Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WIDSTEN PROPERTY MANAGEMENT INC. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S, FFL

Introduction

On March 5, 2019, the Landlord applied for a Dispute Resolution proceeding seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the "*Act*"), seeking to apply the security deposit towards these debts pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act.*

T.S. attended the hearing as an agent for the Landlord, and the Tenants attended the hearing as well. All in attendance provided a solemn affirmation.

T.S. advised that the Notice of Hearing package and evidence was served to each Tenant by registered mail on March 12, 2019. However, these packages were served again to each Tenant on March 14, 2019 after the Tenants provided their correct forwarding address via email on March 13, 2019. The Tenants acknowledged that they provided their forwarding address by email on March 13, 2019 and that they received these packages. Based on this undisputed testimony, as these packages were served in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenants were served the Landlord's Notice of Hearing package and evidence. As such, I have considered this evidence when rendering this decision.

The Tenants advised that they served the Landlord their evidence by hand on April 20, 2019 and the Landlord confirmed that she received this package. As service of this evidence complies with the time frame requirements of Rule 3.15 of the Rules of Procedure, I am satisfied that the Landlord has been served with the Tenant's evidence. As such, I have considered their evidence when rendering this decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to a Monetary Order for compensation?
- Is the Landlord entitled to apply the security deposit towards these debts?
- Is the Landlord entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on January 1, 2018 and ended on February 20, 2019 when the Tenants gave up vacant possession of the rental unit. Rent was established at $1,200.00 per month, due on the first day of each month. A security deposit of $600.00 was also paid.

All parties agreed that a move-in inspection report was conducted with the Tenants on December 29, 2017 and that a move-out inspection report was conducted with the Tenants on February 20, 2019.

T.S. submitted that the Landlord is seeking compensation in the amount of **$262.50** for the cost to plaster, sand, and re-paint some walls due to holes that the Tenants left. She stated that there was a TV mounted on the wall and that there were many holes in the walls around the rental unit that needed to be fixed. She stated that she had a discussion with the Tenants regarding who was responsible for patching and painting the walls, and she speculated that there was likely a miscommunication as the Tenants patched the walls when they should not have. She referenced a document dated February 5, 2019 which specifically advised the Tenants not to touch up any holes in the walls. She stated that the Tenants' efforts to repair the damage were insufficient and the rental unit was not re-rentable in the condition it was left. She referenced an invoice

of the painter's cost to fix the damage and she advised that the pictures submitted demonstrate the severity of the damage.

The Tenants confirmed that they hung up shelves and pictures, and before patching the walls, they emailed T.S. to ask for paint. They submitted an email, dated February 8, 2019, as documentary evidence where T.S. stated that if the holes were from the previous tenant, not to fix the damage. However, if the Tenants were responsible for the damage, they would need to fix it. They stated that they patched the holes, but they would not have done so if T.S. had advised them not to.

T.S. stated that the previous tenant was evicted and that the Tenants accepted that some patches on the walls were from the previous tenant. She submitted that the letter dated February 5, 2019 specifically advised the Tenants not to touch up any holes, and this is also noted in the tenancy agreement.

T.S. submitted that the Landlord is also seeking compensation in the amount of **$420.00** for spray paint damage on the balcony flooring. She stated that she went to the building with the owners in October 2018 and observed that the Tenants had a drop sheet outside on the balcony. It appeared as if the Tenants were painting something and that there was paint overspray on the balcony flooring. She stated that she asked Tenant I.B. what this was; however, she did not know. T.S. advised that she had building maintenance try and remove this paint three times, but they were not successful, so the flooring needed to be replaced entirely. She confirmed that the functionality of the flooring was not affected, but the aesthetic was ruined. She referenced a picture of the deck and an invoice of the maintenance company's cost to attempt to rectify the damage.

The Tenants stated that T.S. never marked this damage on the move-out inspection report. As well, they stated that the deck was shared with another unit and speculated that the neighbouring tenant could have painted something on their side of the balcony. They advised that there was no evidence of a drop sheet. They also provided pictures to demonstrate that the white marks that T.S. suggests is paint is actually "snow mould".

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

Sections 24(2) and 36(2) of the *Act* state that the right of the Landlord to claim against a security deposit for damage is extinguished if the Landlord does not complete the condition inspection reports. Based on the undisputed evidence before me, I am satisfied that the Landlord complied with the *Act* and conducted a move-in and move-out inspection report. Therefore, the Landlord still retains a right to claim against the security deposit.

Section 38(1) of the *Act* requires the Landlord, within 15 days of the end of the tenancy or the date on which the Landlord receives the Tenants' forwarding address in writing, to either return the deposit in full or file an Application for Dispute Resolution seeking an Order allowing the Landlord to retain the deposit. If the Landlord fails to comply with Section 38(1), then the Landlord may not make a claim against the deposit, and the Landlord must pay double the deposit to the Tenants, pursuant to section 38(6) of the *Act*.

The undisputed evidence is that the forwarding address was provided to the Landlord by email on March 13, 2019 and that the Landlord made the Application within the 15 - day frame to claim against the deposit. As the Landlord complied with Section 38(1) of the *Act* by making a claim within 15 days, I find that they have complied with the requirements of the *Act*. Therefore, the doubling provisions do not apply.

With respect to the Landlord's claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

Regarding the Landlord's claim in the amount of $262.50 for the cost to repair the holes in the walls, Policy Guideline # 1 states the following:

- Most tenants will put up pictures in their unit. The landlord may set rules as to how this can be done e.g. no adhesive hangers or only picture hook nails may be used. If the tenant follows the landlord's reasonable instructions for hanging and removing pictures/mirrors/wall hangings/ceiling hooks, it is not considered damage and he or she is not responsible for filling the holes or the cost of filling the holes.
- The tenant must pay for repairing walls where there are an excessive number of nail holes, or large nails, or screws or tape have been used and left wall damage.
- The tenant is responsible for all deliberate or negligent damage to the walls.

There is no evidence before me that the Landlord established how the Tenants may specifically hang items on the walls. Furthermore, both parties agreed that there were some patches on the walls prior to the Tenants moving into the rental unit. However, when reviewing the move-in inspection report, the only deficiencies noted were “marks from TV”. There is no definitive evidence outlining which patches were attributed to the previous tenant, and which were as a result of the Tenants. As such, based on the lack of persuasive evidence before me, I am not satisfied that the Landlord established that the Tenants created an “excessive number of nail holes”, or large holes in the wall that would be considered deliberate or negligent. Consequently, I am not satisfied that the Landlord has substantiated this claim, and I dismiss it in its entirety.

With respect to the Landlord’s claim of $420.00 for the damage to the balcony flooring, the pictures from both parties clearly show that there is a white paint overspray on the tiles. I do not find it reasonable or likely that this was attributed to the neighbouring tenant coming over and spray painting something on the Tenants’ side of the balcony. As such, I am satisfied that the Tenants more likely that not were responsible for this damage. While this damage does not affect the functionality of the flooring and appears to be more of an aesthetic loss, I am satisfied that the Landlord has established that they should be granted a monetary award in the amount of **$420.00** to cover the cost of the attempts by maintenance to clean the deck and remove this paint.

As the Landlord was successful in this Application, I find that they are entitled to recover the $100.00 filing fee paid for this Application. Under the offsetting provisions of Section 72 of the *Act*, I allow the Landlord to retain a portion of the security deposit in satisfaction of the amount awarded.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Tenants a Monetary Order as follows:

Calculation of Monetary Award Payable by the Landlord to the Tenants

Security deposit	$600.00
Deck maintenance	-$420.00
Filing fee	-$100.00
TOTAL MONETARY AWARD	**$80.00**

Conclusion

The Tenants are provided with a Monetary Order in the amount of **$80.00** in the above terms, and the Landlord must be served with **this Order** as soon as possible. Should the Landlord 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: May 30, 2019

Residential Tenancy Branch