Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes 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 a monetary claim of $375.00 for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the cost of their filing fee.

The Tenant, her witness, C.H. ("Witness"), and the Landlords, C.P. and T.P. 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 Tenant and the Landlords were given the opportunity to provide their evidence orally and respond to the testimony of the other Party.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution and/or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and that they had reviewed it sufficiently 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.

I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"). However, only the evidence relevant to the issues and findings in this matter are described in this decision letter. At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing.

Issue(s) to be Decided

- Are the Landlords entitled to a monetary order, and if so, in what amount?
- Are the Landlords entitled to recovery of their filing fee?

Background and Evidence

The Parties agreed that the month-to-month tenancy began on January 1, 2017, with a monthly rent of $750.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlords a security deposit of $375.00, and a pet damage deposit of $375.00. The Parties agreed that the Tenant vacated the rental unit on December 1, 2018, and gave the Landlords her forwarding address on December 12, 2018. The Landlords applied for dispute resolution on December 19, 2018.

The Parties agreed that they may have done a walk-through prior to the tenancy; however, they said they did not do a move-in or move-out inspection of the condition of the rental unit or fill out a condition inspection report ("CIR"), pursuant to section 23 of the Act.

The tenancy agreement indicates that the Landlords approved of the Tenant having six specific dogs in the rental unit; the dogs were identified by their name and breed in the tenancy agreement. The tenancy agreement also contained specific terms, beside which the Tenant initialed, including a section entitled "PETS", which included:

> Any animal damage will be deducted from damage deposit.
> . . .
> The 5 dogs have been approved with the provision that: they are not to be replaced if one dies.
> . . .

In the hearing, the Landlord, C.P., said he gave permission for five dogs to be allowed on the property. This and the clause immediately above contradict the section of the tenancy agreement setting out that six specific dogs were allowed. Given that nothing turns on this matter, I do not find this contradiction to be fatal to the Landlords' claims. In the hearing, C.P. said: "At one point, I counted 14 dogs in the enclosure behind the suite."

The Landlord said "There were way too many pets; the smell was unbelievable. Maybe she wasn't running a kennel, but the number of mammals in such a small space was overwhelming, because of the humidity of their bodies."

In their written evidence, the Landlords said:

> The tenant, [E.H.], misrepresented herself as a dog walker that would be off the

> property with her dogs and would pick up other dogs along the way. When in fact she was operating a boarding kennel in our suite without our permission.
> She worked for [named] training rescue, cadaver and dogs for the handicapped on site without our express permission.
>
> Snuck in six puppies and raised them in secret while refusing us access to our suite during those 8 weeks. When questioned why she didn't ask she said she knew we would have refused.
>
> Ran a dog boarding/kennel with as many as 14 dogs kennelled at one time in our 730 sq. ft. suite.
>
> Had a damage deposit of $375 returned by cheque but lost her pet deposit due to the SMELL and damage. See attached photos.
>
> [reproduced as written]

Some of the photos that the Landlords uploaded are blurry and difficult to see, but I find that they show some damage, such as: damage to an electric heat register, mud and dog hair between the wall and rug, the outside mat left covered in dirt and/or dog hair, and the bathroom shelf damaged by the dogs. However, there are no photographs or documentation of the condition of the rental unit before the tenancy began for comparison purposes.

The Tenant said: "The fact that I have dogs and had dogs visiting on occasion was no secret to the Landlord. We lived in fairly close proximity. I had my own dogs and friends' dogs over. We would chat about it and their names, etc. I never knew this was something that was an issue until later."

The Tenant's Witness said in answer to the Tenant's question: "What did the suite smell like [at the end of the tenancy]?":

> It was fresh and clean. We used Mr. Clean a flower scented cleaner, and that was what it smelled like.
>
> The surfaces were very easy to clean. The walls and the floor were easy to do, and were scrubbed and cleaned.
>
> There was one shelf in the bathroom, a particle board shelf with a shelf liner, and the edge of the shelf was chewed and splintered. Otherwise everything was just

> as clean as it could be.

In the hearing, the Landlord, T.P., said that she made notes while the Witness was speaking. T.P. said:

> [The Witness] said the floor and the walls were easy to clean, but there were still lumps of food on the walls up to the ceiling and I had to bleach them three times.
>
> The shelf in the bathroom was not particle board, it was oak plywood. If you compare her pictures to ours the white trim was missing - gone. They cleaned the heaters? The front pops out and that's where we found a mountain of hair. Wiping the outside of the heaters left a lot of hair inside and would smell like dogs no matter how much rose scented cleaner you use.

The Landlords did not submit a monetary order worksheet, but they submitted a page of their application claiming a monetary order in the amount of the pet damage deposit. They did not indicate why they claimed that particular amount, other than saying:

> The damage deposit of $375 has been returned to tenant on Dec 1/18 when she handed back the key, late. The remaining pet deposit we are holding back due to SMELL, filth & damage caused by pets (up to 14 dogs being kenneled without our consent).
>
> [reproduced as written]

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Section 32 of the Act requires tenants to make repairs for damage caused by the action or neglect of the tenant, other persons or pets that the tenant permits on the property. Section 37 requires tenants to leave the rental unit undamaged.

However, the Act sets out the rights and responsibilities surrounding the need to inspect the condition of the rental unit at the start and the end of a tenancy. Parties must complete a CIR, as landlords need evidence to establish that the damage occurred as a result of the tenancy. If there is damage, a landlord may make a claim for damage, but without a CIR, a landlord's right to claim against the security or pet damage deposit for damage to the rental unit is extinguished, pursuant to section 24 of the Act.
In the evidence before me, the Parties agreed that, while they may have done a brief walk-through at the beginning of the tenancy, they did not complete a CIR.

Section 23 sets out the CIR requirement:

> **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.

Section 24 sets out the consequences, if the Parties do not comply with their obligations in section 23:

> **Consequences for tenant and landlord if report requirements not met**
>
> **24** (1) The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if
>
> (a) the landlord has complied with section 23 (3) *[2 opportunities for inspection]*, and
>
> (b) the tenant has not participated on either occasion.
>
> **(2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord**
>
> (a) does not comply with section 23 (3) *[2 opportunities for inspection]*,
>
> (b) having complied with section 23 (3), does not participate on either

occasion, or

(c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

[emphasis added]

I find from the evidence before me that the Landlords extinguished their right to make a claim for damages against the security and pet damage deposits by not completing a CIR. As a result, the Landlords were required to return both the security and pet damage deposits to the Tenant within 15 days of the later of the end of the tenancy and the date the Landlords received the Tenant's forwarding address, pursuant to section 38(1) of the Act. Further, section 38(6) of the Act states:

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.

[emphasis added]

This is consistent with Policy Guideline #17, which states:

7. The right of a landlord to obtain the tenant's consent to retain or file a claim against a security deposit for damage to the rental unit is extinguished if:

• the landlord does not offer the tenant at least two opportunities for inspection as required (the landlord must use Notice of Final Opportunity to Schedule a Condition Inspection (form RTB-22) to propose a second opportunity); and/or

• having made an inspection does not complete the condition inspection report, in the form required by the Regulation, or provide the tenant with a copy of it.

. . .

11. If the landlord does not return or file for dispute resolution to retain the deposit within fifteen days, **and** does not have the tenant's agreement to keep the deposit, the landlord must pay the tenant double the amount of the deposit. Where the landlord has to pay double the security deposit to the tenant, interest is calculated only on the original security deposit amount before any deductions and is not doubled.

[emphasis added]

Accordingly, I award the Tenant the return of double the $375.00 pet damage deposit for a total of **$750.00**. There is no interest payable on this amount.

While the Landlord may still make a claim for damages, he cannot make the claim against the pet damage deposit. In order to prove the claim in damages, the Landlord must follow the four-part test set out in Policy Guideline #16. The Landlord must establish that:

1. damage or loss occurred to the rental unit;
2. the damage or loss was the result of a violation of the tenancy agreement or the Act or regulation by the Tenant;
3. the value of the loss or damage; and
4. the party claiming damages took reasonable steps to mitigate their loss.

[the "Test"]

The Landlords provided photographic and testimonial evidence that damage occurred to the rental unit, due to the animals housed there, which I find more persuasive than the Witness's testimony. I find it more likely than not that the damage resulted from the Tenant's behaviour in keeping too many dogs in the rental unit. The Tenant's failure to properly clean and repair the damage is consistent with a breach of section 32(3) of the Act:

> **32** (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.

I find this means that the Landlords have passed the first two steps in the Test.

However, the Landlords did not provide any explanation as to the costs they incurred trying to clean and/or repair the damage, other than the full amount of the pet damage deposit, so I find the Landlords failed the third step of the Test.

In addition, the Landlords did not point me to evidence that they tried to mitigate the damage by, for instance, notifying the Tenant in writing that she was in breach of the Act and/or tenancy agreement and giving her time to resolve the problem, so I find they failed to pass the fourth step of the Test.

Despite my finding that the Tenant left damage, including the smell of dogs in the rental unit, the Landlord's failure to conduct proper condition inspections, failure to complete a CIR, failure to establish the value of the damage, and failure to mitigate the damage, I

award the Landlords a nominal amount of $100.00, pursuant to section 7 of the Act.

As the Landlords were not successful in their Application, I do not award them recovery of the filing fee in this matter.

Conclusion

I found that the Tenant breached section 32 of the Act, leaving damage to the rental unit by having more dogs in the rental unit than were allowed by the Landlords; however, the Landlords failed to conduct condition inspections before and after the tenancy, and they failed to provide sufficient evidence establishing the value of the damage and that they mitigated the damage in the circumstances. As such, I grant the Landlords only a nominal monetary award of $100.00.

In not conducting the condition inspections pursuant to the Act, the Landlords extinguished their right to claim against the pet damage deposit they retained, and pursuant to section 38(6), they must pay the Tenant double the pet damage deposit

I authorize the Landlords to set off the $100.00 nominal award against the Tenant's doubled pet damage deposit of $750.00 in satisfaction of the claim, and I direct them to return the remaining amount of **$650.00** to the Tenant, as soon as possible.

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 30, 2019

Residential Tenancy Branch