Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL; MNDCT, FFT

Introduction

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

- a monetary order for damage to the rental unit, pursuant to section 67;
- authorization to retain the tenants' security and pet damage deposits (collectively "deposits"), pursuant to section 38;
- authorization to recover the filing fee for his application, pursuant to section 72.

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

- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- authorization to recover the filing fee for their application, pursuant to section 72.

The landlord and the two tenants, tenant SM ("tenant") and "tenant DJ," attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The "owner" of the rental unit appeared at this hearing, as he was originally named as a landlord-respondent by the tenants in their application. He confirmed that he had permission to represent his twin brother, the other named landlord-respondent, at this hearing (collectively "owners"). With the consent of both parties, the owner remained as an observer during the hearing. This hearing lasted approximately 31 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.

Pursuant to section 64(3)(c) of the *Act*, I amend the tenants' application to remove the two landlord-respondent owners as parties. The tenant requested this amendment, stating that he did not feel that he should have named the owners as parties, but did so at the recommendation of someone at the Residential Tenancy Branch. He agreed that the tenants did not have a tenancy with the owners, only the landlord named in this application. Both parties agreed that the landlord sublet the rental unit to the tenants and the owners had a separate tenancy with the landlord. The owner and the landlord agreed to the amendment during the hearing. I also amend the tenants' application to correct the spelling of the landlord's surname. I amend the landlord's application to correct the spelling of tenant DJ's surname. I find no prejudice to either party in making these amendments.

Issues to be Decided

Is the landlord entitled to a monetary order for damage to the rental unit?

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

Is the landlord entitled to retain the tenants' 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, 2018 and ended on July 30, 2019. Monthly rent in the amount of $1,475.00 was payable on the first day of each month. A security deposit of $737.50 and a pet damage deposit of $150.00 were paid by the tenants and the landlord continues to retain both deposits. A written tenancy agreement was signed by both parties. No move-in or move-out condition inspection reports were completed for this tenancy. The tenants provided a written forwarding address verbally to the landlord on July 12, 2019. The landlord did

not have any written permission to keep any part of the tenants' deposits. The landlord's application to retain the tenants' deposits was filed on August 29, 2019.

The landlord seeks a monetary order of $887.50 plus the $100.00 application filing fee. He increased his monetary claim to $923.22, prior to the hearing, which included a loss of rent claim, but stated that he was only pursuing the original $887.50 at this hearing. He testified that there was no move-in condition inspection report done because the tenants refused to do it, so the tenants took photographs instead. He claimed that the tenants smoked inside the rental unit, despite being told that they were not permitted to do so. He stated that the tenants failed to clean the rental unit when they vacated, leaving carpet spots, approximately 19 to 20 holes in the kitchen wall, and a dirty refrigerator. He maintained that the tenants' bedding was not cleaned or sanitized.

The tenants dispute the landlord's entire application. The tenant stated that the tenants did not cause any damages inside the rental unit and they cleaned it when they vacated. He confirmed that the landlord failed to do condition inspection reports. The tenant explained that the first two times, the landlord told the tenants he was tired 3 to 4 hours after the parties were supposed to meet, and he would do an inspection the next day. The tenant maintained that the last two times, the landlord did not show up to the inspections, so the tenants took photographs themselves.

The tenants seek a monetary order of $17,709.79 plus the $100.00 application filing fee. The tenant said that the landlord did a lot of laundry while the tenants were living in the rental unit. He claimed that the tenants would have stayed longer in the rental unit, but the landlord wanted them to pay utilities. He stated that the move from the rental unit was expensive, so the tenants wanted all of their rent back.

The landlord disputes the tenant's entire application. He said that he did not do laundry at the rental unit for 5 to 6 hours per day, as alleged by the tenants. He agreed that he manages a number of rentals. He claimed that he submitted a letter from his office manager, showing that he only had two vacation rentals during the tenancy, while the rest were unfurnished conventional rentals. He stated that the tenants were the ones doing a lot of laundry, since tenant DJ is a gardener. He explained that he submitted utility bills, which he said show that there was a high consumption of utilities while the tenants were living at the rental unit, but it was lower when the tenants vacated.

Analysis

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. To prove a loss, the applicants 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 respondents 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 applicants followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

At the outset of the hearing, I informed both parties of the above test and the burden of proof on the applicants. Despite this, both parties provided very limited submissions during the hearing. They did not explain their claims in detail, nor did they provide breakdowns of their claims. They did not go through their documents submitted for the hearing, asking only if I had received them, which I confirmed I did.

The landlord provided limited testimony during the hearing. He did not confirm what amounts he was seeking, nor did he review a breakdown of his claim, particularly since he decided to pursue his original claim, rather than the higher amended amount that he submitted thereafter. The landlord complained that the tenants caused damages and did not clean when they vacated. He did not go through his receipts, nor did he provide receipts or invoices for his entire claim. I find that the landlord failed all four parts of the above test. Accordingly, the landlord's application for $887.50 is dismissed without leave to reapply. As the landlord was unsuccessful in his application, I find that he is not entitled to recover the $100.00 filing fee paid for his application.

The tenants provided limited testimony during the hearing. They complained that they wanted their entire rent back because it was expensive for them to move. They did not go through their documents during the hearing. They did not reference any receipts, invoices, estimates or quotes to support their moving expenses or any other claims. Accordingly, the tenants' application for $17,709.79 is dismissed without leave to reapply. As the tenants were unsuccessful in their application, I find that they are not entitled to recover the $100.00 filing fee paid for their application.

Section 38 of the *Act* requires the landlord 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 landlord is 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 landlord has 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 landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

The landlord continues to hold the tenants' deposits totalling $887.50. Over the period of this tenancy, no interest is payable on the deposits. The tenancy ended on July 30, 2019. The tenants provided the landlord with a forwarding address on July 12, 2019, which the landlord said that he received. Although the address was provided verbally by the tenants, not in writing as per section 88 of the *Act*, the landlord acknowledged receipt of same, so I find that he was sufficiently served with it, as per section 71(2)(c) of the *Act*.

The tenants did not give the landlord written permission to retain any amount from their deposits. The landlord did not return the deposits to the tenants. The landlord filed an application for dispute resolution to claim against the deposits on August 29, 2019, which is more than 15 days after July 30, 2019, the end of tenancy date. The landlord's right to claim against the deposits for damages was extinguished for failure to complete move-in and move-out condition inspection reports.

Accordingly, I find that the tenants are entitled to double the value of their deposits of $887.50, totalling 1,775.00. Although the tenants did not apply for the return of their deposits in their application, I have to consider the return of the deposits in the landlord's application to retain the deposits, as per Residential Tenancy Policy Guideline 17. The tenants are provided a monetary order in the amount of $1,775.00.

Conclusion

Both parties' entire applications are dismissed without leave to reapply.

I issue a monetary order in the tenants' favour in the amount of $1,775.00 against the landlord. 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.

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: December 16, 2019

Residential Tenancy Branch