



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNDL-S (Landlord)
 FFT, MNSD (Tenant)

Introduction

This hearing was convened by way of conference call in response to cross Applications for Dispute Resolution filed by the parties.

The Landlords filed their application May 14, 2019 (the “Landlords’ Application”). The Landlords applied for compensation for damage to the unit, to keep the security deposit and for reimbursement for the filing fee.

The Tenant filed her application May 17, 2019 (the “Tenant’s Application”). The Tenant applied for return of the security deposit and reimbursement for the filing fee.

The Tenant filed an amendment in relation to the rental unit address.

The Landlords and Tenant appeared at the hearing. The Tenant was going to call witnesses at the hearing; however, the witnesses were not available when called.

At the hearing, the Tenant advised she is seeking return of double the security deposit if I find the Landlords failed to comply with the *Residential Tenancy Act* (the “Act”).

I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing packages and evidence. The Landlords confirmed receipt of the hearing package and evidence for the Tenant’s Application. The Tenant testified that she received the

Landlords' evidence but no hearing package. The Tenant advised she was fine with proceeding and therefore I heard both applications.

The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered the documentary evidence and oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Are the Landlords entitled to compensation for damage to the unit?
2. Are the Landlords entitled to keep the security deposit?
3. Are the Landlords entitled to reimbursement for the filing fee?
4. Is the Tenant entitled to return of double the security deposit?
5. Is the Tenant entitled to reimbursement for the filing fee?

Background and Evidence

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. It is between Landlord T.K. and the Tenant in relation to the rental unit. The tenancy started August 15, 2018 and was a month-to-month tenancy. Rent was \$900.00 per month due on the first day of each month. The Tenant paid a \$450.00 security deposit.

The Landlords advised that Landlord G.K. is a co-owner of the rental unit.

The parties agreed the tenancy ended April 30, 2019.

The Tenant testified that she provided the Landlords with her forwarding address in a note dated May 01, 2019 in evidence. Landlord T.K. acknowledged receiving the note and testified that the forwarding address provided was incorrect. He said the correct address was later confirmed.

The parties agreed on the following. The Landlords did not have an outstanding monetary order against the Tenant at the end of the tenancy. The Tenant did not agree in writing at the end of the tenancy that the Landlords could keep some or all of the security deposit.

Landlord G.K. testified that the parties did a move-in inspection. She testified that a Condition Inspection Report was completed but not signed. Landlord T.K. testified that a Condition Inspection Report was started but not completed. He testified that a checklist of repairs was done on move-in.

The Tenant testified that no move-in inspection was done. The Tenant testified that a Condition Inspection Report was started but not completed and not signed.

Landlord T.K. testified that a move-out inspection was done but a Condition Inspection Report was not completed.

The Tenant testified that no move-out inspection or Condition Inspection Report was done.

The Landlords sought \$450.00 in compensation for painting the rental unit upon move-out. Landlord T.K. pointed out that the parties did a list of repairs on move-in and the list does not show damage to the walls.

Landlord T.K. further testified as follows. At the end of the tenancy, the Tenant told him there may be wall damage and asked for permission to putty the damage. He told the Tenant to go ahead and said he would do the touch up paint. The Landlords subsequently attended the rental unit and saw that every wall of the rental unit had putty on it. There were 70 to 80 patches on the walls. The damage required more than touch up paint. The entire rental unit had to be painted. He obtained two quotes for the paint, both of which are higher than the security deposit amount. The Tenant caused the damage. It is not from previous tenancies. Some of the small pin holes might have been from previous tenancies; however, not the extent of the damage at the end of the tenancy.

The Landlords relied on photos and text messages submitted. They submitted that the text messages show the Tenant acknowledged causing the damage to the walls.

The Tenant testified as follows. The list of repairs done on move-in only addressed serious issues such as safety hazards and not less serious issues such as prior damage to the walls. She let the Landlords know well in advance of the end of the tenancy that there were a lot of holes in the walls from prior tenancies. The Landlords could have come down and looked at the walls. She did not make many holes in the walls during the tenancy. She confirmed with the Landlord about putting putty on the walls prior to doing it. The Landlord told her to putty everything. The repair list shows the condition of the rental unit on move-in and gives a sense of what the walls would have been like.

The Tenant relied on text messages submitted.

Analysis

Section 7 of the *Act* states:

(1) If a...tenant does not comply with this Act...the non-complying...tenant must compensate the [landlord] for damage or loss that results...

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Section 37 of the *Act* requires a tenant to leave a rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Under sections 24 and 36 of the *Act*, landlords and tenants can extinguish their rights in relation to the security deposit if they do not comply with the *Act* and *Residential*

Tenancy Regulations. Further, section 38 of the *Act* sets out specific requirements for dealing with a security deposit at the end of a tenancy.

Section 24 of the *Act* states:

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.

Given the testimony of the parties about a move-in inspection, I do not find this to be a situation where the Tenant was offered two opportunities to do a move-in inspection, at move-in, but refused to participate. Therefore, the Tenant did not extinguish her rights in relation to the security deposit under section 24 of the *Act*.

I do not accept that a Condition Inspection Report was completed on move-in. Landlord T.K. acknowledged that a Condition Inspection Report was not completed. The Tenant agreed that a Condition Inspection Report was not completed. There is no completed Condition Inspection Report in evidence. There is no other compelling evidence showing a Condition Inspection Report was completed. I do not accept that one was. I find the Landlords extinguished their right to claim against the security deposit for damage to the rental unit by failing to complete a Condition Inspection Report.

I acknowledge that a list of repairs was done on move-in. I have reviewed this list. It is not the equivalent of a Condition Inspection Report. It is not sufficient to fulfill the Landlords' obligations in relation to completing a Condition Inspection Report.

I find the tenancy ended April 30, 2019 given the testimony of the parties.

I find the Tenant provided her forwarding address to the Landlords May 01, 2019 given the testimony of the parties. I do not find it relevant that the address was later determined to be incorrect. Section 38(1) of the *Act* was triggered as of May 01, 2019 and the Landlords would have been permitted to use the forwarding address provided by the Tenant to attempt to return the security deposit or to serve the Tenant in relation to an RTB claim.

Pursuant to section 38(1) of the *Act*, the Landlords had 15 days from May 01, 2019 to repay the security deposit or file a claim against it. However, the Landlords had extinguished their right to claim against the security deposit for damage to the rental unit. Therefore, the only options open to the Landlords were to repay the security deposit or claim against it for something other than damage to the rental unit. The Landlords did neither as they did not return the security deposit and did claim against it for damage to the rental unit.

None of the exceptions to section 38(1) of the *Act* as set out in sections 38(2) to 38(4) of the *Act* apply here given my finding above that the Tenant did not extinguish her rights in relation to the security deposit and given the testimony in relation to the absence of an outstanding monetary order or consent from the Tenant allowing the Landlords to keep the security deposit.

The Landlords failed to comply with section 38(1) of the *Act*. Therefore, pursuant to section 38(6) of the *Act*, the Landlords cannot claim against the security deposit and must pay the Tenant double the amount of the security deposit. The Landlords therefore must pay the Tenant \$900.00. No interest is owing as the amount has been 0% since 2009.

The Landlords are still entitled to seek compensation for damage to the rental unit and I consider that request now.

Pursuant to rule 6.6 of the Rules of Procedure, it is the Landlords as applicants who have the onus to prove they are entitled to the compensation sought.

I am not satisfied the Tenant caused all of the damage shown in the photos. There is no Condition Inspection Report showing the condition of the rental unit upon move-in. The purpose of the requirements regarding Condition Inspection Reports is so there is evidence of the state of the rental unit prior to the Tenant moving in. The Landlords failed to comply with the *Act* in relation to completing a Condition Inspection Report on move-in which has resulted in an absence of evidence about the state of the rental unit upon move-in.

I do not find the repair list to be sufficient proof that the walls were not damaged on move-in. I am not satisfied the repair list is an exhaustive list of all issues with the rental unit. The repair list is not an outline of the condition of the rental unit, it is simply a list of what needed to be fixed. I do not accept that the Tenant would have necessarily included repairs to less serious issues such as pin holes or smaller holes in the wall on this list.

I have reviewed the text messages and note the following. The Tenant told Landlord T.K. that she had hung a couple of things and that there were a lot of holes and marks on the walls from prior tenancies. She asked about his expectations on move-out. Landlord T.K. asked the Tenant to take care of holes she caused. The Tenant told Landlord T.K. she would putty holes she made and holes from prior tenancies. Landlord T.K. agreed to the Tenant doing so. Given these text messages, I cannot find that the putty shown in the photos is only on holes the Tenant caused.

The Tenant submitted two signed witness letters which support that the walls of the rental unit were not in good shape on move-in, that they had marks on them and that they had holes in them.

Considering the evidence, I am not satisfied the Tenant caused all of the holes or damage to the walls shown in the photos. Therefore, I am not satisfied the entire rental unit had to be re-painted because of damage caused by the Tenant. I am not satisfied the Landlords are entitled to compensation for the cost of re-painting the entire rental unit. I decline to award the Landlords the \$450.00 sought.

Given the Tenant was successful, I award her reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

Given the Landlords were not successful, I decline to award them reimbursement for the filing fee.

In total, the Landlords must pay the Tenant \$1,000.00 and I issue the Tenant a Monetary Order in this amount.

Conclusion

The Tenant's Application is granted.

The Landlords' Application is dismissed without leave to re-apply.

The Tenant is issued a Monetary Order for \$1,000.00. This Order must be served on the Landlords and, if the Landlords do not comply with the Order, it may be filed in the Provincial Court (Small Claims) 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 *Act*.

Dated: September 11, 2019

Residential Tenancy Branch