Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNDCL-S, FFL; MNSD, FFT

Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* ("*Act*") for:

- a monetary order for damage to the rental unit and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenants' security and pet damage deposits (collectively "deposits"), pursuant to section 38; and
- authorization to recover the filing fee for their application, pursuant to section 72.

This hearing also dealt with the tenants' application pursuant to the *Act* for:

- authorization to obtain a return of double the amount of the tenants' deposits, pursuant to section 38; and
- authorization to recover the filing fee for their application, pursuant to section 72.

The two landlords and the two tenants attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 32 minutes.

Both parties confirmed receipt of the other party's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that both parties were duly served with the other party's application.

Issues to be Decided

Are the landlords entitled to a monetary order for damage to the rental unit and for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Are the landlords entitled to retain the tenants' deposits?

Are the tenants entitled to obtain a return of their deposits?

Is either party entitled to recover the filing fee for their application?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of both parties' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on August 1, 2017 and ended on April 29, 2019. Monthly rent in the amount of $1,350.00 was payable on the first day of each month. A security deposit of $650.00 and a pet damage deposit of $650.00 were paid by the tenants and the landlords continue to retain both deposits. A written tenancy agreement was signed by both parties. Move-in and move-out condition inspection reports were completed for this tenancy. The tenants provided a written forwarding address to the landlords on April 29, 2019, by way of the move-out condition inspection report. The landlords had written permission to keep $239.36 for utilities, approximately $75.00 for April 2019 utilities, and the kitchen countertop repair to be determined in the future, from the tenants' security deposit. The landlords' application to retain the tenants' deposits was filed on May 2, 2019.

The landlords seek a monetary order of $1,464.78 plus the $100.00 application filing fee. The landlords seek April 2019 utilities of $79.20, which the tenants agreed to pay during the hearing.

The landlords also seek to replace the kitchen countertop for an estimated amount of $1,385.58. The landlords provided a quote for the above amount, claiming that they had not yet replaced the countertop but would do so with the cooperation of the new tenants living in the rental unit. They stated that they thought the counter could be repaired, so they indicated this in the move-out condition inspection report. They maintained that the tenants told them about water damage from their Brita filter during

the tenancy, the landlords tried to temporarily fix the swelling in the seal of the countertop with silicone, the damage did not get any worse, and the landlords did inspections of the unit in the months after the damage occurred and before the tenants moved out. The landlords said that an owner contractor told them that this damage could not be repaired but only replaced, they did not get this information in writing from him in time before this hearing, and they provided a brochure indicating that only replacement, not repair, was possible for this seam swelling type of damage. They claimed that while the countertop was usable, nothing could be laid flat on the surface, like a cutting board. They provided photographs of same.

The tenants dispute the landlords' claim to replace the kitchen countertop. They agreed to pay $400.00 for this repair, during the hearing. They said that they caused the water damage with their Brita filter during their tenancy, the landlords fixed it with silicone, it was minor damage that equated to reasonable wear and tear, and the countertop was still usable. The tenants claimed that despite inspections done by the landlords during their tenancy in the months after the damage and before they moved out, the landlords did not do any other repairs to the countertop. They claimed that the countertop was not new when they moved in, they did not agree to replace the countertop but rather to repair it, as per the move-out condition inspection report.

In their application, the tenants seek the return of double the amount of their deposits, totalling $2,600.00, plus the $100.00 filing fee paid for their application.

Analysis

Landlords' Application

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicants to establish the claim on a balance of probabilities. In this case, to prove a loss, the landlords must satisfy the following four elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the tenants in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the landlords followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

I award the landlords $79.20 for April 2019 utilities, since the tenants agreed to pay this amount during the hearing.

I award the landlords $400.00 for the repair of the kitchen countertop, due to the tenants causing water damage. The tenants agreed to pay the above amount during the hearing. I find that this is a reasonable amount for the repair. I find that the landlords failed to provide a written document from the owner contractor indicating that the damage could not be repaired but rather had to be replaced. The landlords had ample time from when they filed their application on May 2, 2019, to the hearing date on August 6, 2019, a period of over three months, to provide this evidence. I do not find a general brochure to be evidence of this specific damage.

I also find that the landlords conducted multiple inspections of the countertop during the tenancy, in the months after the damage occurred and prior to the tenants moving out. The landlords did not attempt to repair the damage further after the silicone fix, they did not have it evaluated by a contractor, and they did not inform the tenants that it needed to be replaced at their cost. I further find that during the move-out condition inspection, months after the damage had occurred and the landlords had inspected and repaired it temporarily, the landlords had the tenants agree to pay for a repair, not a replacement. The landlords said that they did not know that it had to be replaced at that time, but they could have had a contractor look at the damage at least when the tenants were moving out, to inform them that a replacement was required.

I find that the damage is minor, it was difficult to locate it the landlords' photographs, which the landlords had to specifically point out during the hearing. I find that the tenants agreed to a repair in the move-out condition inspection report and that is what I have ordered above.

Tenants' Application

Section 38 of the *Act* requires the landlords to either return the tenants' deposits or file for dispute resolution for authorization to retain the deposits, within 15 days after the later of the end of a tenancy and the tenants' provision of a forwarding address in writing. If that does not occur, the landlords are required to pay a monetary award, pursuant to section 38(6)(b) of the *Act,* equivalent to double the value of the deposits. However, this provision does not apply if the landlords have obtained the tenants' written authorization to retain all or a portion of the deposits to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has

previously ordered the tenants to pay to the landlords, which remains unpaid at the end of the tenancy (section 38(3)(b)).

The tenancy ended on April 29, 2019. The tenants provided the landlords with a written forwarding address on the same date in the move-out condition inspection report. The landlords did not return both deposits to the tenants.

I find that the landlords filed an application for dispute resolution to claim against the security deposit on May 2, 2019, which is within 15 days of the forwarding address being provided on April 29, 2019. Therefore, I find that the tenants are not entitled to double the value of their security deposit of $650.00.

The tenants gave the landlords written permission to retain $239.36 for utilities, which the landlords confirmed the tenants paid to them separately before the hearing. Therefore, I order the landlords to retain $79.20 for April 2019 utilities and $400.00 for the kitchen countertop repair, from the tenants' security deposit of $650.00, leaving a balance of $170.80 owed to the tenants.

I find that the tenants are entitled to recover double the value of their pet damage deposit of $650.00, totalling $1,300.00. A pet damage deposit can only be used for damage caused by a pet to the residential property. Section 38(7) of the *Act* states that unless the tenants agree otherwise, the landlords are only entitled to use a pet damage deposit for pet damage.

Both parties agreed at the hearing that the damage to the kitchen countertop was due to water from a Brita filter, not from pet damage. Also, the unpaid utilities, which the landlords had permission to retain from the security deposit, are not damage and are not due to a pet.

Therefore, the landlords did not have written permission to retain the tenants' pet damage deposit at all, they did not file an application to keep the pet damage deposit for pet damage specifically, and they did not return this $650.00 pet damage deposit to the tenants within 15 days of April 29, 2019.
Over the period of this tenancy, no interest is payable on the tenants' deposits. Accordingly, I find that the tenants are entitled to $1,300.00 for their pet damage deposit and $170.80 from their security deposit. I issue a monetary order to the tenants and against the landlords for $1,470.80.

As both parties were only partially successful in their applications, I find that they are not entitled to recover the $100.00 filing fees paid for their applications.

Conclusion

I order the landlords to retain $479.20 from the tenants' security deposit of $650.00.

I issue a monetary order in the tenants' favour in the amount of $1,470.80 against the landlord(s). The landlord(s) must be served with this Order as soon as possible. Should the landlord(s) 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 remainder of both parties' applications are 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 07, 2019

Residential Tenancy Branch