Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL, 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, pursuant to section 67; and
- authorization to recover the filing fee for their application, pursuant to section 72.

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

- authorization to obtain a return of double the amount of the security and pet damage deposits (collectively "deposits"), pursuant to section 38; and
- authorization to recover the filing fee for his application, pursuant to section 72.

The two landlords (male and female) and the tenant 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 81 minutes.

The tenant confirmed receipt of the landlords' application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was duly served with the landlords' application.

The landlords claimed that they did not receive a copy of the tenant's application for dispute resolution or notice of hearing but they received his evidence package. The tenant confirmed that his application was scheduled for a future hearing on January 13, 2020 at 1:30 p.m. The file number for that hearing appears on the front page of this decision. The tenant confirmed that the evidence for his future application was the same as the evidence he submitted for the landlord's application for this hearing. Both parties verbally affirmed during the hearing that they wanted to deal with the tenant's application at this hearing, together with the landlords' application. Accordingly,

I joined both applications to be heard together based on both parties' consent. I notified both parties at the hearing that the future hearing for the tenant's application was cancelled and neither party was required to attend that hearing. Both parties confirmed their understanding and agreement to same.

Issues to be Decided

Are the landlords entitled to a monetary order for damage to the rental unit?

Is the tenant entitled to obtain a return of double the amount of his 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 31, 2015 and ended on January 22, 2019. A security deposit of $1,300.00 and a pet damage deposit of $650.00 was paid by the tenant and the landlords returned both deposits, totalling $1,950.00 to the tenant on June 28, 2019. A written tenancy agreement was signed by both parties. Move-in and move-out condition inspection reports were not completed or signed by both parties for this tenancy. The tenant provided a written forwarding address to the landlords on June 17, 2019, by way of the previous RTB hearing decision made by a different Arbitrator on June 19, 2019. In that decision, the Arbitrator stated that the tenant provided a forwarding address to the landlords at the hearing on June 17, 2019 and the landlords had until July 2, 2019 to either return the deposits or make an application to claim against them. The tenant's application for the return of his deposits was dismissed with leave to reapply in that previous decision. The file number for that hearing appears on the front page of this decision. The landlords did not have written permission to keep any amount from the tenant's deposits. The landlords did not make an application to retain the tenant's deposits.

The tenant originally applied for a return of $3,900.00, which is double both deposits. However, at the hearing, the tenant confirmed that he already received $1,950.00 and

he was only seeking the remaining $1,950.00 from the doubling provision. The tenant also seeks to recover his $100.00 application filing fee.

The landlords seek a monetary order of $1,447.75 plus the $100.00 application filing fee. They seek $125.00 for curtain cleaning, $80.26 for renting a carpet cleaner, $150.00 for performing carpet cleaning, $152.49 for paint and supplies, $500.00 for the wall repair, $240.00 for cleaning the rental unit, and $200.00 for balcony cleaning.

The female landlord said that the tenant failed to clean the rental unit when he vacated so she did it all herself. She claimed that the tenant failed to clean the balcony, windows, carpets, food on top of the stove, under the refrigerator, the floors, the bathroom, and other areas. She said that she took double the amount of time as a professional cleaner to complete this cleaning. She explained that she provided estimates for one of her friends that is a professional cleaner, at a rate $30.00 per hour for her own cleaning. She stated that she replaced the curtains rather than cleaning them. She explained that the tenant made many holes in the wall, so she had to repair and paint the walls herself, using an estimate from someone who had done the work previously in 2016. She confirmed that a new tenant moved into the rental unit on March 1, 2019, so she completed the cleaning after the tenant moved out and before the new tenant moved in.

The tenant disputes the landlords' entire application. He said that he cleaned the rental unit before moving out without strong chemicals, as requested by the landlords. He agreed that he did not clean under the refrigerator or stove, or the balcony which he did not use. He stated that this was reasonable wear and tear. He claimed that the holes in the wall were present when he moved in, as the landlords failed to do a move-in condition inspection, since he took possession of the unit as soon as the landlords bought it. He explained that he did not cause the holes in the walls and he used a sticky "putty" to hang things because the landlords told him not to make wall holes.

The tenant claimed that he shampooed the carpets before moving out, and at least three times during the tenancy, using a machine that he bought. He explained that he provided more than one month's notice of moving out, the landlords thanked him, they did not attempt to arrange a move-out condition inspection before he vacated, they did not give him two opportunities to do a move-out inspection, and he sent numerous emails asking for an inspection, but the landlords were out of town. He maintained that he would not pay to renovate the rental unit, the landlords' evidence was fraudulent, they were submitting old receipts like a painting receipt from a different unit, and the landlords wanted to replace the curtains rather than cleaning them.

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 tenant 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.

On a balance of probabilities and for the reasons stated below, I dismiss the landlords' application for damages of $1,447.75 without leave to reapply.

The tenant agreed that he did not clean under the stove or refrigerator, or the balcony, which he did not use. I find that this is minor and I accept the tenant's evidence that he cleaned the rest of the unit. I find that the landlords' cleaning costs are mainly reasonable wear and tear. I accept that the tenant did not cause excessive holes in the wall, requiring painting or repair. I find that the landlords failed to provide move-in and move-out condition inspection reports, signed by the tenant, in order to prove the condition of the rental unit upon move-in and move-out.

I also find that the landlords failed to provide receipts or invoices to support their claims for damages. The landlords provided an old panting receipt from 2016 to justify the $500.00 they claimed for the wall repair that they claimed to have done themselves. The landlords said that they gave their original receipts to the tenant and provided a credit card statement for the carpet cleaner of $80.26 and painting and supplies of $152.49. Yet, they did not provide these receipts to the RTB for this hearing. They only provided a computer statement that they created themselves, rather than an official credit card statement.

The landlords used estimates from a cleaner friend, to claim for their own cleaning at $30.00, which they said took double the time, and totaled $390.00, but did not justify why they should be paid $30.00 per hour or a similar amount when they are not professional cleaners. Further, these cleaning estimates did not include the contact information or address of the professional, nor did they include the date, address of the rental unit, or any other such information. They were simply computerized statements listing a number of cleaning tasks at $30.00 per hour. The landlords provided photographs with their description that the strata recommended cleaner would clean the balcony for $200.00 but there was no estimate, invoice or receipt for this cost with the name, contact information, address of the rental unit, date or other such identifying information. The landlords did not clean the curtains, they replaced it instead, but still claimed for the cleaning at $125.00, which I find is not justified.

Tenant's Application

Section 38 of the *Act* requires the landlords to either return the tenant's 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 tenant's 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 tenant's 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 tenant to pay to the landlords, which remains unpaid at the end of the tenancy (section 38(3)(b)).

The tenancy ended on January 22, 2019. The tenant provided the landlords with a written forwarding address on June 17, 2019, as decided by the Arbitrator at the previous RTB hearing. The landlords had until the deadline of July 2, 2019, as per the previous RTB decision, to return the deposits or make an application to retain them. The landlords returned the deposits of $1,950.00 to the tenant by June 28, 2019, which is within the 15 days. Therefore, I find that the tenant is not entitled to double the value of his deposits of $3,900.00. Over the period of this tenancy, no interest is payable on the tenant's deposits. The tenant already received the regular return of his deposits of $1,950.00, so he is not entitled to another monetary order from the landlords.
As both parties were unsuccessful in their applications, I find that they are not entitled to recover their $100.00 filing fees.

Conclusion

Both parties' entire 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: October 11, 2019

Residential Tenancy Branch