



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, MNDL-S, FFL

Introduction

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

- a Monetary Order pursuant to section 67 of the *Act* for compensation from tenant for other money owed (unpaid rent);
- authorization to retain all or a portion of the tenants' security deposit and pet damage deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to sections 37 and 67; and
- authorization to recover their filing fee for this application from the tenant pursuant to section 72 of the Act.

The tenant "SS" (the "tenant") and the landlord appeared at the hearing. All parties present were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The landlord testified that the tenants were each served with the Landlord's Application for Dispute Resolution hearing package ("dispute resolution hearing package"), including the landlords' evidence, by way of registered mail. The tenants confirmed receipt of the dispute resolution hearing packages and the landlords' evidence.

The tenant testified that she provided her evidence package to the landlord. The landlord confirmed receipt of the tenants' evidence.

Issue(s) to be Decided

Are the landlords entitled to monetary compensation for unpaid rent pursuant to sections 37 and 67 of the Act?

Are the landlords entitled to retain the tenants' security deposit and pet damage deposit pursuant to section 38 of the Act?

Are the landlords entitled to recover the filing fee for this application pursuant to section 72 of the Act?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the sworn testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here. I have reviewed all oral and written submissions before me, along with all evidence before me that met the requirements of the Rules of Procedure. However, only the evidence and testimony relevant to the issues and findings in this matter are described in this decision. The principal aspects of the landlord's claim and my findings around it are set out below.

The landlord testified that the tenancy initially began on July 01, 2016 and had been renewed since that time. The parties renewed the tenancy by signing a new tenancy agreement which stipulated that a fixed-term tenancy would commence on July 01, 2018 and end on June 30, 2019. The monthly rent was determined to be \$2,000.00, which was due on the first day of each month. The landlord stated that the tenants provided a security deposit in the amount of \$1,000.00 and a pet damage deposit in the amount of \$1,000.00, both of which continue to be held by the landlord. The parties provided as evidence a copy of a written tenancy agreement signed by both parties, which confirms the details provided orally by the landlord.

The subject rental property is a single-family detached house. The rental unit which is the subject of the dispute is the upper unit of the house. The parties testified that the tenants rented only the upper unit of the house and that there were other occupants residing in the lower unit subject to a separate tenancy with the landlords.

The landlord testified that the tenants provided notice to end the tenancy, by way of an email message to the landlord on August 29, 2018. In the email, the tenants notified the landlord of their intention to vacate the rental unit by September 30, 2018.

The landlord provided that pursuant to the tenants' notice of August 29, 2018, the tenancy ended on September 30, 2018, although the tenants may have vacated the rental unit prior to that date.

The landlord testified that a condition inspection report was completed, and signed by all parties, at the start of the tenancy. The landlord stated that on September 30, 2018, the parties undertook an end-of-tenancy condition inspection, after which an end of tenancy condition inspection report was completed. The parties agreed that the tenants provided their forwarding address in writing on the condition inspection report on September 30, 2018.

The landlord testified that the tenants had caused damage to the walls of the rental unit. The landlord states that the tenants had patched the walls and painted the patched areas, but that the walls were not left in a suitable condition. The paint colour chosen by the tenants to paint over the patched surfaces of the wall did not match the paint colour on the walls throughout the rental unit. The landlord provided photographs which depict the walls of the rental unit presenting with noticeable patches which do not blend with the surrounding walls, as there is inconsistency of paint colour.

The landlord testified that she obtained a quote from a painting company, which provides that the cost to re-paint the rental unit would be \$2,970.00. The landlord provided a copy of the quote as evidence.

The landlord provided that the tenants left the carpet in a damaged state, such that it required cleaning. The landlord provided a copy of a quote from a carpet cleaning which provided that the estimated cost to clean the carpets would be \$293.95. the quote provided that two of the rooms would need additional cleaning due to the need of a urine removal service.

The landlord testified that the tenants damaged three blinds in the rental unit. The landlord provided photographs of damaged blinds as evidence. The landlord provided an estimated cost to replace three blinds and provided a printed quote from the website of a large hardware and home improvement store to demonstrate that the cost to replace three blinds would be \$176.16.

The landlord asserted that since the tenancy was a fixed-term tenancy that was to end on June 30, 2019, it was not open to the tenants to end the tenancy by providing a one month to end tenancy. As a result of the tenants breaching the terms of the tenancy agreement and ending the tenancy on September 30, 2018, the landlord asserted that

she incurred a loss of rental income for the month of October 2018, and is seeking compensation in the amount of \$2,000.00 as rent owed for that month.

The landlord wishes to retain both the security deposit and pet damage deposit, which total \$2,000.00, as partial satisfaction for damage caused to the rental unit by the tenants and for compensation owed by the tenants due to rental loss for a period of one month.

The landlord testified that the tenants submitted their forwarding address in writing on September 30, 2018, by providing the address on the condition inspection report. The landlord stated that she elected to apply for dispute resolution within 15 days of receiving the tenants' forwarding address, as provided under the Act.

The landlord testified that after learning of the tenants' decision to end the tenancy early, she decided to list the property for sale. The landlord stated that the property was listed for sale on or about September 07, 2018. The property remained listed for sale until October 16, 2018, at which time the property was de-listed and removed from the market.

The landlord testified that on October 14, 2018, an offer was accepted from a potential buyer, which subsequently resulted in the sale of the property. The closing period for the transaction of sale was such that the completion date of the transaction was November 15, 2018, at which point the purchaser became the new owner of the property.

The landlord testified that house sold for a lower price than the listed price due to the damaged state in which it was left after the tenancy had ended.

The landlord testified that the rental unit remained vacant from September 30, 2018 to November 15, 2018.

The landlord provided that while the property was listed for sale, the landlord decided to concurrently advertise the rental unit for the purpose of finding a new tenant. The landlord stated that after the tenants provided their notice to end tenancy, the first occasion on which the rental unit was advertised was on September 20, 2018. The landlord advertised on a commonly-used online classified site, which, for the purpose of this decision, will be referred to as "CL". The landlord testified that the rental unit was not advertised on any other platform or medium other than CL.

The landlord testified that she continued to list the rental unit on the CL site until October 14, 2018. The landlord stated that the advertisement for the rental unit did not result in any prospective tenant contacting the landlord to view the rental unit, and that her effort to find a new tenant was unsuccessful.

The landlord testified that the parties agreed that at the end of the tenancy, the tenants would provide payment to have the carpets professionally cleaned.

The landlord testified that for each item which comprises the landlord's claim for damage to the rental unit, only an estimate was provided, as no work was undertaken to repair any of the damage identified by the landlord. The landlord provided that for carpet cleaning, painting, and replacement of the blinds, the landlord did not incur any cost, as no supplies were purchased, no work was commenced or completed, and no services of any company or individuals were retained with respect to the damages identified by the landlord. In short, the landlord simply identified the nature of the damages and obtained quotes to identify the potential cost to repair or remediate the issues identified.

The tenant provided testimony to confirm the date on which the landlord's testimony with respect to the date on which the tenancy ended, the date on which the end of tenancy condition inspection was completed, and the date on which the forwarding address was provided.

The tenant testified that the tenants attempted to paint the rental unit on three occasions before vacating, but could not match the paint colour consistently throughout the rental unit. The tenant testified that she had offered to paint the rental unit again if the landlord were to provide an accurate paint colour match, but that the landlord declined the offer.

The tenant denied causing damage to the blinds in the rental unit, and suggested that the occupants of the lower suit has access to the rental unit and may have been responsible for damage to the blinds.

The tenant testified that before the landlord applied for dispute resolution, the tenants verbally agreed to pay for carpet cleaning. However, during the hearing the tenant provided that the tenants no longer agree that they should compensate the landlord for the estimate cost of cleaning the carpets, since the landlord did not incur any such cost to clean the carpet and has sold the house in which the rental unit is located.

The tenant testified that the landlord should not be permitted to retain the security deposit and pet damage deposit, and should not be granted a monetary order pursuant to a claim for damages and unpaid rent.

Analysis

Upon consideration of the evidence before me, I will outline the following relevant sections of the Act that are applicable to this application. I will provide the following findings and reasons when rendering this decision.

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 that 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 claimant must prove the existence of the damage/loss, and that it stemmed from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary value of the loss or damage. In this case, the onus is on the landlord to prove their claim for a monetary award.

Regarding the landlord's claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that the purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred, and that it is up to the party claiming compensation to provide evidence to establish that compensation is warranted. In essence, to determine whether compensation is due, the following four-part test is applied:

- Did the tenant fail to comply with the *Act*, regulation or tenancy agreement?
- Did the loss or damage result from this non-compliance?
- Did the landlord prove the amount of, or value of, the damage or loss?
- Did the landlord act reasonably to minimize that damage or loss?

The onus or burden of proof is on the party making the claim. When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events without any form of evidentiary corroboration, the

party making the claim has not met the burden on a balance of probabilities and the claim fails.

Although the landlord has demonstrated that there was damage caused to the rental unit by the tenants, the landlord has not established that she actually incurred a loss. One of the components of the four-part test, as listed above, is to prove the value of the loss.

The landlord has identified and documented the nature of the damage, and has also provided the estimated cost that she would incur if she undertook repairs to repair or remediate the items listed. However, the landlord did not commence or complete any repairs.

Furthermore, the landlord testified that she did not incur any cost, as she did not purchase any materials or contract the services of any individual or company in anticipation of undertaking the repairs. Instead, the landlord has only identified the damage and the estimated cost of repairing the damage.

Therefore, although the landlord has demonstrated that the damage existed, the landlord did not incur a monetary loss as the landlord did not spend any sum of money to address remediation or repair of the identified damage. Instead, despite the state in which the rental unit was left after the tenancy ended, the landlord chose to continue listing the property for sale and leaving it open to viewings.

One of the outcomes sought by the landlord was to sell the property in which the rental unit is located, and the landlord was subsequently able to achieve that outcome by accepting an offer from a purchaser on October 14, 2018, which resulted in the sale of the property.

In effect, despite the damage identified by the landlord, the landlord was able to achieve one of the desired outcomes by selling the residential property while having the rental unit remain in the same condition—which included the damage items identified by the landlord--- and without having to incur a cost by allocating money to repair the damage.

The landlord argues that the loss resulted because the purchaser offered a purchase price that was lower than the listed price. The landlord asserted that the purchaser argued that the rental unit presented with damage, such as the evident damage to the walls and carpet, and the other damage identified by the landlord as part of this

application. Therefore, the landlord argues, the landlord was compelled to sell the property for a lower price, thereby resulting in a monetary loss.

However, the onus is on the landlord to prove this loss, and I find that the landlord has not done so. The landlord has provided testimony to argue that she suffered a monetary loss but has not sufficiently proven the loss as required in Policy Guideline 16.

The landlord has not provided any documentary evidence, and has not provided any witness testimony from the realtor or purchaser to describe discussions, written communication, offers or counter offers which show whether the parties to the sale of the residential property discussed the damage to the rental unit, and by extension, whether the parties discussed a specific or quantifiable discrepancy between the listed price of the property and the sale price, and whether the parties considered specific monetary reductions of the price stemming solely from the damage to the rental unit identified by the landlord in this application.

The landlord has not indicated whether other offers were made or entertained. The landlord did not prove that the property could have sold for the asking price, even given the damages that the landlord chose to not repair.

The landlord has not proven that the sole reason for the lower purchase price was limited to the specific damage identified by the landlord as part of this application. The landlord has not demonstrated whether any other factors were identified by the purchaser which contributed to a lower selling price.

The landlord is citing the damage to the rental unit as a factor in the lower selling price, and is arguing that she be compensated for the estimated value of the damage. However, if the landlord knew that the rental unit did not present as well as it could have due to the damage, it was open to the landlord to repair all of the damage identified by the landlord in order to remedy the problem to allow the unit to present in a much better state to prospective buyers while the unit was listed on the market. However, the landlord chose not to do so.

In essence, the landlord could have mitigated the problem that she is now seeking compensation for. If the landlord's position is that the rental unit presented in a compromised condition due to the damage left by the tenants, the landlord could have remedied that issue by completing the repairs, thus mitigating the issue of the rental unit presenting in a less-than-ideal condition, and subsequently, mitigating the issue of

having potential purchasers offering lower offer prices. However, the landlord did not choose to mitigate the issue in this manner.

Notwithstanding the foregoing, I find that even given the damage to the rental unit, as identified by the landlord, the landlord was able to achieve one of her desired outcomes, which was to sell the house in which the rental unit is located. In this sense, the damage to the rental unit did not prevent that outcome, and the landlord has not proven any potential loss incurred during the sale of the house as a result of the damage to the rental unit. Based on the foregoing, I dismiss the landlords' claim for monetary compensation arising from damage caused by the tenants to the rental unit.

The landlord seeks monetary compensation for the loss of rental income, in the amount of \$2,000.00, for the month of October 2018 due the tenants ending a fixed-term tenancy in a manner not permitted by the Act.

The landlord was notified on August 29, 2018 of the tenants' intention to end the tenancy. Subsequently, the landlord chose to list the house for sale. It was not until September 20, 2018 that the landlord undertook actions to find new tenants in an attempt to enter into a new tenancy, as the landlord testified that the rental unit was first listed for rent on that date after receiving notice to end tenancy from the tenants.

The landlord waited a period of 22 days after receiving the notice to end tenancy from the tenants to place an ad in an effort to find new tenants by October 01, 2018. I also find that by waiting until September 20, 2018 to place an ad in search of new tenants, the landlord left herself only 10 days with which to procure new tenants in order to enter into a new tenancy by October 01, 2018.

Based on the foregoing, by delaying her efforts to find new tenants and enter into a new tenancy, I find that the landlord failed to mitigate the potential loss of income that she could reasonably have anticipated for the month of October 2018. Therefore, I dismiss the landlords' claim for compensation due to money owed for loss of rental income.

After consideration of the evidence and testimony before me, I find that the landlord has not proven that she has cause to retain the security deposit and pet damage deposit in accordance with section 38 of the Act. I find that the tenants have not extinguished their rights to return of the security deposit and pet damage deposits, as provided in section 24 and section 36 of the Act.

Residential Tenancy Policy Guideline 17 states that an Arbitrator may order the return of a security deposit based on a landlord's application to retain all or part of the security deposit. The guideline further provides that an Arbitrator may 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.

As I find that the landlord has not proven cause to retain the security deposit and pet damage deposit, in accordance with section 38 of the Act and Residential Tenancy Policy Guideline 17, I order that the security deposit and pet damage deposit, totalling the sum of \$2,000.00, be returned to the tenants. As the landlord complied with section 38(1)(c) of the Act, the tenants will not be awarded a doubling of the security deposit and pet damage deposit in accordance with section 38(6)(b).

The security deposit and pet damage deposit, which total the sum of \$2,000.00, are to be returned to the tenants. The tenants are therefore entitled to a monetary award in the amount of \$2,000.00.

Based on the information provided by the Residential Tenancy Branch deposit interest calculator, I find that there is no interest to be added to the amount of the deposits to be returned to the tenants.

Conclusion

I issue a monetary order in the tenants' favour in the amount of \$2,000.00 on the above terms.

The tenants are provided with a monetary order in the above terms and the landlord(s) must be served with this order as soon as possible. Should the landlord(s) fail to comply with these orders, these orders may be filed in the Small Claims Division of the Provincial Court and enforced as orders of that Court.

As the landlords were not successful in their application, the landlords are not entitled to recover the filing fee.

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: March 07, 2019

Residential Tenancy Branch