Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing dealt with an Application for Dispute Resolution (the "Application") that was filed by the Landlord under the *Residential Tenancy Act* (the "*Act*"), seeking:

- Monetary compensation for damage to the rental unit;
- Monetary compensation for other money owed or damage or loss under the *Act*, regulation or tenancy agreement;
- Authorization to withhold the security deposit against any monetary compensation owed by the Tenants; and
- Recovery of the filing fee.

This hearing also dealt with a cross-Application that was filed by the Tenants under the *Residential Tenancy Act* (the "*Act*"), seeking:

- The return of all or part of their security deposit; and
- Recovery of the filing fee.

The hearing was originally convened by telephone conference call on September 13, 2018, at 1:30 PM and was attended by the Tenants and the Landlord, all of whom provided affirmed testimony. Neither party raised any concerns about the service or receipt of the Applications or the Notice of Hearing. The hearing was subsequently adjourned due to the time constraints of the one hour hearing and an interim decision was made on September 13, 2018. The reconvened hearing was set for December 18, 2018, at 1:30 PM and 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 the parties in the original hearing. For the sake of brevity, I will not repeat hear any 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 December 18, 2018, at 1:30 PM and was attended by the Tenants and the Landlord, all of whom provided affirmed testimony. 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 met the requirements of 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 Tenants, copies of the decision and any orders issued in their favor will be e-mailed to them at the e-mail addresses provided by them in their Application. At the request of the Landlord, copies of the decision and any orders issued in their favor will be mailed to them at the mailing address provided by them in the hearing.

Preliminary Matters

During the original hearing there was disagreement between the parties regarding what documentary evidence had been served on and received by the Tenants from the Landlord. In the interest of time and fairness, I proceeded with the hearing as scheduled and allowed the parties to make submissions with regards to the contested evidence on the condition that I would reserve my decision on whether to accept or exclude this evidence from consideration until after the conclusion of the proceeding.

Having fully considered the documentary evidence, testimony, and arguments of the parties in relation to this evidence, I am satisfied that all of the documentary evidence before me for consideration from the Landlord was duly served on the Tenants in accordance with the *Act*. The Landlord testified that the documentary evidence before me was served on the Tenants on September 5, 2018, by placing it through the mail slot of their forwarding address. The Landlord also called a witness who testified that they were present with the Landlord at the time the documents were placed in the Tenants' mail slot and the Tenants acknowledged receipt of this envelope. Based on the above, I find it more likely than not that the Landlord's testimony, as supported by the Witness, is reliable and that the documentary evidence before me for consideration from the Landlord was therefore contained in the envelope placed through the Tenant's mail slot on September 5, 2018. As a result, I find that it was deemed served on September 8, 2018, in accordance with section 90 (d) of the *Act*.

Based on the above, I therefore accept all of the Landlord's documentary evidence for consideration in this matter.

Issue(s) to be Decided

Is the Landlord entitled to monetary compensation for damage to the rental unit?

Is the Landlord entitled to monetary compensation for other money owed or damage or loss under the *Act*, regulation or tenancy agreement?

Is the Landlord entitled to withhold the security deposit against any monetary compensation owed by the Tenants?

If the Landlord is not entitled to withhold all or a portion of the Tenant's security deposit, are the Tenant's entitled to its return?

Is either party entitled to recovery of the filing fee?

Background and Evidence

In the hearing the parties confirmed that the tenancy began on September 1, 2017, and ended on January 31, 2018. The parties confirmed that rent in the amount of $2,400.00 was due on the first day of each month and that a $1,200.00 security deposit was paid by the Tenants, which the Landlord still holds. The parties also agreed that the Tenants' forwarding address was received by the Landlord in writing on February 10, 2018.

The parties agreed that although a walk-through of the rental unit occurred at the start and the end of the tenancy, no condition inspection reports were completed.

The Landlord stated that the Tenants failed to leave the rental unit reasonably clean at the end of the tenancy, and sought $400.00 in cleaning costs. The Landlord testified that it took him approximately one day to clean the rental unit and sought $300.00 for this time and effort. The Landlord also sought $100.00 for two hours of fridge cleaning completed by his mother-in-law. In support of his claim the Landlord submitted a witness statement from C.W. stating that the carpets and floors were dirty and that the rental unit had a strong pet odour. The Landlord also submitted two pictures of a dryer and several pictures of the carpet.

The Tenants denied that they left the rental unit anything other than reasonably clean at the end of the tenancy and stated that the Tenant C.T. had spent well over a week cleaning the rental unit and that the carpets had been steam cleaned several times. In support of their testimony the Tenants pointed to a letter stating that they had borrowed a steam cleaner for approximately 2 weeks just prior to moving out and a witness statement from a friend stating that they were present with the Tenant on numerous occasions after January 13, 2018, to help C.T. while she cleaned the rental unit. As a result, the Tenants disputed that they owe any cleaning costs.

The Landlord sought $156.22 for the cost of replacing a pair of shoes he stated were irreparably damaged by a large amount of dog feces left on the property by the Tenants pet when he attended the rental unit to complete yard maintenance; specifically the removal of sprinkler heads. In support of his claim the Landlord pointed to a receipt for the purchase of the replacement shoes and stated that he purchased the same shoes as the ones that were damaged and that for medical reasons, he requires well-made shoes with adequate support. When asked, the Landlord acknowledged that he did not attempt to clean the shoes before replacing them as they were beyond repair or cleaning.

While the parties agreed that the Tenants had a dog and that it was the Tenants' responsibility to regularly clean up any feces left in the yard from their pet, the Tenants stated that they had recently cleaned the yard and that in any event, they hadn't even moved out yet so their dog was still present on the property. Further to this, they stated that there is no fence in the yard so the pet feces referred to by the Landlord may have been left behind by other neighbourhood dogs and that the Landlord, knowing he was doing yard work in a yard with a dog, should have worn appropriate shoes. As a result, they stated that they should not be responsible for the replacement costs of the Landlord's shoes.

In addition to the above, the Landlord also sought $643.78 in damages for the loss of the sale of the rental unit. The Landlord stated that he had hired a company ("N.B.") to help him sell and move the house off the property so that a new home could be built. The Landlord stated that when a sale was not reached as a result of his contract with N.B., he arranged for his cousin to view the property with the intention of purchasing it. The Landlord stated that due to the state of the rental unit near and at the end of the tenancy, the sale he had lined up with his cousin fell through and he suffered a loss of over $5,000.00 when he had to pay N.B. to move the house despite the fact that it had not been sold. The Landlord stated that he is not seeking this $5,000.00 loss from the Tenants but instead is seeking $643.78 for time and other expenses incurred arranging the property sale which ultimately fell through.

In support of his position the Landlord pointed to several photographs of the carpet and shower, a damaged wall, a picture of a dryer, a carpet cleaning receipt for
October 24, 2016, a written agreement from a previous occupant K.B. regarding damages caused by them, and a witness letter from C.W., stating that after the Tenants moved out, they noticed that the carpets and floors were dirty and that the rental unit had a strong pet odour.

The Tenants denied that they are in any way responsible for the costs sought by the Landlord in relation to the sale, or lack thereof, of the rental unit. They stated that they were told by the company N.B. that the Landlord had misrepresented the space, condition, and layout of the home to them and lead them to believe that the home had a separate full basement suite, which is does not. As a result, the Tenants stated that they suspect this dishonesty and a general lack of interest in the property, for which they are not responsible, is the reason the rental unit did not sell.

The Tenants sought the return of their $1,200.00 security deposit as they believe that the Landlord is not entitled to any of the costs sought by him in his Application.

Analysis

Rule 6.6 of the Rules of procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities and that the onus to prove their case is on the person making the claim. As a result, I find that the parties are responsible to satisfy me, on a balance of probabilities, that they are entitled to the compensation sought by them in their Applications.

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 a 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.

Residential Tenancy Policy Guideline #16 states that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due and that 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.

In assessing the monetary claims and evidence of both parties, I have therefore considered and applied rule 6.6 of the Rules of Procedure, section 7 of the *Act*, all other applicable sections of the *Act* as well as the four part test for monetary claims outlined above from Residential Tenancy Policy Guideline #16.

I will start by considering the Landlord's claim for $400.00 in cleaning costs. Section 37 (2) of the *Act* states that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean. Further to this, Residential Tenancy Policy Guideline #1 states that tenants are generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with this standard. The parties, who all provided affirmed testimony, disputed whether the Tenants left the rental unit reasonably clean at the end of the tenancy. Both parties also submitted documentary evidence for my consideration in support of their testimony.

Although the Landlord testified that he and his mother in law spent numerous hours cleaning the rental unit, the Landlord has submitted only a few photographs of a dryer and some stained carpeting as well as a witness statement in support of his testimony that the rental unit was unclean and had a strong pet odour. In response, the Tenants submitted two equally compelling witness statements that the rental unit had been thoroughly cleaned prior to the end of the tenancy and that the Tenants had borrowed a carpet cleaner for several weeks just prior to moving out. Having reviewed the very limited photographs of the rental unit from the Landlord, I find that they do not establish that the rental unit was left unclean as stated by the Landlord. As a result, and given the equally compelling and reliable yet contradictory evidence and testimony of the parties, and the lack of additional corroborating evidence from the Landlord that the rental

unit was not left reasonably clean at the end of the tenancy, such as a condition inspection report or more fulsome photographic evidence, I find that the Landlord has failed to satisfy me, on a balance of probabilities, that the rental unit was not left reasonably clean at the end of the tenancy. As a result, I dismiss the Landlord's claim for $400.00 in cleaning costs without leave to reapply.

Having made the above finding, I will now turn my mind to the Landlord's claim for $156.22 for the cost of replacing a pair of shoes. As stated above, 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. Although the Landlord submitted a receipt for the purchase of shoes, no other documentary evidence was submitted or pointed to by the Landlord in support of his testimony that the yard was filled with pet feces, that his shoes were in fact damaged beyond repair or that they were damaged in the manner claimed. The Landlord also admitted that he purchased a new pair of shoes rather than attempting to clean them and that he attended the property wearing these particular shoes knowing full well that he was intending to do yard maintenance; specifically to remove sprinkler heads from a yard where a dog is known to reside. Further to this, the Tenants testified that they had recently cleaned the yard of pet feces and argued that as there is no fence, any pet feces in the yard could also have been left by other neighbourhood pets.

Based on the above, I find that the Landlord has not satisfied me, on a balance of probabilities, that the Tenants either breached their tenancy agreement by failing to clean the yard regularly, or that the Landlord suffered the damage claimed from any such breach. In any event, even if I had been satisfied that the Tenants had breached the tenancy agreement and that the Landlord had suffered a loss, I am also not satisfied that the Landlord made any attempts to either mitigate potential loss by wearing suitable footwear for the environment or the type of work being completed by him or by attempting to clean the footwear rather than replacing it entirely. As a result, I find that the Landlord has failed to satisfy me on at least three grounds of the four part test for awarding damages and I therefore dismiss this claim without leave to reapply.

I will now turn my mind to the reaming claim by the Landlord for $643.78 in damages for the loss of the sale of the rental unit. Although the Landlord stated that he had an agreement for the purchase of the home, which fell through as a result of the state in which the Tenants left the rental unit, the Landlord did not submit any documentary or other evidence to corroborate his testimony that there was in fact a solid agreement for the purchase of the home or that the agreement fell through.

While the Landlord submitted a few photographs of the rental unit which he stated were taken at the end of the tenancy, these photographs are not date stamped and are very limited both in quantity and in the nature of what is shown. Further to this, as there is no move-in condition inspection report or other corroborative evidence establishing the condition of the rental unit at the start of the tenancy, I am not satisfied that these photographs demonstrate that any damage shown was not already present at the start of the tenancy. In addition to the above, the Landlord

neither provided me with a detailed accounting of how he came to the amount sought for any loss suffered nor submitted any documentary or other evidence in support of his testimony that his loss amounted to $643.78,

Based on the above, I find that the Landlord has failed to satisfy me, on a balance of probabilities, that the Tenants breached the *Act* by failing to leave the rental unit reasonably clean and undamaged, except for reasonable wear and tear, that any such breach has resulted in a loss, or the value of any loss suffered. As a result, I dismiss the Landlord's claim for $643.78 in costs associated with the loss of the sale of the property without leave to reapply.

As I have dismissed all of the Landlord's claims, I decline to grant him recovery of the filing fee.

Having assessed all of the Landlord's claims, I will now turn my mind to the Tenants' claim for the return of their security deposit. Residential Tenancy Branch Policy Guideline #17 states that unless the tenant has 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 pursuant to section 38(6), should it apply. As a result, I will consider whether the Tenants are entitled to the return of double their security deposit despite the fact that the Tenants requested only the return of the original deposit amount.

During the hearing the parties agreed that the tenancy ended on January 31, 2017, and that the Tenants' forwarding address was received by the Landlord in writing on February 10, 2018. Both parties also agreed that no condition inspection reports were completed at the start or end of the tenancy.

Sections 24 and 36 of the *Act* state that where a landlord fails to comply with the condition inspection requirements set forth in sections 23 and 35 of the *Act*, 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. Given the testimony of the parties in the hearing, I therefore find that the Landlord extinguished their right to claim against the Tenants' security deposit for damage to the rental unit. Despite this finding, the Landlord remained at liberty to file their remaining claims with the Branch so I will now turn my mind to whether they were entitled to withhold the security deposit pending the outcome of these remaining claims.

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.

As stated above, the parties were in agreement that the tenancy ended on

January 31, 2018, and that the Tenants' forwarding address was received by the Landlord in writing on February 10, 2018. As a result, I find that the Landlord had until February 25, 2018, to file an Application with the Branch seeking to retain the Tenants' security deposit for anything other than physical damage to the rental unit. As the Landlord filed their Application on February 13, 2018, and their Application included claims for matters other than physical damage to the rental unit, I find that the Landlord complied with section 38 (1) of the *Act*. As a result, I find that the Tenants are not entitled to double the amount of their security deposit.

Despite the foregoing, I find that the Tenants are still entitled to the return of their $1,200.00 security deposit as the Landlord's monetary claims have been dismissed and there is no evidence before me that the Landlord was authorized to retain any amounts pursuant to section 38 (3) or 38 (4) of the *Act*. As the deposit was paid in 2016, I find that no interest is payable.

As the Tenants were successful in their Application, I therefore grant them recovery of the $100.00 filing fee pursuant to section 72 of the *Act*. Based on the above, and pursuant to section 37 of the *Act*, the Tenants are therefore entitled to a Monetary Order in the amount of $1,300.00.

Conclusion

Pursuant to section 67 of the *Act*, I grant the Tenants a Monetary Order in the amount of $1,300.00. 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.

Although this decision has been rendered more than 30 days after the conclusion of the proceedings, I note that 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 section 77 (1) (d) of the *Act*.

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: January 22, 2019

Residential Tenancy Branch