Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("*Act*") for:

- a monetary order for damage to the rental unit, pursuant to section 67;
- authorization to retain the tenants' security and pet damage deposits (collectively "deposits") in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord's agent ("landlord") and the two tenants attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that he had permission to represent the landlord named in this application, as an agent at this hearing. This hearing lasted approximately 58 minutes.

The tenants confirmed receipt of the landlord's application for dispute resolution hearing package and the landlord confirmed receipt of the tenants' written evidence package. In accordance with sections 88, 89 and 90 of the *Act*, I find that the tenants were duly served with the landlord's application and the landlord was duly served with the tenants' written evidence package.

Issues to be Decided

Is the landlord entitled to a monetary order for damage to the rental unit?

Is the landlord entitled to retain the tenants' deposits in partial satisfaction of the monetary order requested?

Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on September 21, 2016 and ended on August 31, 2018. Monthly rent in the amount of $1,660.00 was payable on the first day of each month. A security deposit of $800.00 and a pet damage deposit of $800.00 were paid by the tenants and the landlord continues to retain both deposits. Two written tenancy agreements were signed by both parties and copies were provided for this hearing. Move-in and move-out condition inspection reports were completed for this tenancy and copies were provided for this hearing. A written forwarding address was provided by the tenants to the landlord on September 13, 2018, by way of a text message. The landlord had written permission to keep both of the tenants' deposits. The landlord's application to keep both deposits was filed on September 14, 2018. The rental unit is a one-bedroom and one-bathroom apartment of approximately 620 square feet.

The landlord seeks a monetary order of $2,830.80, to retain the tenants' deposits totalling $1,600.00 towards the above amount, and to recover the $100.00 application filing fee. The landlord provided a quote for $2,830.80 for the laminate flooring replacement. He said that this amount was paid, probably by credit card. The landlord searched for his credit card receipt but was unable to find it, stating he did not submit it for this hearing.

The landlord said that the entire laminate flooring in the rental unit, except for the bathroom, had to be replaced because the tenants and their two dogs destroyed it. The landlord provided black-and-white photographs of the flooring in the rental unit. The landlord said that due to moisture and urine stains from the tenants' dogs, the laminate flooring bubbled and it was swollen and chipped in the corners. He stated that the landlord purchased the rental unit brand new in 2014. He said that the flooring was in

good condition two years later when the tenants moved in, despite other tenants living there before these tenants.

The landlord pointed to the parties' two tenancy agreements, indicating that the tenants agreed to be responsible for any damages caused by their pets in the rental unit. He stated that the tenants also had two cats at the rental unit but when strata fined them for bylaw violations, they got rid of the cats and kept the two dogs in the rental unit.

The landlord claimed that the damages were noted on the move-out condition inspection report to the flooring for the window, hall, and living room. He said that this was contained at the end of the report, rather than throughout the report where references were not made in the different rooms and areas, including the bedroom. The tenants disputed the report, indicating that the landlord made changes to two areas of the report, including the master bedroom and the entry way flooring, where it was previously a check mark indicating all was acceptable and then changed to "d" or "damaged" and only initialled by the landlord, not the tenants. The landlord did not dispute this claim by the tenants.

The landlord submitted black-and-white photographs from advertisements, which he said were of the rental unit before the tenants moved in. The tenants disputed these photographs, claiming they were of another unit, not the tenants' rental unit. They provided a number of advertisements and photographs of the rental building and the location of the building. The landlord agreed with the tenants, that he may have submitted photographs of another unit, not the tenants' rental unit, and he could not be sure.

The tenants dispute the landlord's entire claim, stating that they did not realize they signed the move-out condition inspection report for the landlord to keep the entirety of both their deposits. They claim that they were told by the landlord's agent, who conducted the move-out condition inspection and filled out the report, that they would be provided with invoices and receipts as well as additional information about the damages being claimed by the landlord. They stated that the agent told them that they would receive the remainder of their deposits back. The tenants said that they were not told the entire laminate flooring needed replacement, nor did they receive any invoices or receipts from the landlord, they only received the quote submitted in the landlord's evidence package with this application. They claim that they agreed for the landlord to keep a portion of their deposits for damage to the chips in the marble kitchen countertop only, not the laminate flooring.

Analysis

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove a loss, the landlord must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the tenant in violation of the *Act*, *Residential Tenancy Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the landlord followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

On a balance of probabilities and for the reasons stated below, I dismiss the landlord's application for $2,830.80 and to retain the tenants' deposits of $1,600.00 in partial satisfaction of the monetary order, without leave to reapply.

The landlord agreed that the move-out condition inspection report did not indicate all of the damages to the flooring, as described by him during the hearing. It also did not indicate the cost or estimate of the flooring replacement. It indicated that the tenants were required to relinquish both of their deposits to pay for chips to the kitchen countertops, the wood floor near the window, hall and living room and for cleaning to the unit. It did not state that the entire flooring had to be replaced, including to the bedroom.

The tenants pointed to two areas of the move-out condition inspection report, referring to the flooring, that were changed by the landlord and initialled by only the landlord, not the tenants. This was not disputed by the landlord. The tenants were not told that the entire flooring needed replacement and the landlord did not produce a quote until they sent their application package to the tenant.

For the above reasons, I find that the tenants could not have given proper and informed consent for the landlord to retain both deposits and therefore, the landlord did not have written permission to keep their deposits. The tenants agreed for the landlords to keep a portion of their deposits for damage to the kitchen countertops, as noted in the move-out condition inspection report, which is not being claimed by the landlord.

I find that the landlord failed to prove the condition of the flooring in the rental unit, at the start of the tenancy. The landlord agreed with the tenants, during the hearing, that he may have submitted photographs of another rental unit to show the condition at the start of the tenancy. He said that he could not be sure that the photographs were of the rental unit. This was only after the tenants produced documentary evidence to show the location of their unit, as well as advertisements by the landlord for the building, which showed other units.

The tenants provided coloured photographs of the rental unit, showing the condition of the flooring, which appears to have some bumps and peeling in the flooring, which I find is reasonable wear and tear. Further, the flooring was not new when the tenants moved in, as there were previous tenants living there for two years, as per the landlord's evidence, and no condition inspection reports or photographs from that tenancy were provided by the landlord to show the condition when the tenants moved in.

I also find that the landlord failed part 3 of the above test by failing to provide a receipt (only a quote) for the flooring replacement. The landlord had ample time to do so from the time this application was filed on September 14, 2018 and this hearing date of January 14, 2019, four months later. The landlord was provided with 45 minutes during this hearing to locate his credit card receipt for the flooring payment but said he could not locate it, nor did he submit it for this hearing or to the tenants.

As the landlord was unsuccessful in this application, I find that the landlord is not entitled to recover the $100.00 filing fee paid for this application.

Section 38 of the *Act* requires the landlord to either return the tenants' deposits or file for dispute resolution for authorization to retain the deposits, within 15 days after the later of the end of a tenancy and the tenants' provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act,* equivalent to double the value of the deposits. However, this provision does not apply if the landlord has obtained the tenants' written authorization to retain all or a portion of the deposits to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenants to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

I make the following findings, on a balance of probabilities. The tenancy ended on August 31, 2018. As noted above, I find that the tenants did not give written permission to the landlord to keep both deposits. I find that the tenants provided their written forwarding address to the landlord on September 13, 2018, by way of text message. Although text message is not a permitted method under section 88 of the *Act*, the landlord' acknowledged receipt of the address. The landlord filed this application for dispute resolution within 15 days of receiving the forwarding address, on September 14, 2018.

Therefore, I find that the tenants are not entitled to the return of double the value of their deposits. Over the period of this tenancy, no interest is payable on the landlords' retention of the tenants' deposits. In accordance with Residential Tenancy Policy Guideline 17 and section 38(6)(b) of the *Act,* I find that the tenants are entitled to a return of the original amount of their deposits totalling $1,600.00. The tenants are provided with a monetary order for this amount.

Conclusion

The landlord's entire application is dismissed without leave to reapply.

I issue a monetary Order in the tenants' favour in the amount of $1,600.00 against the landlord. 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.

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 16, 2019

Residential Tenancy Branch