Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT
MNDL-S, FFL

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the "*Act*"). The matter was set for a conference call.

The Tenant's Application for Dispute Resolution was made on January 21, 2019. The Tenant applied for the return of their security deposit and the return of their filing fee. The Landlords' Application for Dispute Resolution was made on March 22, 2019. The Landlords applied for a monetary order for losses due to the tenancy, permission to retain the security deposit and to recover their filing fee.

Both the Landlords and the Tenant attended the hearing and were each affirmed to be truthful in their testimony. The Tenant and the Landlords were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The Tenant and the Landlords testified that they received each others documentary evidence that I have before me.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Are the Landlords entitled to monetary compensation for damages under the *Act*?
- Are the Landlords entitled to retain the security deposit in satisfaction of their claim?
- Are the Landlords entitled to recover the cost of the filing fee?
- Is the Tenant entitled to the return of the security deposit?
- Is the Tenant entitled to recover the cost of the filing fee?

Background and Evidence

Both parties testified that the tenancy began on November 1, 2018, as a two-month fixed term tenancy. Rent in the amount of $3,000.00 was to be paid by the first day of each month and at the outset of the tenancy, the Tenant paid a $1,500.00 security deposit. The Tenant provided a copy of the tenancy agreement into documentary evidence.

The Landlord and the Tenant agreed that the Tenant had physically moved into the rental unit, later in the month, on November 15, 2018. Both parties agreed that the move-in inspections had not been conducted for this tenancy but that the Tenant had sent the Landlords an email the day he moved in stating that the lock on the front door and the fireplace were not working.

Both parties also testified that the Tenant moved out of the rental unit in accordance with the tenancy agreement on January 2, 2019. Both parties agreed that the move-out inspections had not been conducted for this tenancy. The parties agreed that a move-out inspection had been scheduled but that the Landlords were several hours late for the scheduled time and that the Landlords did not attempt to arrange a second inspection time.

The Tenant testified that he provided the Landlord with his forwarding address on January 3, 2018. The Tenant testified that he received a cheque returning $559.20, of his $1,500.00 security deposit on January 29, 2019, but that he received notification from his bank that a “stop payment” had been placed on that cheque. The Tenant testified that he had not given the Landlords permission to keep his security deposit.

The Landlords testified that they had received the Tenant’s forwarding address and had returned the security deposit, less their costs for repairs and cleaning. The Landlords testified that they had also put a stop payment on the cheque they had set to the

Tenant, once they received the notification that the Tenant had taken them to a hearing for the return of the full deposit.

The Landlords testified that they are requesting to retain $1,213.60 of the security depots for this tenancy, consisting of; $900.00 to replace a section of the kitchen countertop and $313.60 for cleaning the rental unit at the end of the tenancy.

The Landlords testified that the rental unit had been clean and in good condition at the beginning of this tenancy. The Landlords submitted an email for a third party that had conducted the move-out inspection for them, for the previous tenancy, into documentary evidence.

The Landlords testified that it took them eight hours to clean the rental unit at the end of this tenancy and that they are requesting $313.60 in compensation for their time to clean the rental unit, at $35.00 per hour plus tax. The Landlords did not submit a bill for the cleaning, stating that they had done the cleaning themselves. The Landlords also did not provide evidence that they had submitted the tax they are claiming for to the government. The Landlords submitted 25 pictures of the rental unit into documentary evidence.

The Tenant testified that he had returned the rental unit to the Landlords clean and in the same condition that he had received it, with only minor wear and tear.

The Landlords testified that the Tenant had damaged the kitchen countertop during the tenancy; that there were several round burn marks on the counter that they believed were caused by a hot milk container. The Landlords submitted six pictures of the kitchen countertop, an estimate for the cost to the replace the damaged section of the countertop and a bill for the purchase and installation of a countertop, dated March 26, 2019, into documentary evidence.

The Tenant testified that he had not damaged the countertop during the tenancy and that the marks the Landlords are claiming he caused, were there at the beginning of his tenancy.

Analysis

Based on the testimony, the documentary evidence before me, and on a balance of probabilities, I find as follows:

Section 38(1) of the *Act* gives the landlord 15 days from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to file an Application for Dispute Resolution claiming against the deposits or repay the security deposit and pet damage deposit to the tenant.

Return of security deposit and pet damage 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.

I accept the agreed upon testimony of these parties, and find that this tenancy ended on January 2, 2019, the date the Tenant moved out of the rental unit and that the Tenant provided his forward address to the Landlord on January 3, 2019. Accordingly, the Landlord had until January 19, 2019, to comply with section 38(1) of the *Act* by either repaying the deposits in full to the Tenant or submitting an Application for Dispute resolution to claim against the deposits. The Landlords, in this case, returned a portion of the security deposit to the Tenant and did not file to retain the security deposit until March 22, 2019, 61 past the statutory deadline.

At no time does a landlord have the right to simply keep the security deposit because they feel they are entitled to it or are justified to keep it. If the landlord and the tenant are unable to agree, in writing, to the repayment of the security deposit or that deductions be made, the landlord must file an Application for Dispute Resolution within 15 days of the end of the tenancy or receipt of the forwarding address, whichever is later. It is not enough that the landlord thinks they are entitled to keep even a small portion of the deposit, based on unproven claims.

I find that the Landlords breached section 38 (1) of the *Act* by not returning the Tenant's deposits or filing their claim against the deposits within the statutory timeline.

Section 38 (6) of the *Act* goes on to state that if the landlord does not comply with the requirement to return or apply to retain the deposit within the 15 days, the landlord must pay the tenant double the security deposit.

Return of security deposit and pet damage deposit

38 (6) If a landlord does not comply with subsection (1), the landlord

(a)may not make a claim against the security deposit or any pet damage deposit, and

(b)must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Therefore, I find that pursuant to section 38(6) of the *Act* the Tenant has successfully proven his entitled to the return of double the security deposit. I find for the Tenant, in the amount of $3,000.00, awarding the return of double the security deposit.

As for the Landlords claim for compensation for repairing the countertop and cleaning the rental unit at the end of the tenancy, in the amount of $1,213.60.

Awards for compensation due to damage are provided for under sections 7 and 67 of the *Act.* A party that makes an application for monetary compensation against another party has the burden to prove their claim. The Residential Tenancy Policy Guideline #16 Compensation for Damage or Loss provides guidance on how an applicant must prove their claim. The policy guide states the following:

> "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. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To determine whether compensation is due, the arbitrator may determine whether:
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> - A party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
> - Loss or damage has resulted from this non-compliance;
> - The party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
> - The party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

I accept the testimony of both parties that the Landlords did not conduct the written move-in inspection for this tenancy. Section 23 of the *Act* states the following:

Condition inspection: start of tenancy or new pet

23 (1) The landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.

(2) The landlord and tenant together must inspect the condition of the rental unit on or before the day the tenant starts keeping a pet or on another mutually agreed day, if

(a) the landlord permits the tenant to keep a pet on the residential property after the start of a tenancy, and

(b) a previous inspection was not completed under subsection (1).

(3) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.

(4) The landlord must complete a condition inspection report in accordance with the regulations.

(5) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.

(6) The landlord must make the inspection and complete and sign the report without the tenant if

(a) the landlord has complied with subsection (3), and

(b) the tenant does not participate on either occasion.

I find that the Landlords were in breach of section 23(1) of the *Act* by not completing the written move-in inspection.

I also accept the testimony of both parties that the Landlords were several hours late for the scheduled move-out inspection, and that they did not attempt to schedule a second move-out inspection time with the Tenant. Section 35 of the *Act* states the following:

Condition inspection: end of tenancy

35 (1) The landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit

(a) on or after the day the tenant ceases to occupy the rental unit, or

(b) on another mutually agreed day.

(2) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.

> (3) The landlord must complete a condition inspection report in accordance with the regulations.
> (4) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.

I find that the Landlords were in breach of section 35(1) of the *Act* by not completing the move-out inspection and that they were in breach of section 35(2) of the *Act* when they only offered the Tenant one opportunity to schedule the move-out inspection.

Therefore, I find that the Landlord did not complete the move-in or the move-out inspection reports as required and in accordance with the *Act*.

The move-in/move-out inspection is an official document that represents the condition of the rental unit at the beginning and the end of a tenancy, and it is required that this document is completed in the presence of both parties. In the absence of that document, I must rely on verbal testimony given during these proceedings, regarding the condition of the rental unit at the beginning and the end of the tenancy.

However, I find that the parties to this case offered conflicting verbal testimony regarding the cleanliness of the rental unit, and the condition of the kitchen countertops at the beginning of this tenancy. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

I have reviewed the documentary evidence submitted by the Landlords, and I note that the only document regarding the condition of the rental unit at the beginning of this tenancy was an email, from a third party, dated March 25, 2019, which states that the rental unit had been clean as October 31, 2018. I find this document to be unreliable, as it was written over two months after this tenancy had ended and it stated the condition of the rental unit fifteen days before this Tenant had physically taken possession of the rental unit.

I have also reviewed the 31 pictures taken of the rental unit at the end of tenancy, submitted by the Landlord. However, in the absence of documents or pictures to show the condition of the rental unit at the beginning of the tenancy, to compare these pictures too, I find these pictures to be unusable as evidence to these proceedings. Overall, I find that the Landlords have not submitted sufficient documentary evidence to

support their claim for compensation for cleaning the rental unit and for the replacement of the kitchen countertop.

Therefore, I dismiss the Landlords' claim for compensation for cleaning the rental unit and purchasing a replacement section of kitchen countertop.

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenant has have been successful in his application, I find that the Tenant is entitled to recover the $100.00 filing fee paid for this application.

As the Landlords have not been successful in their application, I find that the Landlords are not entitled to recover the $100.00 filing fee paid for their application.

Conclusion

I find that the Landlords' breached section 38 of the *Act* when they failed to repay or make a claim against the security deposit as required by the *Act*.

I dismiss the Landlords' claim for compensation.

I find for the Tenant pursuant to sections 38 and 72 of the *Act*. I grant the Tenant a **Monetary Order** in the amount of **$3,100.00**. The Tenant is provided with this Order in the above terms, and the Landlords must be served with this Order as soon as possible.

Should the Landlords 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.

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 25, 2019

Residential Tenancy Branch