that the tenancy was over by midnight on March 1, 2018, and that that Tenants forwarding address was provided to the Landlord, in writing, on February 28, 2018. The Landlord also acknowledged that she did not have the Tenant's permission to retain any amount of either the security deposit or the pet damage deposit at the end of the tenancy and that an Application seeking retention of these amounts was not filed with the Branch until May 17, 2018.

Both parties provided differing yet affirmed testimony in relation to the obligations of the parties under the *Act* and the regulation in relation to condition inspections. Both parties agreed that a condition inspection and report were completed at the start of the tenancy and although the Landlord stated that a copy was sent to the tenant within 7 days of completion, the Tenant denied receipt. The parties also disagreed about whether a

proper condition inspection or report was completed at the end of the tenancy, and whether a copy of any such report was provided to the Tenant. The Tenant stated that she completed a walk-through with the Landlords on February 28, 2018, and provided them with her forwarding address in writing, at which time she was advised that her deposits would be returned to her by mail. The Tenant stated that she was not shown or asked to sign any report and that the only thing mailed to her after the tenancy was a security deposit refund form and a letter explaining why her deposit was not being returned to her.

The Landlord disputed this testimony stating that by the time the Tenant vacated, it was too late to complete and inspection, and although one was agreed to and attempted the following day when the Tenant attended the residence to pick up a shelf that was left behind, the Tenant became upset and refused to either continue with the inspection or to sign the report. As a result, the Landlord stated that the inspection and report were completed in her absence and a copy of the report was mailed to her forwarding address on March 3, 2018, along with the security deposit refund form and a letter. In support of her testimony that the Tenant refused to participate in the move-out condition inspection or to sign the report, the Landlords submitted a witness statement.

In their Application, the Landlords sought $1,484.83 in costs related to mice, overholding of the rental unit, damage and cleaning, and attendance at the hearing. Specifically, the Landlords sought the $589.23 they state remains unpaid from the security deposit refund form ($1,489.23, less the $900.00 in deposits retained), $297.09 in costs related to mice, $50.00 in compensation for late move-out and overholding the rental unit, $226.42 in costs for lost work in order to clean the rental unit and $322.09 in lost work to attend the hearing. However, the Monetary Order Worksheet submitted by the Landlords lists $1,786.32.00 in compensation sought and a letter sent to the Tenant dated March 3, 2018, states that the Tenant owes $1,489.23 for painting, cleaning, a broken tap, and repairs to a bathroom door.

In the hearing the Landlord J.W. testified that they are seeking the following amounts in compensation for monetary loss of other money owed:

- $332.09 in compensation for time spent preparing for and attending the hearings;
- $146.98 for repairs to a door and tap;
- $297.09 in relation to mice;
- $622.25 in relation to painting of the rental unit;
- $720.00 in cleaning costs; and

- $50.00 in compensation for overholding the rental unit.

Although the Landlord sought $332.09 in compensation for time taken off work to prepare for and attend the hearing, the Tenant stated that she should not be responsible for this cost as the hearing could easily have been rescheduled to accommodate the Landlords' needs and that time off work is not a requirement to prepare for the hearing. Further to this, the Tenant stated that the Landlords filled their own Application to be crossed with hers and therefore they should be responsible to bear the costs of their own Application.

The Landlord testified that a new tap was purchased and installed in the rental unit on June 27, 2016, which had to be replaced at the end of the tenancy as it was damaged by the Tenant. Further to this, the Landlord stated that the Tenant damaged the bathroom door. As a result, the Landlords sought $146.98 for repairing the tap and bathroom door. In support of this testimony the Landlord pointed to receipts for the initial purchase of the tap in 2016, as well as its repair at the end of the tenancy, a copy of the condition inspection report noting the condition of the rental unit at the start and the end of the tenancy but unsigned by either party, photographs of the damaged bathroom door, plus a quote for replacement of the door.

The Tenant denied damaging the bathroom door or the tap. The Tenant stated that the tap always leaked slightly onto the counter and into the sink and that despite bringing it up in person with the Landlord D.W. on numerous occasions, nothing was ever done to repair or replace it. Further to this, the Tenant stated that the only thing on the bathroom door was a hook, which she did not install and was already present at the start of the tenancy. As a result, the Tenant stated that she should not be responsible for any damage caused by the installation of this hook. The Landlord J.W. denied ever being told that the faucet leaked, however, I note that D.W., who is the person the Tenant states was told about the leaking tap, did not attend the hearing to provide any evidence or testimony regarding this allegation. The Landlord J.W. also denied that the door damage was related to the installation of a hook as the damage is at knee and hip height, not the height at which a hook would be hung.

The Landlord testified that the Tenant did not leave the rental unit reasonably clean at the end of the tenancy and sought $720.00 in cleaning costs. In support of this testimony the Landlord pointed to 39 photographs showing the lack of cleanliness in the rental unit at the end of the tenancy as well as a witness statement from the painter that the Tenant did not clean the rental unit and invoices for cleaning costs. The Tenant denied that she made no efforts to clean the rental unit stating that she cleaned

numerous areas such as the kitchen and bathroom and that the areas which remained uncleaned such as walls and floors were left that way as the Landlord advised her not to clean them as the rental unit was being painted. The parties also disputed the size of the rental unit and the amount of time that would have been required to clean it, had further cleaning been necessary.

The Landlord testified that the Tenant was supposed to move out of the rental unit by 3:00 P.M. on February 28, 2018, but did not fully move out or return the keys until 12:30 A.M. on March 1, 2018. The Landlord stated that due to the late move-out and the state of the rental unit at the end of the tenancy, the new tenants could not move into the rental unit until March 2, 2018, and were provided $50.00 in compensation as a result. The Landlords' therefore sought the $50.00 in compensation paid to the new tenants for overholding and loss of rent. The Tenant did not deny the agreement that she was to vacate the rental unit by 3:00 P.M. on February 28, 2018, and stated that there was a delay in her move-out due to a snow storm. However, the Tenant argued that she was out of the rental unit by midnight, not 12:30 A.M. and that she was advised by the neighbours that the new tenants moved in on March 1, 2018, not March 2, 2018 As a result, the Tenant stated she should not be responsible for this $50.00.

The Landlord stated that they were told when they purchased the property in 2014, that it had been recently painted but did not provide any verification of the last date upon which the rental unit was painted. The Landlord stated that the walls were very dirty at the end of the tenancy and that one of the walls was damaged. As a result, the Landlord stated that painting the walls was the fastest way to have the rental unit ready for re-occupation by new tenants and sought $622.25 in painting costs. In support of these costs the Landlords submitted a witness statement from the painter as well as invoices and receipts for painting supplies and costs. When asked, the Landlord confirmed that no attempt was made to clean the walls which were instead repainted. The Landlord also acknowledged that the cost of painting only the damaged wall was approximately 10% of the total painting costs.

The Tenant acknowledged that one of the walls was damaged but stated this was due to puppies owned by the previous tenant and that the Landlords were aware of this damage at the start of the tenancy. The Tenant did however acknowledge filling and repairing these damaged areas during the tenancy as the Landlord had not done this as promised. Further to this, the Tenant stated that the remainder of the walls were specifically not cleaned by her at the Landlord's express request as the Landlord wished to paint the entire premises. As a result, the Tenant stated that she should not be responsible for these costs.

Finally, the Landlord stated that the Tenant had kept chinchillas food in the basement of the rental unit, which she believes attracted rodents, and sought $297.09 in costs associated with pest control. In support of this testimony the Landlords provided receipts for pest control supplies and remediation as well as copies of correspondence with the Tenant regarding a chinchilla and witness statements from the previous and current tenants stating that they experienced no issues with rodents. The Tenant acknowledged that she had a chinchilla, which was rehomed immediately after the start of the tenancy, and denied that chinchilla food was ever stored in the basement. The Tenant stated that mice were already present in the basement at the start of the tenancy and that over the course of the tenancy, they destroyed many of her possessions as the Landlords refused to address the issue until after she moved out. The Tenant argued that as she is not the cause of the rodent infestation, she should therefore not be responsible for these costs.

In her Application the Tenant sought $1,800.00, double the amount of her pet damage and security deposit, pursuant to section 38(6) of the *Act* as she does not believe the Landlords had authority to withhold her deposits after the end of the tenancy and because the Landlords did not either return her deposits to her or file a claim against them within 15 days after the later of either the date the tenancy ended or the date she provided her forwarding address to them in writing.

Analysis

While the parties disagreed about whether the tenancy ended at midnight (12:00 A.M. or 12:30 A.M. on March 1, 2018, section 12(6) of the regulation states that unless otherwise agreed, the Tenant must vacate the residential property by 1:00 P.M. on the day the Tenancy ends. In the hearing the Landlord testified that it was agreed that the Tenant was to vacate the rental unit by 3:00 P.M. on February 28, 2018, and the Tenant did not dispute this testimony. As a result, I find that there was agreement between them that the tenancy was to end at 3:00 P.M. on February 28, 2018. Based on the above, I find that the Tenant overheld the rental unit when she failed to vacate the rental unit as agreed upon, regardless of the reason for the delay in vacating.

Further to this, although the Tenant testified that she vacated the rental unit at midnight (12:00 A.M) and the Landlord testified that it was approximately 12:30 A.M, regardless

of which of the aforementioned times is correct I find that 11:59 P.M. was the latest point at which the Tenant could have vacated in order to end the tenancy on February 28, 2018. According to the above noted testimony of both parties, the Tenant in fact moved out either at 12:00 A.M. on March 1, 2018, or 12:30 A.M. on March 1, 2018, and as a result, I find that the tenancy ended on March 1, 2018.

Although both parties provided differing yet affirmed testimony and documentary evidence in relation to the obligations of the parties under the *Act* and the regulation in relation to condition inspections and reports, I note that both parties bear an onus to satisfy me of the claims made by them in their cross-applications. Having carefully considered the conflicting testimony of the parties and the documentary evidence before me, ultimately I am not satisfied on a balance of probabilities, that either party extinguished their rights under the *Act* in relation to the security or pet damage deposits.

Section 38 (1) of the *Act* states that except as provided in subsection (3) or (4) (a), of the *Act*, within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations or make an application for dispute resolution claiming against the security deposit or pet damage deposit.

The Landlord acknowledged in the hearing that they did not have permission from the Tenant to withhold any amount from the security or pet damage deposit at the end of the tenancy and there is no documentary or other evidence before me that the Landlord was either ordered by the Branch to retain these deposits or had a previous order from the Branch at the time the tenancy ended totalling at least the amounts of these deposits which remained unpaid. Based on the above, and as the parties were in agreement that the Tenant’s forwarding address was received by the Landlord in writing on February 28, 2018, and I have already found above that the tenancy ended on March 1, 2018, I therefore find that the Landlords had until March 16, 2018, to either repay the Tenant’s security and pet damage deposits to her in full or file a claim against them with the Branch.

As the Landlords did not file their Application seeking retention of the security deposit and pet damage deposit until May 17, 2018, and did not have authority to withhold these deposits in accordance with either section 38 (3) or 38 (4) (a) of the *Act* as outlined above, I find that the Landlords therefore breached section 38 (1) of the *Act*

when they failed to return the Tenant's security deposit and pet damage deposit to her, in full, or file a claim against them by March 16, 2018. Section 38 (6) of the *Act* states that if a landlord does not comply with subsection (1), the landlord may not make a claim against the security deposit or pet damage deposit and must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable. The parties agreed that a security deposit and a pet damage deposit were both paid, each in the amount of $450.00, at the start of the tenancy, neither of which has been returned to the Tenant. As these deposits were paid in 2016, I find that there is no interest due to the Tenant on these deposits under the regulation and I therefore find, pursuant to section 38(6) of the *Act* that the Tenant is entitled to $1,800.00; double the amount of the $900.00 in deposits paid by her.

Having made the above finding, I will now turn my mind to the Landlord's claim for compensation for loss or other money owed. Section 7 of the *Act* states that if a landlord or tenant does not comply with the *Act*, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. It also states that landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with the *Act*, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss. Further to this, 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.

As stated above, there was agreement between the parties that the tenancy was set to end on February 28, 2018, at 3:00 P.M. and I have already found above that it did not end until March 1, 2018. I am also satisfied that this failure to vacate as scheduled resulted in a $50.00 loss to the Landlords. As a result, I grant the Landlords' claim for $50.00 in costs associated with overholding of the rental unit pursuant to section 7 of the *Act* and Residential Tenancy Policy Guideline #3.

Although the Landlords believed that the mice infestation was caused by the Tenant keeping Chinchilla food in the basement of the premises, the Tenant denied this allegation and there is no documentary or other evidence to support this testimony. As a result, I find that this testimony is speculative in nature and give it little weight. The Landlord's also acknowledged in their written submissions that it was very difficult to assess where the mice were coming in and where nests were located. Based on the above, I find that the Landlords have failed to satisfy me, on a balance of probabilities that the mice infestation was in fact caused by the Tenant. As a result, I dismiss the

Landlords' claim for $297.09 in costs associated with a mice infestation without leave to reapply.

While I am satisfied by the significant photographic and documentary evidence submitted by the Landlord's that the rental unit was not reasonably clean at the end of the tenancy, given the contradictory testimony and documentary evidence of the parties, and the lack of a signed move-in or move-out condition inspection report, I am not satisfied that the Tenant caused the damage alleged by the Landlords in their Application. As a result, I grant the Landlords' claim for $720.00 in cleaning costs but dismiss the Landlord's claim for $146.98 in repair costs without leave to reapply.

Further to the above, I also dismiss the Landlords' $622.25 claim for painting costs without leave to reapply as I am not satisfied that the Tenant damaged the wall alleged to have been damaged by the Landlords, that the paint in the rental unit had not already surpassed it's useful life of four years pursuant to Residential Tenancy Policy Guideline #40 or that the Landlords made any attempts to mitigate their loss pursuant to section 7 of the *Act* by washing or attempting to wash the walls instead of simply repainting them.

As both parties were at least partially successful in their own Applications I decline to grant either party recovery of the filing fee and I find that both parties must bear the costs associated with filing their disputes and attending the hearings. As a result, I dismiss the Landlords' claim seeking $332.09 in compensation for time off work to prepare for and attend the hearings without leave to reapply.

Based on the above and pursuant to section 67 of the *Act*, I therefore find that the Tenant is entitled to a Monetary Order in the amount of $1,030.00; $1,800.00 for double the amount of her security and pet damage deposits, less the $770.00 owed to the Landlords for cleaning costs and overholding as outlined above.

I believe that this decision has been rendered within 30 days after the conclusion of the proceedings pursuant to section 77 (1) (d) of the *Act* and the *Interpretation Act*. In any event, section 77(2) of the *Act* states that the director does not lose authority in a dispute resolution proceeding, nor is the validity of a decision affected, if a decision is given after the 30 day period in subsection 1(d).

Conclusion

Pursuant to sections 67 of the *Act*, I grant the Tenant a Monetary Order in the amount of $1,030.00. The Tenant is provided with this Order in the above terms and the Landlords

must be served with this Order as soon as possible. Should the Landlords 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: December 29, 2018

Residential Tenancy Branch