Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL; MNSD, FFT

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 deposit, pursuant to section 38; and
- authorization to recover the filing fee for his application, pursuant to section 72.

This hearing also dealt with the tenants' cross-application pursuant to the *Act* for:

- authorization to obtain a return of double the amount of the tenants' security deposit, pursuant to section 38; and
- authorization to recover the filing fee for their application, pursuant to section 72.

The landlord and the two tenants (male and female) attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

"Witness TS" testified, under oath, on behalf of the landlord at this hearing. She confirmed that she was the landlord's fiancée. Both parties had equal opportunities to question the witness. Witness TS stated that she was not a landlord for this tenancy, she had never met the tenants or been involved with them personally, and she helped prepare the tenancy agreements and order the parts and arrange for the installation of stove cooktop and the refrigerator door shelves for this tenancy.

This hearing lasted approximately 81 minutes. The landlord spoke for approximately 40 minutes of the hearing time, his witness spoke for approximately 10 minutes of the hearing time, and the tenants spoke for approximately 10 minutes of the hearing time.

The remainder of the 21-minute hearing time was spent discussing service of documents and the hearing process.

Both parties confirmed receipt of the other party's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I found that both parties were duly served with the other party's application.

The tenants claimed that they received the landlord's application on December 21, 2018, rather than on October 17, 2018 when it was filed. The landlord explained that there were issues with receiving his application package through email from the RTB. The tenants claimed that they would not have filed their application and paid their filing fee if they knew that the landlord had filed his application to keep the tenants' security deposit. I notified both parties that the tenants chose to file their application, even though they were not required to do so, and they had two years to file it after the end of the tenancy. I found that the tenants did not demonstrate any prejudice and that both parties had received and had a chance to respond to the other party's application, so I proceeded with hearing both applications at this hearing, as both parties consented.

Preliminary Issue – Joining the Tenants' Application with Landlord's Application

At the outset of the hearing, the tenants confirmed that they filed an application for dispute resolution against the landlord on December 13, 2018. The file number for that application is contained on the front page of this decision. They confirmed that they filed for double the value of their security deposit and the $100.00 application filing fee. They said that they served their application to the landlord. They stated that their hearing was scheduled for April 8, 2019 at 1:30 p.m. The landlord confirmed that he received the tenant's application and evidence.

The tenants asked that their matter be heard at the same time as the landlord's application at this hearing. The landlord consented to this.

Rule 2.10 of the Residential Tenancy Branch *Rules of Procedure* states the following:

> *2.10 Joining applications*
> *Applications for Dispute Resolution may be joined and heard at the same hearing so that the dispute resolution process will be fair, efficient and consistent. In considering whether to join applications, the Residential Tenancy Branch will consider the following criteria:*

a) whether the applications pertain to the same residential property or residential properties which appear to be managed as one unit;
b) whether all applications name the same landlord;
c) whether the remedies sought in each application are similar; or
d) whether it appears that the arbitrator will have to consider the same facts and make the same or similar findings of fact or law in resolving each application.

Residential Tenancy Policy Guideline 17 states the following, in part:

The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:

- *a landlord's application to retain all or part of the security deposit; or*
- *a tenant's application for the return of the deposit.*

unless the tenant's right to the return of the deposit has been extinguished under the Act. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for dispute resolution for its return.

…

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…

The same landlord and tenants are named in both applications, both applications deal with the same rental unit, the remedies sought in both applications relate to the same issue of the security deposit, and the same facts and law regarding the security deposit will be considered in both applications.

The landlord filed this application asking to retain the tenants' security deposit and therefore, I am required to consider the doubling provision as part of the landlord's application, even if the tenants do not ask for double and have not filed an application, pursuant to Residential Tenancy Policy Guideline 17.

For the above reasons, I notified both parties that I would be hearing the tenants' application at the same time as the landlord's application. Hearing both applications together would be efficient and consistent, avoiding duplication of facts and procedure. I informed both parties that they were not required to attend the future hearing on April 8, 2019 and it would be cancelled by way of this decision.

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' security deposit?

Are the tenants entitled to the return of double the amount of their security deposit?

Is either party entitled to recover the filing fee for their application?

Background and Evidence

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

Both parties agreed to the following facts. This tenancy began on November 3, 2015 and ended on September 30, 2018. Monthly rent in the amount of $3,320.00 was payable on the first day of each month. A security deposit of $1,575.00 was paid by the tenants and the landlord continues to retain this deposit. Move-in and move-out condition inspection reports were completed for this tenancy. A forwarding address was provided by the tenants to the landlord by way of a letter and the move-out condition inspection report, both on September 30, 2018. The landlord did not have any written permission to keep any amount from the tenants' security deposit. The landlord filed his application to retain the security deposit on October 14, 2018. Written tenancy agreements were signed by both parties. The rental unit is the upper portion of a house, where the basement was occupied by different occupants.

The landlord seeks a monetary order of $4,532.22 plus the $100.00 application filing fee. The tenants seek a return of double the amount of their security deposit of $1,575.00, totalling $3,150.00, plus the $100.00 application filing fee.

The landlord seeks $2,646.00 and $472.50 for the first and second phases of a driveway repair at the rental property because he said the tenants destroyed it with chloride-based salt, due to the snow. The landlord provided photographs, invoices, text messages, a witness statement from the contractor and documentary information regarding the salt and the snow. The landlord said that he was not given receipts but he had bank documents that could show the $1,000.00 cash deposit and the cheque

payments for the above work to be done, but he did not provide them for this hearing because he was told by the RTB that invoices were sufficient for documentary proof. Witness TS stated that the landlord paid for the driveway repair and she saw the landlord's bank statements and cheques that were used to pay for the above work but she did not know the date of any such repairs to the driveway.

The landlord stated that the driveway was done in 2012, he bought the property in 2015, and the tenants moved in November 2015. He claimed that the damage occurred in February 2017 and the tenants failed to notify him until May 18, 2017. He said that he came to inspect on May 18, 2017, he pressure-washed the concrete a few days later, and then he had a company come in to pressure wash, colour and refill the concrete. He claimed that the salt ate through the concrete and the company has to come back every year to fill it. He said that he did not want to charge the tenants for this damage during their tenancy because he did not want to upset them or for them to cause further damage during their tenancy.

The tenants dispute the landlord's claim for the driveway repair. They provided photographs and documentary information regarding the snow and salt. They agreed that they used a minimum amount of salt on the driveway because it was one of the harshest winters in the area and there was a lot of snow. They said that they were never told by the landlord that they could not use salt on the driveway. They maintained that other occupants, who lived in the basement of the same rental house, also used this walkway and these occupants provided a statement in support of the tenants' version of events. The tenants maintained that they were required to clear the driveway in order for mail personnel to deliver their mail or they were told the mail would not be delivered to the rental property.

The tenants questioned when the landlord completed both phases of the driveway repair because they said the first was done in November 2017, much later than the reported issue in May 2017, claiming dry conditions were needed when it would have been raining at this time. They maintained that the landlord did not tell them they were responsible for any damage at the time but then the landlord claimed for damages two years later at the end of the tenancy. They disagreed that they caused damage and they claimed that the landlord indicated he would keep their security deposit towards the driveway repair, so this is why both parties did not sign the move-out condition inspection report because they disagreed on this and other damages.

The landlord seeks $840.26 for parts and $408.45 for installation for the glass stove cooktop and the refrigerator door shelves. The landlord provided photographs, an email

for the installation, and the invoice for the parts order. The landlord and witness TS confirmed that the installation occurred on the day before this hearing, February 7, 2019, because it took so long for the parts to arrive. Witness TS claimed that she ordered and paid for the parts and the landlord paid for the installation. She maintained that she used her credit card for the parts but did not submit the receipt or credit card statement for this hearing. She confirmed that the landlord used his credit card to pay for the installation and she saw the receipt on the day before this hearing when the installation occurred. The landlord did not submit receipts for the above items.

The landlord stated that the tenants scratched the glass stove cooktop so he had to replace it. He said that the stove was still in proper, working order but that the scratches were more than reasonable wear and tear, since an abrasive pad was used to clean. The landlord said that the shelves in the refrigerator door were cracked and that the tenants never notified him before they moved out. He said that he did not open the refrigerator door when he performed the move-out condition inspection, which he claimed was his mistake. He indicated that the refrigerator was still in proper, working order, despite the cracked shelves.

The tenants disputed the above claims to the refrigerator shelves and the stove cooktop. They said that they hired a cleaner to clean every two weeks during their tenancy and that no abrasive cleaning products were used. They stated that they only had soft cloths and sponges in their unit and if there were any scratches, they were reasonable wear and tear. The tenants explained that they did not know there were any cracks or holes inside the refrigerator as they had no issues putting their items inside and that if anything was cracked, it was reasonable wear and tear.

The landlord seeks $165.01 to replace a dead tree at the rental property. He provided an invoice for this amount but not a receipt. Witness TS confirmed that the landlord paid for this amount. The landlord said that the damage was not noted on the move-out condition inspection report because he did not notice it during the move-out condition inspection. He stated that the tenants did not report this obvious damage to him and they agreed it occurred during summer. He explained that the tree could not be saved, so he had to replace it.

The tenants dispute the landlord’s claim for the tree, stating that they were not responsible for watering it. They said that they only had to water the gardens at the rental property. They maintained that the external trees had an irrigation system where they were watered according to a timing system. The tenants explained that they told

the landlord that the trees outside needed more water from the irrigation system. They said that no indication of this damage was contained in the move-out condition inspection report.

Analysis

Landlord's Application

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 on a balance of probabilities. In this case, to prove a loss, the landlord must satisfy the following four elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the tenants in violation of the *Act*, *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 entire application without leave to reapply.

I find that the landlord failed to provide receipts to show when he paid and what method he used to pay for all of the above repairs. Both the landlord and his witness TS confirmed that they made payments but could not provide all of the exact dates. Both the landlord and his witness TS confirmed that they had credit card statements, receipts, bank documents, cheques and other documents to show how and when they paid, but they did not supply these documents for this hearing, despite having ample time to do so.

The tenants disputed the damages claimed by the landlord, noting that some were not contained on the move-out condition inspection report. The landlord even agreed that he did not notice some of the damages during the 45-minute move-out condition inspection, he only noticed it after, despite claiming it was so obvious that the tenants should have told him about them. These include a huge dead tree at the front of the

rental property and the fridge shelves. As noted above, the landlord has the burden of proof, on a balance of probabilities to prove his monetary application.

Since the landlord was not successful in his application, I find that he is not entitled to recover the $100.00 application filing fee from the tenants.

Tenants' Application

Section 38 of the *Act* requires the landlord to either return the tenants' security deposit or file for dispute resolution for authorization to retain the deposit, 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 deposit. However, this provision does not apply if the landlord has obtained the tenants' written authorization to retain all or a portion of the deposit 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 based on a balance of probabilities. The tenancy ended on September 30, 2018. The tenants provided a written forwarding address to the landlord on September 30, 2018. The tenants did not give the landlord written permission to retain any amount from their deposit. The landlord did not return the deposit to the tenants. However, the landlord made an application on October 14, 2018, which is within 15 days of the end of tenancy on September 30, 2018, to claim against the deposit. Although the tenants did not receive the landlord's application until December 2018, due to some administrative issues, the landlord still filed it within the required timeline. Therefore, I find that the tenants are not entitled to receive double the value of their security deposit, only the regular return of $1,575.00.

As the tenants were only partially successful in their application, I find that they are not entitled to recover the $100.00 filing fee from the landlord.

Conclusion

I issue a monetary order in the tenants' favour in the amount of $1,575.00 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.

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

The tenants' application to recover the $100.00 filing fee is dismissed without leave to reapply.

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 11, 2019

Residential Tenancy Branch