Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, FFL

Introduction

On February 5, 2019, the Landlords made an Application for Dispute Resolution seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the "*Act*"), seeking to apply the security deposit and pet damage deposit towards this debt pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On April 18, 2019, the Tenant made an Application for Dispute Resolution seeking a Monetary Order for compensation pursuant to Section 67 of the *Act*, seeking a return of her security deposit and pet damage deposit pursuant to Section 38 of the *Act*, seeking a return of her personal property pursuant to Section 65 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

As per my Interim Decision of June 12, 2019, the Tenant's Application was dismissed with leave to reapply (the relevant file number is listed on the first page of this decision). As a result, the only Application being addressed in this decision will be that of the Landlords.

Both the Landlords and the Tenant attended the July 12, 2019 adjourned hearing. All in attendance provided a solemn affirmation.

All parties acknowledged the evidence submitted and 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

- Are the Landlords entitled to a Monetary Order for compensation?
- Are the Landlords entitled to apply the security deposit and pet damage deposit towards these debts?
- Are the Landlords 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 June 1, 2017 and ended when the Tenant gave up vacant possession of the rental unit on January 21, 2019. Rent was established at $1,600.00 per month, due on the first day of each month and the Tenant was responsible for one third of the utilities. A security deposit of $800.00 and a pet damage deposit of $200.00 were also paid. A copy of the signed tenancy agreement was submitted into evidence.

The Landlords advised that a move-in inspection report was conducted with the Tenant at the beginning of the tenancy. However, the Tenant advised that this was never conducted and therefore, she was never provided with a copy of this report. She referenced her audio recording to support this position. The Landlords stated that they always conduct this inspection and place a copy of the report in the tenant's mailbox. They cited the audio recording asking if the Tenant brought the report with her to the move-out inspection.

All parties agreed that a move-out inspection report was conducted on January 21, 2019. However, the Tenant alleges that she has not received a copy of the move-out inspection report.

All parties agreed that a forwarding address in writing was provided via an email from the Tenant on January 30, 2019.

The Landlords submitted that they were seeking compensation in the amount of **$1.058.35** and **$511.57** for the cost of plumbing and restoration services required due to the Tenant's negligence. They stated that on January 3, 2019 at 10:10 PM, the Tenant texted them regarding the toilet making noises and not flushing, and of furnace issues. They replied to this message from the Tenant and they asked the upstairs tenant if they were experiencing plumbing issues as well, which they were not. They also contacted a sewage solutions company who told them to monitor the situation, and they had a furnace repair person attend to the furnace on January 4, 2019. As well, they attended the rental unit on January 6, 2019 with a drain clearing product and the Tenant advised that there was no problem with the toilet flushing, but she had "heard noises" coming from it.

On January 10, 2019, the Tenant texted the Landlords as the toilet would not flush and she demanded that it be fixed. The Landlords responded and advised that a plumber could be there that evening or later, but the Tenant stated that it had to be sooner even though it was not an emergency. The Tenant then sent a text stating "911" and attached pictures of the toilet flooding. The Landlords requested that the upstairs tenant attend as he was a plumber, but the Tenant would not allow him access. The Landlords had a sewage solutions company attend the

next day and it was noted that inappropriate debris was found to be flushed down the Tenant's toilet, that the Tenant's actions could be responsible for issues with the septic tank, and that the Tenant refused to allow this company to conduct an inspection for other related issues.

They stated that the RCMP contacted them on January 12, 2019 because the Tenant called them, turned off the water to the house, and locked the garage. The Tenant explained to the RCMP that her toilet was clogged so she turned off the water, but the police advised her to turn the water back on and unlock the garage. The Landlords advised the police that they had a restoration company coming to deal with the issue, but this company did not have the tools to deal with the plug in the tube leading to the septic tank, so a plumber was called to attend. However, the plumber was not available until 6:00 PM and the Tenant stated that she would call her own plumber. The Landlords requested that the restoration company suction the toilet and after the debris was removed from the p-trap of the toilet, it was operating properly. Upon inspection of this debris, a large, plastic bottle cap, paper towels or non-flushable wipes, floor sweepings, and other random items were discovered blocking the toilet.

They stated that there were never any issues or evidence of any problems with the toilet prior to January 2019, and there were no more issues with the toilet after this incident. The only issues that occurred with this toilet were during this small window of time in the midst of the Tenant's tenancy. They referenced two documents submitted as evidence from the plumbing companies indicating that the debris found clogging the Tenant's toilet were retrieved from the p-trap of the toilet and were likely as a direct result of the Tenant's actions. Also submitted to support their claim were pictures of the debris found and invoices for the costs to rectify this issue.

The Tenant advised that her daughter told her of flushing issues with the toilet on January 2, 2019 and the next day, the toilet made weird noises after being flushed. She texted the Landlords about this issue and they advised that someone would be sent out right away. On January 6, 2019 the Landlords attended the rental unit and poured a drain clearing product down the sink drain. The Tenant advised that the toilet was still gurgling. On January 10, 2019, she sent a video to the Landlords showing that the toilet was still gurgling after being flushed and it acted like it was overflowing. The Landlords said that they could attend multiple times that evening but that did not work for the Tenant. She advised that she used the toilet at 6:15 PM, that the toilet backed up with black water, that the sink and tub filled with grey water, and that she then shut off the water.

The Tenant advised that she texted the Landlords about this being an emergency and the upstairs tenant came with a plunger to fix the issue, but she denied him entry as she had issues with him. She advised him to turn off the water, and she sent a message with pictures to the Landlords informing them of "major plumbing issues". She stated that the sewage solutions company attended the next day and dug around the septic tank. She referenced the Landlords' invoice from this company and noted that it stated that the "inlet" was clogged. She advised that as the septic tank is shared, the inappropriate products discovered in the tank could be from other tenants. She pointed to the invoice stating that after their work was completed, "both"

inlets flowed properly; however, the toilet backed up again the next Sunday and she shut off the water.

At this point, the Tenant called the RCMP and her own plumber. The police told her to cancel her plumber because the Landlords had already called one; however, one did not attend. She confirmed that the restoration company came that night to vacuum debris out of the toilet and she speculated that the debris came directly from the septic tank, through her toilet.

The Tenant referenced text messages, that she submitted as documentary evidence to outline the history of their communications and pictures demonstrating the significance of the issues, to support her position that she informed the Landlords of problems with the toilet, but the Landlords refused to take action immediately.

The Landlords submitted that they were seeking compensation in the amount of **$38.64** for the cost to remove and dispose of garbage that the Tenant refused to take with her at the end of the tenancy. They stated that the Tenant submitted pictures in her own evidence of her garbage. They advised that the tenant in the upstairs rental unit disposed of the Tenant's garbage and they submitted a receipt for this cost.

The Tenant stated that she cleaned the rental unit on January 18, 2019 and referenced a text message where she advised the Landlords that the garbage bins were not picked up by the city. As well, she advised them that the garbage was related to the sewer backup and that this was for them to deal with. She referenced pictures submitted as evidence of this garbage and as it was not picked up by the city, she moved it back near the house.

The Landlords submitted that they were seeking compensation in the amount of **$169.29** for the cost of hydro that the Tenant was responsible for as per the tenancy agreement. They stated that the agreement required the Tenant to pay one third of these utilities; however, the Tenant did not pay this amount for December 2018 and January 2019. They advised that it was the Tenant's belief that she did not have to pay this amount, and while the Landlords tried to settle this issue, the Tenant simply left and did not pay.

The Tenant stated that a new tenant moved upstairs on October 31 and the Landlords advised her that the upstairs tenants would be two adults and two children. However, a few weeks later, a fourth adult had moved in upstairs and she advised the Landlords of this, as per her texts submitted as documentary evidence. She stated that she agreed to pay one third of the utilities when there were only two people living upstairs but this amount should be re-negotiated if more people are living upstairs as this is not fair to her. She confirmed that the tenancy agreement stated that she was responsible for one third of the utilities. She submitted that the Landlords proposed lowering the cost of the utility bill to thirty percent, and she responded by email agreeing to pay this amount. However, the Landlords advised that the Tenant never responded to this offer.

The Landlords submitted that they were seeking compensation in the amount of **$323.02** and **$299.76** for the cost of their lost wages. However, they were advised that there are no provisions in the *Act* to provide compensation for such losses. As such, these claims were dismissed in their entirety.

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.

Section 23 of the *Act* states that the Landlords and Tenant must inspect the condition of the rental unit together on the day the Tenant is entitled to possession of the rental unit or on another mutually agreed day.

Section 35 of the *Act* states that the Landlords and Tenant must inspect the condition of the rental unit together before a new tenant begins to occupy the rental unit, after the day the Tenant ceases to occupy the rental unit, or on another mutually agreed day.

Sections 24(2) and 36(2) of the *Act* state that the right of the Landlords to claim against a security deposit for damage is extinguished if the Landlords do not complete the condition inspection reports and provide the Tenant with a copy in accordance with the regulations. However, these sections pertain to a Landlords' right to claim for damage, and as the Landlords also applied for refuse disposal and utilities owing and not solely damage claims, the Landlords still retain a right to claim against the security deposit.

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

The undisputed evidence is that the forwarding address in writing was provided to the Landlord on January 30, 2019 and that the tenancy ended when the Tenant gave up vacant possession of the rental unit on January 21, 2019. As such, the Landlords made their Application within the 15-day frame to claim against the deposit. As the Landlords were entitled to claim against the security deposit still, and as they complied with Section 38 (1) of the *Act* by making a claim within 15 days of January 30, 2019, I find that they have complied with the requirements of the *Act* and therefore, the doubling provisions do not apply to the security deposit.

However, the pet damage deposit can only be claimed against if there is damage due to pets. As the Landlords did not advise of any damage that was due to pets, the pet damage deposit should have been returned in full within 15 days of January 30, 2019. As the Landlords did not return the pet damage deposit in full within 15 days of January 30, 2019, the Landlords in essence illegally withheld the pet damage deposit contrary to the *Act*. Thus, I am satisfied that the Landlords breached the requirements of Section 38. As such, under these provisions, I grant the Tenant a Monetary Order amounting to double the original pet damage deposit, or **$400.00**.

With respect to the Landlords' 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 Landlords' claim for compensation in the amount of **$1.058.35** and **$511.57** for the cost of plumbing and restoration services caused by the Tenant's negligence, I have before me evidence submitted by the Landlords of two different companies indicating that products were discovered that should not be flushed down a toilet. Furthermore, one of those companies specifically indicated in an email dated January 13, 2019 that work was done on the toilet in the lower suite to extract debris and upon further inspection of this debris, they "found paper towels or non-flushable wipes, and a bottle cap. The cap was a larger cap, not from a pop bottle, at least one and a half time[sic] that size."

While the Tenant's main arguments are that there was a problem with the toilet and it is her belief that the Landlords did not respond appropriately to her requests with the toilet, the evidence from the plumbing professionals point to the issue with the toilet being as a direct result of materials that the Tenant was flushing down her toilet. I find it important to note that the Tenant has not provided any evidence to contradict these findings. Furthermore, I do not find it likely that these companies would attribute these items in a report as coming from the Tenant's toilet if there was a potential for them to be as a result of a different source.

When reviewing the totality of the evidence before me, I find the Landlords' evidence to be more compelling and persuasive and I am satisfied, on a balance of probabilities, that the Tenant was more likely than not directly responsible for the issues with the toilet. Consequently, I find that the Landlords have substantiated a claim for these costs, and I grant the Landlords a monetary award in the amount of **$1,569.92**.

Regarding the Landlords' claims for the costs associated with the garbage left behind, there was some dispute with respect to who the garbage belonged to. However, as the Tenant advised that this garbage was related to the backup in the toilet, and as I am satisfied that the toilet issue was caused by the Tenant, I find that the corresponding garbage should be the Tenant's

responsibility. As such, I am satisfied that the Landlords have substantiated a monetary award in the amount of **$38.64** for this claim.

Finally, with respect to the Landlords' claims for the utilities, the consistent evidence before me is that the parties agreed that the tenancy agreement stated that the Tenant was responsible for one third of the utilities. As such, I am satisfied that the Landlords have substantiated a monetary award in the amount of **$169.29** for this portion of their claim.

As the Landlords were successful in their claims, I find that the Landlords 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 Landlords to retain the security deposit in partial satisfaction of the debts outstanding.

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

Calculation of Monetary Award Payable by the Tenant to the Landlords

Plumbing issues	$1,569.92
Garbage removal	$38.64
Utilities	$169.29
Filing fee	$100.00
Security deposit	-$800.00
Double pet damage deposit	-$400.00
TOTAL MONETARY AWARD	**$677.85**

Conclusion

The Landlords are provided with a Monetary Order in the amount of **$677.85** in the above terms, and the Tenant must be served with **this Order** as soon as possible. Should the Tenant 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: August 2, 2019

Residential Tenancy Branch