Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, MNDL-S, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for compensation for damage caused by the Tenants, their pets or guests to the unit, site or property, claiming against the pet and/or security deposit, and to recover the cost of their filing fee.

The Tenant, E.O., the former Tenant, S.M., and the Landlord appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process.

During the hearing, the Tenants and the Landlord were given the opportunity to provide their evidence orally and respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure; however, only the evidence relevant to the issues and findings in this matter are described in this decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution and/or the documentary evidence. The Tenants said they had received the Application and/or the documentary evidence from the Landlord and they had time to review it prior to the hearing.

Preliminary and Procedural Matters

The Parties provided their email addresses at the outset of the hearing and confirmed their understanding that the decision would be emailed to both Parties.

Issue(s) to be Decided

- Is the Landlord entitled to a monetary order, and if so, in what amount?
- Is the Landlord entitled to retain the Tenants' pet or security deposit, and if so, in what amount?
- Is the Landlord entitled to recover the filing fee for this Application?

Background and Evidence

The Parties agreed that the Tenant, E.O., moved into the rental unit on June 1, 2017, and that this Tenant and the Landlord signed a tenancy agreement. The monthly rent was $1,200.00, and E.O. paid a $600.00 security deposit to the Landlord.

The Parties agreed that the Tenant, S.M., moved in with E.O. on March 1, 2018 and that S.M. paid a $600.00 pet damage deposit. The Parties said they signed a six-month lease extension. They agreed that the tenancy went month-to-month after the lease extension expired in September 2018.

The Parties agreed that S.M. moved out on November 1, 2018, and gave her forwarding address to the Landlord on January 20, 2019. In the hearing, I found that the Tenant E.O. remains in the rental unit and that her tenancy continues.

S.M. said she gave E.O. and the Landlord notice of the end of her tenancy via a text message on October 1, 2018. She said she did this from work. E.O. said she did not recall getting the text from S.M., although she said “we talked about it sometimes, but [S.M.] would say she’s moving in 30 or 60 days. The move out date was up in the air.”

The Landlord said that S.M. did not provide a specific date on when she was going to move out. The Landlord said: “Her text says: ‘Hey [Landlord], looking to move out either this month or next month. If there’s anything else you need from me, let me know.’”

The Parties agreed that there was damage done to hardwood flooring, baseboards and trim in the kitchen area of the rental unit, which they said was caused by the S.M.’s cat urinating. The Landlord has applied for dispute resolution in order to seek compensation from S.M. for the damage done to the rental unit.

The Landlord said he obtained quotes from two restoration companies, and that the cost to repair the damage to the rental unit exceeds the Tenants’ pet damage and security deposits. The Landlord said he is seeking compensation for damage above the amount of the deposits to cover the cost of the lowest price quoted.

The Landlord submitted invoices from the restoration company including a $150.00 inspection fee, and a quote of $2,788.11 for “reconstruction services”. The Landlord submitted a quote from a second restoration company for repairing the rental unit in the amount of $3,439.80.

The Tenant S.M. wrote the Landlord a letter with her forwarding address on January 20, 2019.

The Landlord submitted a move-in condition inspection report ("CIR") that he and the Tenant, E.O., signed and dated on May 18, 2017, but a move-out CIR was not completed, he said, "because E.O. is still a tenant of the rental unit." There is no CIR with the Tenant, S.M.'s signature. The move-in CIR indicates that the flooring was in "good condition" in June 2017.

The Landlord submitted photographs of flooring and baseboards, saying they show damage to the flooring, baseboards and trim. However, there are no photographs of these areas from the beginning of either Tenant's tenancy, so I give the photographs limited weight in my considerations.

The Landlord submitted a letter he received from the Tenant, S.M., dated January 20, 2019, in which she said:

> Dear [Landlord],
> This is my official forwarding address, [new address]. By writing this I'm hoping we can officially part ways, I know you're tired of contacting me and so am I. BC tenancy laws state you would now have 15 days to return my pet deposit but I'm willing to look the other way if this is dropped. I have contacted an official information officer from the Residential Tenancy Branch office to get some legal advice to see if you can take any real legal action after threatening my mom with it, which I do not appreciate. Thanks to his advice, my expired lease I was on, no inspection report before or after moving in with my signature, and everything being over text, you have no legal rights to act on. I was gonna make you a counter offer and make some payments to be fair and kind but after finding out you have enough flooring (which you lied to me about it) but tried to take advantage by making me pay you for it and also the fact you won't get another quote as per mine and my moms request which I have a right to. I don't feel the need to pay for any damages that may have occured, I will however be willing to pay for the holes in the wall depending on how this goes over (even though you're not allowed to put that in a lease, another way you tried to take advantage). I'm hoping we can both move on from this and part ways.
> Sincerely, [S.M.]
>
> [reproduced per original]
>
> ["S.M.'s Letter"]

In addition, in the hearing, E.O. said that S.M. admitted that she was responsible for the damage - that it was because of her cat.

Analysis

The Landlord did not upload a copy of the lease or lease extension, but I infer from the evidence of all the Parties that S.M. signed the lease extension, which turned into a periodic tenancy in September 2018 pursuant to section 44(3) of the Act. I find from the Parties' evidence that the two Tenants were joint tenants and, therefore, jointly and severally liable for damage in the rental unit.

As it sets out in Policy Guideline 13:

> Co-tenants are jointly and severally liable for any debts or damages relating to the tenancy. This means that the landlord can recover the full amount of rent, utilities or any damages from all or any one of the tenants. The responsibility falls to the tenants to apportion among themselves the amount owing to the landlord.

The Tenant, S.M., asked for the return of her pet damage deposit in S.M.'s Letter. Section 38 of the Act requires the following of a landlord in relation to a pet damage or security deposit:

> **38** (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of
>
> (a) the date the tenancy ends, and
>
> (b) the date the landlord receives the tenant's forwarding address in writing,
>
> the landlord must do one of the following:
>
> (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
>
> (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

S.M.'s tenancy ended on October 31, 2018, and S.M.'s Letter with the forwarding address was dated January 20, 2019. The Landlord applied for dispute resolution on January 21, 2019, so I find that the Landlord has complied with section 38 of the Act and may apply to claim against the deposits.

I find that S.M. did not give proper notice to the Landlord about the end of her tenancy. She did not provide a copy of the text message she said she sent to the Landlord and E.O. I find it is more likely than not that the evidence of the Landlord and E.O. are more credible than S.M.'s evidence in this regard, given their consistency with each other about the type of notice given by S.M. I find the Landlord and E.O.'s version of this matter to be an accurate representation of the type of notice that S.M. gave them of her intended departure from the rental unit.

Regardless, sections 45, 52 and 88 of the Act do not permit a tenant to give notice of the end of a tenancy by text. Based on all the evidence before me overall, I find that S.M. vacated or abandoned the rental unit, pursuant to section 44(1)(d). I find that the Landlord and E.O. continued the periodic tenancy after S.M. left.

Awards for compensation are provided for under sections 7 and 67 of the Act. Further, Part C of Policy Guideline 16 ("PG #16")) establishes the following four-part test an applicant must prove for damages:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss, and
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

[the "Test"]

Section 32(3) of the Act states:

> (3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

This is also a standard term of a tenancy agreement, pursuant to the Residential Tenancy Regulation. In addition, I find that S.M.'s Letter indicates her acknowledgement of responsibility regarding the damage to the rental unit. It is also consistent with E.O.'s evidence that S.M. admitted to having been responsible for the damage - that it was because of her cat. I find from the evidence, overall, that the only damage done to the flooring between the time of the move-in CIR and S.M. moving out was as a result of

S.M.'s cat urinating on the floor, baseboards and trim. Based on the evidence before me, I find that the Landlord has met the burden of the first two steps of the Test.

The Landlord obtained two quotes for the cost of the repair, which I find on a balance of probabilities, meets the second and third parts of the Test. I find that the Landlord's lower quote of **$2,788.87** plus the cost of the inspection: **$150.00** establishes the value of the loss, for a total of $2,938.87.

As the Landlord's Application has merit, I grant the Landlord **$100.00** in full recovery of the cost of the filing fee pursuant to section 72 of the Act.

Monetary Order

I find that the Landlord has established a total monetary claim in the amount of **$3,038.87** comprised of the restoration of the flooring, baseboards and trim in the amount of $2,788.87, the restoration estimate of $150.00, plus the filing fee of $100.00.

I find that this claim meets the criteria under section 72(2)(b) of the Act to be offset against the Tenant's pet damage deposit of $600.00 in partial satisfaction of the Landlord's monetary claim.

I grant the Landlord a monetary order pursuant to section 67 of the Act for the balance owing by the Tenants to the Landlord in the amount of **$2,438.87**.

Conclusion

The Landlord's claim for compensation for damage or loss against the Tenants is successful.

The Landlord has established a monetary claim of $3,038.87. I authorize the Landlord to retain the Tenant's full pet damage deposit of $600.00 in partial satisfaction of the claim. The Landlord has been granted a monetary order under section 67 for the balance due by the Tenants to the Landlord in the amount of $2,438.87.

This order must be served on the Tenants by the Landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

As the Tenants were jointly and severally liable during the time they were joint Tenants, the Landlord may enforce the monetary order against one or the other or both of them.

Further, as the tenancy is continuing with E.O., the security deposit must be dealt with at the end of the tenancy.

This decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: April 18, 2019

Residential Tenancy Branch