Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CAPREIT LIMITED PARTNERSHIP and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFL MNDL-S

Introduction

This hearing dealt with applications from both the landlord and tenants pursuant to the Residential Tenancy Act.

The landlord applied for:

- A monetary award for damages and loss pursuant to section 67;
- Authorization to retain the security and pet damage deposit for this tenancy pursuant to section 38; and
- Authorization to recover the filing fee from the tenants pursuant to section 72.

The tenant applied for:

- A return of the security and pet damage deposit for this tenancy pursuant to section 38; and
- Authorization to recover the filing fee from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The corporate landlord was represented by its agent (the "landlord"). The co-tenant EK (the "tenant") spoke on behalf of both named tenants.

As both parties were present service was confirmed. The parties each testified that they had been served with the other's materials. Based on the testimonies I find that each party was served with the respective materials in accordance with sections 88 and 89 of the *Act*.

Rule 2.10 of the Residential Tenancy Branch Rules of Procedure grants me the authority to join applications for dispute resolution and hear them together at the same hearing.

I was originally scheduled to only hear the landlord's application but as the parties consented to the matters being combined and as I find that the applications pertain to the same issue of the security and pet damage deposit and the same facts would be considered I ordered that the matters be combined.

Issue(s) to be Decided

Is either party entitled to a monetary award as claimed?
Is either party entitled to the deposits for this tenancy?
Is either party entitled to recover the filing fee from the tenants?

Background and Evidence

The parties agree on the following facts. This periodic tenancy began in May, 2017. A security deposit of $787.50 and pet damage deposit of $787.50 were collected at the start of the tenancy and are still held by the landlord. This tenancy ended on April 30, 2019 when the parties participated in a move-out inspection. The parties disagreed on the condition of the rental unit and the tenant did not provide authorization that the landlord may retain any portion of the security deposit.

The tenant provided a forwarding address in writing by a letter dated April 29, 2019 and a subsequent email sent on April 30, 2019. The landlord filed their application for dispute resolution including an application to retain the deposits on May 15, 2019. The tenant submits that they did not receive the landlord's application until early June, 2019.

The landlord submits that the rental unit floors were left in a poor state at the end of the tenancy. The landlord testified that the laminate flooring was considerably scuffed and several slats were raised above others. The landlord submits that the cost of repairs to the flooring is $6,145.83. The landlord submitted a quotation from a flooring company as evidence of the monetary amount of their loss.

Analysis

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or receiving a forwarding address in writing. If that does not occur, the landlord must pay a monetary award pursuant to section 38(6) of the *Act* equivalent to double the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the security deposit.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

In the present case the tenancy ended on April 30, 2019 and the landlord filed their application for dispute resolution on May 15, 2019, within the 15 days provided under the Act. While the tenant makes some submissions that they were not served with the landlord's application within the 15 days, I find that is irrelevant to the requirement that the landlord file their application. I find that the landlord filed their application within the 15 days provided under the *Act*.

The parties disagree on the state of the rental unit at the end of the tenancy. The landlord submits that the floors of the suite were considerably damaged and that the damages arise from the tenancy. The tenants dispute that they caused anything more than expected wear and tear and are not liable for the replacement of all laminate flooring in the suite.

On a balance of probabilities, I find that the landlord has not established their monetary claim. The few photographs submitted by the landlord show some discoloration to the flooring and fraying of the edges of slats but I find this is insufficient to conclude that the tenant caused these issues or that they require a full replacement of the floors throughout the rental suite. I find that the landlord's evidence shows nothing more than the expected wear and tear to laminate flooring after occupation and normal usage. I do not find that the issue with raised slats to be reasonably attributable to the tenants. I

find that the landlord has not established, on the basis of their evidence, that the tenants are responsible for damage to the rental suite.

Furthermore, I find that the amount the landlord claims as the cost of repairs to the rental suite is far in excess of what is reasonable. The amount quoted is for the cost of replacing flooring throughout the rental suite. If there were damage to the suite, which has not been shown on a balance of probabilities, the tenants would only be responsible for the cost of restoring the rental unit to its previous state not for upgrades to the entirety of the suite.

The landlord seeks an award of $6,145.83, the cost of fully replacing and installing the flooring and underlay of the suite. I find that there is insufficient evidence in support of the landlord's claim. The minimal evidence provided merely shows some expected wear and tear. I find that the images submitted do not show that the rental suite is so damaged that a full replacement of flooring is required or reasonable.

I find that the landlord has not shown that the tenants are responsible for damage to the rental suite. As such, I dismiss the landlord's application for a monetary award and authorization to retain the deposits for this tenancy.

I order that the landlord return the tenants' security and pet damage deposit in the total amount of $1,575.00. No interest is payable over this period.

As the tenants were successful in their application they may recover their filing fee from the landlord.

Conclusion

I issue a monetary award in the tenants' favour as against the landlord in the amount of $1,675.00 which allows the tenants to recover the security and pet damage deposit for this tenancy and recover the filing fee.

The tenants are provided with a Monetary Order 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.

The landlord's application is dismissed without leave to reapply.

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: August 27, 2019

Residential Tenancy Branch