



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL

Introduction

On October 15, 2018, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) requesting a Monetary Order for damages to the rental unit, to apply the security deposit to the claim, and to recover the cost of the filing fee. The matter was set for a participatory hearing via conference call.

The Landlord and Tenants attended the hearing and provided affirmed testimony. They were provided the opportunity to present their relevant oral, written and documentary evidence and to make submissions at the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Evidence

Early in the hearing, the Tenants acknowledged that they received the Landlord’s evidence packages. The Tenants testified that they served their evidence package to the Landlord via email on the same day the Tenants submitted their evidence package to the Residential Tenancy Branch. The Landlord stated that he did not receive the evidence package and the Tenants did not have any further evidence to prove service. I find that the Tenants failed to serve their evidence to the Landlord in accordance with Section 88 of the Act and, therefore, the Tenants’ evidence shall not be referenced during this hearing.

Issues to be Decided

Should the Landlord receive a Monetary Order for damages to the rental unit, in accordance with Section 67 of the Act?

Should the Landlord be authorized to apply the security deposit to the claim, in accordance with Sections 38 and 72 of the Act?

Should the Landlord be compensated for the cost of the filing fee, in accordance with Section 72 of the Act?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Landlord and the Tenants agreed on the following terms of the tenancy:

The one-year, fixed-term tenancy began on June 1, 2017. The rent started out as \$1,200.00 a month and the Landlord collected and still holds a \$600.00 security deposit and a \$600.00 pet damage deposit. The tenancy ended on September 30, 2018.

The Landlord testified that he did not complete a move-in inspection; however, did submit a copy of a cleaning service invoice, dated May 17, 2017 and stated that the rental unit was professionally cleaned prior to the Tenants moving into the unit.

The Landlord stated that he did not complete a move-out inspection; however, entered the rental unit on October 1, 2018, the day after the Tenants left the unit, to note the damages.

The Landlord said that he received a registered letter from the Tenants, dated October 2, 2018, that stated the Tenants wanted their deposits returned and provided a forwarding address. The Landlord applied for dispute resolution on October 15, 2018.

Landlord's Evidence for Monetary Claim:

The Landlord testified that he collected a pet damage deposit at the beginning of the tenancy as the Tenants had 3 dogs. When the tenancy ended, the Landlord viewed the rental unit on October 1, 2018, and found that it was unrentable due to the smell of urine and the amount of work that would be required to clean the unit and replace some of the floors that were damaged by the pets.

The Landlord stated that he hired a contractor to clean the dog feces from the rooftop deck and to remove the flooring and underlay in Room #3 due to the smell of urine. The Landlord said that the floor had to be dried out, sprayed with bleach and then painted with a deodorizing paint. The invoice indicated that the walls were repaired, prepared for painting and painted, that the ceiling in the kitchen and main area was painted and that a piece of the shower surround was re-glued. The Landlord stated that the invoice also included the cost to install the flooring in Room #3. The Landlord submitted the invoice and is claiming the cost in the amount of \$2677.50.

The Landlord submitted invoices that included the deodorizing paint, underlay for the flooring and other miscellaneous items in the amount of \$281.10.

The Landlord submitted two invoices for the cost of the painting supplies in the amount of \$253.82.

The Landlord stated that the Tenant's left the carpets in the three bedrooms in a condition that required cleaning and submitted an invoice for \$126.00. The Landlord did not provide any pictures of the carpets.

The Landlord submitted a receipt for photographs and stated that this was the cost for pictures in preparation for this claim. The amount for photos was \$21.95.

The Landlord included a \$1,200.00 claim, in relation to the pet and security deposit. He could not explain why he included this and withdrew this part of the claim.

The Landlord claimed a loss of rent for the month of October 2018 due to the condition of the rental unit after the Tenants vacated. The Landlord acknowledged that he did not attempt to rent out the unit prior to October 1, 2018, nor did he have any tenants arranged to move into the unit for the month of October.

The Landlord submitted an estimate from the contractor to finish the flooring at a cost of \$630.00. The Landlord confirmed that the contractor billed him this amount for the completed install of the flooring.

The Landlord stated he used 6 gallons of bleach to disinfect the various rooms of the rental unit; however, did not submit a receipt. The Landlord is claiming \$42.00.

The Landlord submitted a receipt for \$455.00. This was the cost of the cleaning company to complete the cleaning of the rental unit and prepare it for new tenants. The Landlord stated that the rental unit had not been properly cleaned and required two cleaners for 6.5 hours. The invoice indicated that the Tenants "left rental unit in very poor condition -extreme cleaning required – top to bottom/inside and out – cleaning/scrubbing/detailing-extra hours required to complete."

The Landlord submitted an estimate for the flooring at a cost of \$933.48. The Landlord confirmed that this is the amount he spent on the new flooring.

The Landlord acknowledged that the Tenants, at the beginning of the tenancy, replaced some of the old carpets with their own laminate flooring, at their own cost, and that he had given the Tenants permission to make these changes. The Landlord also stated that Room #3 had laminate flooring that was there before the Tenants moved into the unit.

Tenants' Evidence:

The Tenants stated that when they moved in, the rental unit was in poor condition. With the Landlord's approval, the Tenants replaced the old carpet and put laminate down in the Living

Room, Dining Room, Hallway and Kitchen, and replaced the kitchen counter-top, at their own cost. The Tenant's did not change the flooring in Room #3.

The Tenants testified that there was cat litter and a smell of urine in Room #3 when they moved into the rental unit and stated the smell was a pre-existing condition.

The Tenants stated that they cleaned the rental unit prior to vacating the unit. The Tenants said, in response to the pictures of dog feces presented by the Landlord, that the Landlord was making a false claim.

The Tenants testified that their pets had the ability to roam freely throughout the rental unit and that they did not keep their dogs in one room. They denied that the damage the Landlord was claiming was as a result of their tenancy.

Analysis

Section 23 and 35 of the Act directs a Landlord and Tenant to inspect the condition of a rental unit at both the beginning and end of the tenancy. The Landlord must offer the Tenant at least two opportunities for the inspections and the Landlord must complete condition inspection reports in accordance with the Regulations. Both parties must sign the condition inspection reports and the Landlord must give the Tenant a copy of the reports. The Landlord must make each inspection, complete and sign the reports without the Tenant if the Landlord has offered two opportunities for both the beginning and end of tenancy inspections and the Tenant does not participate on either of the occasions.

Sections 24(2) and 36(2) of the Act state that the right of the Landlords to claim against a security deposit for damage is extinguished if the Landlord does not complete the condition inspection reports. However, these sections pertain to a Landlords' right to claim for damage, and as the Landlord has also applied to recover costs related to the cleaning of the rental unit, an issue which would not be considered solely a damage claim, I find that the Landlord still retains a right to claim against the security deposit.

Section 67 of the Act establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order the responsible party to pay compensation to the other party. In order to claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof. The Applicant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the Tenancy Agreement or a contravention of the Act on the part of the other party. Once that has been established, the Applicant must then provide evidence that can verify the actual monetary amount of the loss or damage.

The majority of the Landlord's monetary claim is based on the costs for the remediation to the damaged floors and to address the smell of urine in the rental unit. The Landlord claimed that the damage to the laminate flooring was as a result of the Tenants' pets urinating on the floors. The Tenants claimed that the smell of urine was present when they moved into the rental unit and likely as a result of the previous tenants' cats.

The Landlord provided photos of the removal of the flooring and the contractor's invoice that documented the smell of urine and feces and the need to dry out the floor. However, the Landlord had not completed any move-in or move-out inspections and subsequently, could not provide any condition inspection reports to help determine the extent of any damages that occurred to the rental unit during this tenancy.

Section 21 of the *Residential Tenancy Regulations* states that, in dispute resolution proceedings, a condition inspection report completed in accordance with the Regulations is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary. I accept the Landlord's evidence that damage occurred to the rental unit as a result of pets; however, in this case, I find that the Landlord failed to provide sufficient evidence that the Tenants, as named in this Application, were solely responsible for the damage to the rental unit.

Regardless of the above, I find that it is reasonable that the Tenants were responsible for some of the damage to the rental unit as a result of having three dogs in the unit. I make this finding in relation to the evidence that there was an overwhelming smell of urine, that feces were present, and that there was some dampness under the flooring. As such, I award the Landlord nominal damages in the amount of \$600.00, the amount of the pet damage deposit.

The Landlord included the loss of October 2018 rent in his claim. I accept the Landlord's testimony that he did not make any attempts to find new tenants prior to October 1, 2018 and did not expect to start collecting rent for October 1, 2018. I find the Landlord has failed to provide sufficient evidence that he suffered a monetary loss because of the Tenants' actions rather than his own choice not to mitigate any potential rental losses, pursuant to Section 7(2) of the Act. As a result, I dismiss this part of the Landlord's claim.

The Landlord did not provide any photographic evidence or condition inspection reports regarding the condition of the carpets. As such, I find the Landlord failed to provide sufficient evidence to prove that the carpets required cleaning, that he suffered a monetary loss or that the Tenants failed to abide by the Tenancy Agreement or Act. I dismiss this part of the Landlord's claim.

I accept the Landlord's evidence that there were dog feces left on the deck and that the rental unit required further cleaning as noted in the pictures and on the invoice of the cleaning

company. I find that the Landlord has established a monetary claim for the cleaning of the rental unit, in the amount of \$455.00.

The final portion of the Landlord's Application concerned costs associated with preparing photos for this hearing. My abilities to award compensation are restricted by Section 67 of the Act which are described above and limited to claims where damage/loss has stemmed directly from a violation of the Tenancy Agreement or a contravention of the Act on the part of the other party. I therefore have no ability to return the costs associated with preparation for a hearing and decline to award the Landlord the cost for the photos.

The Landlord was partially successful with his claim and I find that the Landlord should be compensated for the cost of the filing fee in the amount of \$100.00, in accordance with Section 72 of the Act.

The Landlord has established a monetary claim, in the amount of \$1,155.00, which includes \$600.00 in nominal damages, \$455.00 for cleaning the rental unit, and \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution. Pursuant to section 72(2) of the Act, I authorize the Landlord to keep a portion of the Tenants' security deposit and the entire pet damage deposit in the amount of \$1,155.00, in full satisfaction of the monetary claim.

Based on these determinations I order the Landlord to pay the Tenants the balance of the security deposit, in the amount of \$45.00.

Conclusion

I authorize the Landlord to retain \$1,155.00 of the Tenants' security deposit and pet damage deposits as compensation for the nominal damages, the cost of cleaning, and for the filing fee.

I order the Landlord to return the balance of the security deposit to the Tenants, in the amount of \$45.00, within fifteen days of receiving this Decision, or risk paying double this amount, pursuant to Section 38 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: February 07, 2019

Residential Tenancy Branch