Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL –S, FFL

Introduction

This hearing dealt with a landlord's application for compensation for damage and cleaning and authorization to retain the tenant's security deposit. Both parties appeared or were represented at the hearing and had the opportunity to be make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

I noted that the landlord's Monetary Order worksheet provided for a total claim of $600.66; yet, the Landlord's Application indicated the landlord was seeking compensation of $525.00. The landlord's agent confirmed that the landlord is limiting his claim to $525.00, the amount of the security deposit, in satisfaction of the landlord's losses.

I also noted that in the tenant's written response, the tenant sought to have the security deposit doubled and return of rent paid for the second half of December 2018. Since the landlord made an application against the security deposit, I informed the parties that I would determine whether the security deposit should be doubled. However, I would not deal with the tenant's request for return of part of the rent she paid for December 2018 since the landlord was not agreeable to such a request and the tenant had not made an Application for Dispute Resolution to make such a claim. The parties were informed the tenant remains at liberty to pursue such a claim against the landlord by filing her own Application for Dispute Resolution.

Issue(s) to be Decided

1. Is the landlord entitled to compensation of at least $525.00 from the tenant for damage and cleaning?
2. Should the security deposit be doubled?
3. Disposition of the security deposit.

Background and Evidence

The tenancy started on March 1, 2015 and the tenant paid a security deposit of $525.00. The tenant was required to pay rent of $1,050.00 although the rent was set to increase to $1,092.00 effective December 1, 2018.

The tenant was served with a *1 Month Notice to End Tenancy for Cause* ("1 Month Notice") dated October 19, 2018 with a stated effective date of November 30, 2018. The tenant filed to dispute the 1 Month Notice and a hearing was held on December 4, 2018 (file number referred to on the cover page of this decision). An Arbitrator upheld the 1 Month Notice and provided the landlord with an Order of Possession effective two (2) days after service upon the tenant even though the tenant had paid rent of $1,092.00 for the month of December 2018. The landlord served the Order of Possession upon the tenant on December 13, 2018 and the tenant vacated the rental unit on December 15, 2018.

The landlord did not prepare a move-in inspection report. Nor, was I provided any photographs of the rental unit at the start of the tenancy. Nevertheless, I was provided consistent testimony of both parties that the rental unit had been recently constructed when the tenancy began. The tenant stated she believed someone else had lived in the rental unit before she did. The landlord's agent denied that to be true.

The landlord did not invite the tenant to participate in a move-out inspection. The landlord's agent stated that a move-out inspection was not proposed to the tenant because she had been evicted, the tenant was not home, and because there was a restraining order against the tenant's boyfriend. The landlord prepared a move-out inspection report without the tenant present on December 16, 2018. The landlord also took several photographs of the rental unit after the tenant vacated.

The tenant provided a forwarding address to the landlord via an email sent on December 16, 2018. The landlord filed this claim on December 31, 2018 seeking

compensation for cleaning and damage. Below, I have summarized the landlord's claims and the tenant's responses.

Cleaning -- $130.00

The landlord's agent submitted that the rental unit was left unclean. A cleaning lady was hired to clean the floors, windows, fridge, strove, bathroom, cupboards and the like at a cost of $130.00. The landlord pointed me to the photographs and receipt provided as evidence. The landlord provided a receipt for a "move out clean" dated December 20, 2018.

The tenant testified initially that she cleaned the unit along with her son and a friend. The tenant later testified that she cleaned the unit with the help of six co-workers. The tenant was of the position she left the rental unit in good, clean condition especially considering she had only two days to vacate. The tenant pointed out that in the photograph of the fridge there is the remnants of glue that would not come off since the start of the tenancy but that it was not left dirty.

Carpet cleaning -- $126.00

The landlord submitted that the carpeting in the rental unit was left filthy and it appears to never have been cleaned. The landlord had the carpets cleaned at a cost of $126.00 and seeks to recover that from the tenant. The landlord submitted photographs of the carpeting and a carpet cleaning receipt dated December 20, 2018.

The tenant testified that she had rented a steam cleaner a couple of times during the tenancy and the carpets were clean.

Broken transition pieces and drywall repairs -- $288.75

The landlord's agent stated the transition pieces between the tile floor and the laminate flooring were broken and cracked. Also, the drywall had large chips at the end of the tenancy. The landlord provided an estimate dated December 26, 2018 to have all of the transition pieces and the drywall repaired at a cost of $288.75

The tenant submitted that the transition pieces cracked early in the tenancy and she informed the landlord of this. The tenant testified that in response, the landlord told her that the transition pieces in the upper unit where he lived had also cracked. The tenant is of the position that substandard material was improperly installed as transition pieces

and that is the reason the transition pieces cracked. The tenant stated that she is unaware of any large chips or holes in the drywall and explained that she did not hang any pictures or artwork.

Broken patio door blind – $55.91

The landlord submitted that at the end of the tenancy there was a crack at the top of the vinyl blinds and the blinds were new shortly before the tenancy started. The landlord provided a photograph of the broken blind and a print-out from the internet to demonstrate the cost to purchase a new vinyl blind.

The tenant agreed that there was a crack at the top of the blind but stated that it was there when her tenancy started.

Double security deposit

The tenant was of the position the security deposit should be doubled because the landlord did not prepare move-in and move-out inspection reports with her and did not refund the security deposit within 15 days of her tenancy ending.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

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.

In this case, the landlord, as the applicant, bears the burden of proof. The burden of proof is based on the balance of probabilities.

Upon consideration of everything before me, I provide the following findings and reasons with respect to the landlord's claim for compensation for cleaning and damage against the tenant and her security deposit.

Where a landlord fails to prepare condition inspection reports with the tenant, the landlord extinguishes the right to make a claim for damage against the tenant's security deposit, as provided in sections 24 and 36 of the Act. In this case, it is clear the landlord extinguished his right to make a claim against the security deposit for damage due to failure to prepare a move-in inspection report with the tenant. However, the failure to prepare condition inspection reports does not automatically entitle a tenant to double the security deposit. Doubling of the security deposit is provided in section 38 of the Act.

Under section 38(1) of the Act, the landlord has 15 days, from the date the tenancy ends or the tenant provides a forwarding address in writing, whichever date is later, to either refund the security deposit, get the tenant's written consent to retain it, or make an Application for Dispute Resolution to claim against it. Section 38(6) provides that if the landlord violates section 38(1) the landlord must pay the tenant double the security deposit.

In this case, the tenant provided a forwarding address to the landlord via an email sent on December 16, 2019. Section 88 of the Act does not recognize email as an acceptable way of giving a document and section 90 does not provide a deeming provision as to when an email is considered received. Accordingly, I find the tenant had not given a forwarding address to the landlord, in writing. Nevertheless, the landlord used the address the tenant provided to him in the email and made a claim against the tenant and her security deposit on December 31, 2018 which is within 15 days of receiving the email and the landlord's claim included amounts for things other than damage. Therefore, I find the landlord did not violate section 38(1) and the tenant is not entitled to doubling of the security deposit.

The tenant remains entitled to a credit for the single amount of the security deposit and I proceed to consider whether the landlord is entitled to compensation for the amounts sought.

Cleaning and carpet cleaning

Under section 37 of the Act, a tenant is required to leave a rental unit "reasonably clean" at the end of the tenancy. The parties were in dispute as to whether the tenant left the unit reasonably clean at the end of the tenancy.

I have given the most evidentiary weight to the photographs provided to me. I do not consider the move-out inspection report prepared by the landlord only on December 16, 2018 to be the best evidence in this case since it was not prepared with the tenant as required under section 35 of the Act. In this case, I reject the landlord's various excuses for not inviting the tenant to participate in the move-out inspection. The parties were aware the tenancy was ending following the hearing of December 4, 2018 meaning the landlord has sufficient opportunity to propose a date and time for the move-out inspection to the tenant, as required,; and, the restraining order was against the tenant's boyfriend, not the tenant.

Upon review of the photographs, I find I am satisfied the rental unit was not left reasonably clean. The inside of the refrigerator is clearly soiled with spilled food or drink and I reject that it was left with the remnants of glue only. The cupboards also appear dirty and the carpets are very heavily soiled. I find the amounts claimed by the landlord are reasonable and supported. Therefore, I grant the landlord's request to recover $130.00 and $126.00 from the tenant for cleaning and carpet cleaning.

Broken transition pieces and damaged drywall

Section 32 of the Act provides that a tenant is required to repair damage caused to the rental unit or residential property by their actions or neglect, or those of persons permitted on the property by the tenant. Section 37 of the Act requires the tenant to leave the rental unit undamaged at the end of the tenancy. However, sections 32 and 37 also provide that reasonable wear and tear is not considered damage. Accordingly, a landlord may pursue a tenant for damage caused by the tenant or a person permitted on the property by the tenant due to their actions or neglect, but a landlord may not pursue a tenant for reasonable wear and tear or pre-existing damage.

The photographs provided to me depict the transition pieces that have cracks that run the length of the transition piece. I note that the photographs show transition pieces that are placed between carpeted and laminate flooring, not tiled flooring adjacent to laminate as stated by the landlord's agent. Also, the carpeting appears higher than the laminate and I accept the tenant's explanation for the reason the transition pieces cracked to be reasonably likely and not the result of damage the tenant caused. Therefore, I do not hold the tenant responsible for replacing the transition pieces.

The landlord provided photographs of a gouge in the drywall, a scrape in the bi-fold closet door, and an area where a towel holder appears to have been. Considering this was a tenancy nearing four years, I find the marks to be borderline between wear and

tear and damage. However, upon review of the estimate provided in support of this claim, I note that the estimated amount encompasses replacement of transition pieces and the drywall touch-ups without a breakdown of each task. As such, I find I cannot determine the cost of the drywall repairs from the replacement cost of the transition pieces, which I have denied. Therefore, I find the landlord has not satisfied me that the tenant is responsible to compensate the landlord a specific amount for drywall repairs.

In light of the above, I deny the landlord's claim to recover $288.75 for broken transition pieces and damaged drywall.

Broken patio blind

It was undisputed that the blind was broken at the end of the tenancy and the parties were in dispute as to whether the blind was broken at the start of the tenancy. I find, on the balance of probabilities, that the blind was broken during the tenancy. I make this finding considering the rental unit was newly constructed prior to the tenancy and I find it unlikely a broken blind would have been installed. However, when I consider the blind was made of a vinyl material, and such blinds are relatively inexpensive to purchase, I find it appropriate to recognize the vinyl blinds do not have a very long expected useful lifespan and depreciation must be taken into consideration in awarding the landlord compensation.

I find it reasonable to expect a vinyl blind would last 5 years. Considering the tenancy was nearing four years in duration, I award the landlord compensation equivalent to 20% of the replacement cost, or $11.81 [calculated as $55.91 x 20%].

Filing fee, security deposit and Monetary Order

The landlord was partially successful in his claims against the tenant and I award the landlord recovery of one-half of the filing fee, or $50.00, from the tenant.

Based on all of my findings and awards described above, the landlord is entitled to compensation totaling $317.81 [$130.00 + $126.00 + $11.81 + $50.00] and I authorize the landlord to deduct that sum from the tenant's security deposit and I order the landlord to return the balance of the tenant's security deposit in the amount of $207.19 to the tenant without further delay.

In keeping with Residential Tenancy Policy Guideline 17: *Security Deposit & Set-off*, I provide the tenant with a Monetary Order in the amount of $207.19 to ensure the landlord returns the balance of the security deposit owed to the tenant.

Conclusion

The landlord was partially successful in his claims against the tenant and has been awarded compensation totalling $317.81. The landlord is authorized to deduct that sum from the tenant's security deposit and is ordered to return the balance of the security deposit in the amount of $207.19 to the tenant without delay. The tenant is provided a Monetary Order in the amount of $207.19 to ensure payment is made.

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: April 17, 2019

Residential Tenancy Branch