Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL MNDCL-S MNDL-S

Introduction

This hearing was convened by way of conference call concerning an application made by the landlords seeking a monetary order for damage to the rental unit or property; a monetary order for money owed or compensation for damage or loss under the *Act,* regulation or tenancy agreement; an order permitting the landlords to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenants for the cost of the application.

One of the landlords attended the hearing with a translator who was affirmed to well and truly interpret the hearing from the English language to the landlord's Native language and from the landlord's Native language to the English language to the best of his skill and ability. One of the tenants also attended the hearing and represented the other named tenant. The parties each gave affirmed testimony and were given the opportunity to question each other and give submissions.

At the commencement of the hearing the parties agreed that evidence has been exchanged, however some of the landlord's evidence has been provided with page numbering that is out of order. It was not clear to me whether or not the tenant had received all of the landlord's evidentiary material, and I instructed the tenant to alert me if any evidence was referred to that the tenant could not locate. The tenant did not alert me to any issues, and all evidence provided by the parties has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Have the landlords established a monetary claim as against the tenants for damage to the rental unit or property?
- Have the landlords established a monetary claim as against the tenants for money owed or compensation for damage or loss under the *Act,* regulation or tenancy agreement, and more specifically for storage fees?
- Should the landlords be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlord testified that this tenancy began on October 15, 2014 and ended approximately 10 months ago. Rent in the amount of $3,900.00 per month was payable on the 1st day of each month. A new tenancy agreement was entered into by the parties commencing September 1, 2017 for rent in the amount of $4,150.00 per month, and there are no rental arrears. At the outset of the tenancy the landlords collected a security deposit from the tenants in the amount of $1,950.00 and no pet damage deposit was collected. The rental unit is a single family dwelling, and a copy of the tenancy agreement has been provided as evidence for this hearing.

A move-in condition inspection report was completed at the beginning of the tenancy, but none at move-out. The landlord testified that the parties had agreed to damages that the tenants were responsible for in emails and text messages.

The landlord further testified that the parties had attended a Residential Tenancy hearing on November 1, 2018 and a copy of the resulting Decision has been provided as evidence for this hearing. The tenants had applied for return of the security deposit and monetary compensation. The Decision states that the tenants were successful in obtaining a monetary order for double the amount of the security deposit, less an amount that the tenants had authorized the landlords to keep toward utilities.

The landlords claim:

- $2,500.00 for a damaged refrigerator door,
- $300.00 for a custom wooden blind for the basement that was missing at the end of the tenancy;
- $100.00 to repair a lock on the bathroom door; and
- $511.34 for unpaid utilities.

The landlord testified that all of those amounts are verifiable on a Rona or Home Depot website. During the course of the hearing the landlord withdrew the portion of the application for unpaid utilities.

The landlords also claim $20.00 per day for 151 days of storing a large wooden box that the tenants left at the rental unit, and the landlord testified that it has been there for an extended period of time and the new tenant can't park properly. The landlord does not know what's inside or the value, and it's about the size of a car. A photograph has been provided as evidence for this hearing.

The tenant testified that the parties signed a Mutual Agreement to End the Tenancy on March 4, 2018 effective April 1, 2018.

The tenant also testified that the landlords did not provide the tenants with a copy of the move-in condition inspection report. At move-out, the parties walked through the rental unit after the new tenant had moved in. At that time, the landlord completed a report, but the tenant didn't receive a copy, and the tenant is not certain whether it was a move-out condition inspection report or a move-in condition inspection report for the new tenant.

The fridge was scratched at the beginning of the tenancy, and the tenant testified that if there were more scratches at the end of the tenancy, it should be considered normal wear and tear for a 4 year tenancy. Further, it would not warrant replacing the fridge, nor have the landlords replaced it.

The tenants took the blinds down which were on a door leading out from the walk-out basement, to prevent damage during move-out and the new tenant moving in. Long after the new tenant moved in, the missing blinds were brought to the tenants' attention, and the tenant does not know where the blinds are.

The bathroom lock never worked properly, and the landlord was advised but never fixed it.

During the move-out inspection the tenant asked the landlord about the large wooden box, and the landlord said to leave it there for storage. The landlord has provided a Demand Letter given to the tenants dated June 11, 2018, and there is no mention of the wooden box, and the tenant testified it was only brought to the tenants' attention in this application. If it had been an issue, it could have been removed, and it's empty. New tenants can still comfortably park.

The tenant submits that the landlords' claim is frivolous and retaliatory in every way.

Analysis

Where a party makes a monetary claim for damages as against another party, the onus is on the claiming party to satisfy the 4-part test:

1. that the damage or loss exists;
2. that the damage or loss exists as a result of the other party's failure to comply with the *Residential Tenancy Act* or the tenancy agreement;
3. the amount of such damage or loss; and
4. what efforts the claiming party made to mitigate any damage or loss suffered.

The *Residential Tenancy Act* requires a tenant to leave a rental unit reasonably clean and undamaged except for normal wear and tear, and also states that the move-in and move-out condition inspection reports are evidence of the condition of the rental unit at the beginning and end of the tenancy.

I have reviewed all of the evidentiary material, and there is absolutely no evidence that any of the damages claimed by the landlords actually existed at the end of the tenancy and before a new tenant moved in, nor is there any evidence of the costs claimed by the landlords. It is not sufficient to give a ball-park figure of what damaged items cost to replace or repair. I find that the landlords have failed to establish all of the elements in the test for damages with respect to the claims for a refrigerator door, wooden blinds and lock on a bathroom door.

The landlord also claimed in his testimony damage to a front door, but again, provided no evidence to support that claim, and I dismiss it.

With respect to storage costs for the wooden box, the landlord testified that he doesn't know what's inside or its worth, and that the tenant didn't tell the landlord that he was abandoning it so he could not consider it abandoned. However, the regulations state that a landlord may consider personal property to be abandoned if it's left in the rental unit for a month after the tenancy ends. If so, the landlord may remove it from the rental property but must comply with certain obligations:

> **Landlord's obligations**
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> **25** (1) The landlord must

(a) store the tenant's personal property in a safe place and manner for a period of not less than 60 days following the date of removal,

(b) keep a written inventory of the property,

(c) keep particulars of the disposition of the property for 2 years following the date of disposition, and

(d) advise a tenant or a tenant's representative who requests the information either that the property is stored or that it has been disposed of.

(2) Despite paragraph (1) (a), the landlord may dispose of the property in a commercially reasonable manner if the landlord reasonably believes that

(a) the property has a total market value of less than $500,

(b) the cost of removing, storing and selling the property would be more than the proceeds of its sale, or

(c) the storage of the property would be unsanitary or unsafe.

The tenant testified that during the move-out condition inspection he asked the landlord about the wooden box, and the landlord said to leave it there; it might be useful for storage. At no time did the tenant agree to pay rent for storing it, but also testified that it was not brought to his attention in the landlord's demand letter of June 11, 2018 and the tenant only learned of the landlord's issue with it when served with the Landlord's Application for Dispute Resolution. He also testified that if he had known it was an issue, it could have been removed, and the landlord didn't dispute that. If the landlord wanted storage fees, the landlord ought to have told the tenant that, and I find that by failing to do so, and failing to advise the tenant that he wanted it off the property, the landlord did not mitigate any damage or loss suffered by keeping the box. Nor am I satisfied that the landlord has suffered any damage or loss.

The security deposit has already been dealt with in the previous hearing, and therefore, I dismiss the landlord's application for an order permitting him to keep it. Since the landlords have not been successful with the application the landlords are not entitled to recovery of the $100.00 filing fee, and I dismiss the landlords' application in its entirety.

Conclusion

For the reasons set out above, the landlord's application is hereby dismissed in its entirety 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: March 01, 2019

Residential Tenancy Branch