Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFL MNDL-S / FFT MNSD**

Introduction

This hearing dealt with two applications pursuant to the *Residential Tenancy Act* (the "**Act**"). The landlord's for:

- a monetary order for damage to the unit, site or property in the amount of $312 pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

And the tenants' for:

- authorization to obtain a return of $450 of their security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

All parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. Tenant AY, in order to catch a flight, left the hearing shortly after it was convened.

The tenants' application was reconvened from a hearing on January 20, 2020, which I adjourned to be heard at the same time as the landlord's application. I issued an interim decision following that hearing setting out my reasoning for so doing

Preliminary Issue – Tenant AY's Written Statement

In the interim decision, I permitted AY to provide a written statement to be entered into evidence at today's hearing, provided that he serve it on the landlord (via text message) by noon on Thursday, January 23, 2020.

The landlord testified that he did not receive the statement until 2:30 pm on January 23, 2020. AY testified that he sent his statement via text message as a pdf to the landlord prior to noon on January 23, 2020, and then immediately boarded an airplane. He testified that he was unaware that the text message had not gone through until his flight landed (after the noon deadline) and upon learning of which he resent the text message attaching the pdf.

The landlord testified that he was prejudiced by not having the full amount of time to review the statement that I ordered. He argued that given he only received the statement the day before the hearing and that, as such, every hour mattered.

Tenant RY (AY had left the call at this point) argued that AY was very busy with work, and it was AY's priority to focus on his job. He argued that AY had "more important things to do" than make sure his statement was sent to the landlord. RY then argued that it was only through inadvertence that the statement was not delivered on time.

The landlord argued that he was a busy man as well, and that it is not an excuse for sending the statement late. He noted that AY could have sent the statement earlier and chose not to.

I agree with the landlord. AY's work schedule does not give him license to fail to comply with the interim order. AY knew or ought to have known there might be issues with sending a pdf attachment via text message at an airport. He should have accounted for this and provided himself additional time to confirm that the text message was sent prior to his boarding the airplane.

As such, I decline to admit AY's written statement into evidence.

Preliminary Issue – Service

The landlord testified, and RY confirmed, that he served the tenants with his application and supporting evidence.

The landlord testified that he was entirely unaware of the tenants' application (which accounts for his absence at the January 20, 2020 hearing). RY testified that he served the landlord with the tenants' application and copies of its evidentiary materials in October 2019 via registered mail. He provided a Canada Post Tracking number (reproduced on the cover of this decision) in support of this statement. The Canada

Post website indicates that the tenants' documents were delivered to the landlord at his address on October 7, 2019.

The landlord could not explain why this might be the case. In any event, the landlord agreed that the tenants' documents should be admitted into evidence, and that the tenants' application should proceed. As such, I find that the landlord was served with the tenants' documentary evidence in accordance with the Act.

Issues to be Decided

Is the landlord entitled to:

1) a monetary order of $312; and
2) recover his filing fee from the tenants?

Are the tenants entitled to:

1) the return of their security deposit; and
2) recover their filing fee from the landlord?

Background and Evidence

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

The tenants and the former owner of the rental unit entered into a written, fixed-term tenancy agreement starting November 3, 2018 and ending October 31, 2019. Monthly rent was $1,200 and is payable on the first of each month. The tenant paid the former owner a security deposit of $600 at the start of the tenancy. The former owner transferred this amount to the landlord, who still retains this amount, in trust for the tenants.

Tenant RY lived in the rental unit while attending school. Tenant AY, RY's father, while named as a party to the tenancy agreement, did not reside in the rental unit.

The landlord took possession of title to the rental unit on July 1, 2019.

By mutual agreement between the tenants and the former owner, the tenants agreed to end the tenancy on September 1, 2019, one month before the end of the term of the tenancy agreement.

The landlord intended to move into the rental unit once the tenant vacated.

The landlord did not conduct a move-out condition inspection report at the end of the tenancy.

The tenants provided their forwarding address to the landlord on September 17, 2019. The tenants applied for the return of the security deposit on September 16, 2019. The landlord applied to retain the security deposit on September 23, 2019.

The landlord testified that the rental unit was “filthy” at the end of the tenancy, and that it appeared that the tenants made no effort to clean it. He testified (and provided photographic evidence to support his testimony) that:

1) the baseboards and window sills were dirty;
2) the microwave, refrigerator, and oven were not cleaned;
3) there was smudging on the dishwasher cover;
4) the underside of the toilet seat was stained;
5) the cabinets contained debris; and
6) a wall was stained.

RY did not dispute that the landlord photographs submitted were accurate. However, he submitted of his own of individual rooms in the rental unit, in which the rental unit appears clean. RY also testified that the landlord’s agent, who viewed the rental unit after before RY moved out, told him the rental unit was in good condition. Neither party called the landlord’s agent to give testimony or provide a written statement.

RY testified that he was attending school in a different city, and that, given his obligations (which included medical appointments and class registration) he was unable to return to the rental unit after he vacated to clean it, or to let cleaners in.

The parties submitted lengthy text message exchanges between them regarding hiring cleaners to clean the rental unit. These text messages include the following exchanges:

1) RY arranged for cleaners to attend the rental unit on September 1, 2019, but, as he was in another city, he would not be able to let them into the rental unit. He asked that the landlord’s agent do this, but she was not available.
2) The landlord called the cleaning service and advised RY that they all charge $100/hour. RY responded that Facebook Marketplace, Craigslist, and Kijiji have cheaper cleaners listed. The landlord responded that he tried to hire these cleaners, but that they were all booked.

3) On September 9, 2019, RY offered to allow the landlord to deduct $150 for the security deposit for cleaners, insisting that not much cleaning was required. The landlord refused and said he would hire the only cleaners he could and send RY the invoice. On September 14, 2019, the landlord advised RY that the total cost for the cleaning was $312.

The landlord did not provide an invoice supporting this amount. He testified that this was inadvertent, and he accidently uploaded an invoice for an expense entirely unrelated to the tenancy.

The landlord argued that it is the tenants' responsibility to clean the rental unit prior to vacating, and that the tenants failed to do this. As a result, he argued that he incurred damage in the amount of $312 (the cost of hiring cleaners).

The tenants argued that this amount was excessive. They argued that a reasonable amount to pay for the cleaning of the rental unit is $150. They did not provide any documents (such as copies of advertisements or quotes) to support this assertion.

The tenants argue that they are entitled to the return of the security deposit, less $150, which they say is fair compensation for the cleaning of the rental unit.

Analysis

1. Tenants' Claim

RY testified that the landlord did not complete a move-out condition inspection report.

The completion of condition inspection reports at the start and end of the tenancy are required by sections 23(4) and 35(3) of the Act, which state:

> **Condition inspection: end of tenancy**
>
> 35(3) The landlord must complete a condition inspection report in accordance with the regulations.

Consequences for the failure to complete such reports are set out at section 36(2) of the Act:

> **Consequences for tenant and landlord if report requirements not met**

> 36(2) Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord
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> […]
>
> (c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

I do not find that the fact the landlord purchased the rental unit from the prior owner relieves him from his obligations as a landlord under the Act. The landlord collected rent from the tenants. He retains the tenants' security deposit and is claiming against it. Just as he has received the benefits of being a landlord, he bears the responsibilities of one too. Conducting a move-out inspection is one such responsibility.

I find that, in accordance with section 36(2)(c) of the Act, the landlord's right to claim against the security deposit is extinguished for failure to complete a condition inspection report at the end of the tenancy.

Residential Tenancy Policy Guideline 17 states:

> C3. Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit
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> […]
>
> - if the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act;
>
> […]
>
> - whether or not the landlord may have a valid monetary claim.

The tenants have not specifically waived the doubling of the deposit. Accordingly, I find that the landlord's right to claim against the deposit is extinguished. I also find that the tenants consented to the landlord retaining $150 of the deposit.

Policy Guideline 17 provides the following example of how the doubling provision is to be applied in such circumstances:

> Example B: A tenant paid $400 as a security deposit. During the tenancy, the parties agreed that the landlord use $100 from the security deposit towards the payment of rent one month. The landlord did not return any

> amount. The tenant applied for a monetary order and a hearing was held. The arbitrator doubles the amount that remained after the reduction of the security deposit during the tenancy. In this example, the amount of the monetary order is $600.00 ($400 - $100= $300; $300 x 2 = $600).

So, the tenants are entitled to the return of double the portion of the deposit that they did not agree the landlord could retain: $900 ($600 - $150 = $450; $450 x 2 = $900).

Accordingly, I order that the landlord pay the tenants $900.

This does not mean that the landlord's claim for damages is dismissed, however. He may still be entitled to compensation for damage caused by the tenants.

2. Landlord's Claim

Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

> The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. 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:
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> - 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 states:

> **Leaving the rental unit at the end of a tenancy**
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> 37(2) When a tenant vacates a rental unit, the tenant must
>
> (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear

Based on the testimony of the parties and the photographic evidence submitted by the landlord, I find that the rental unit required cleaning at the end of the tenancy to bring it to the level of "reasonably clean". Accordingly, I find that the tenants breached the Act.

Despite the lack of supporting invoice, and as the tenants have not disputed the landlord's assertion, I accept the landlord's testimony the cost he incurred to hire cleaners was $312.

Rather than dispute the assertion that the landlord paid $312 for cleaning, the tenants accept that he did, and argue that the landlord could have had the rental unit cleaned for a lesser amount. In effect, they argue that the landlord did not act reasonably to minimize the cleaning cost. I disagree.

I accept that the landlord's uncontroverted evidence that he attempted to hire a less expensive cleaning company but was unable to do so in his desired time frame.

I have no evidence before me that a less expensive cleaning service is available in the city the rental unit is located in. Additionally, even if I did, I do not know if those services would have been available to the landlord within the time frame he required. I find that, as the landlord (quite reasonably) wanted to move into the rental unit as soon as the tenants vacated it, it is not unreasonable for him to have selected a higher-priced cleaning service to clean the rental unit that was available sooner.

It would not be enough for the tenants to show that cleaning services were available at a lower price. They must show that the landlord was unreasonable for having refused to retain the lower-priced services. In this case, the tenants showed neither. I find that the landlord acted reasonably to minimize his costs.

As the tenants consented to the landlord retaining $150 of the deposit to pay for cleaning costs, this amount must be credited against the costs incurred by the landlord for cleaning the rental unit.

As such, I find that the tenants must pay the landlord $162 ($312 - $150 = $162).

As the parties were each successful in their own applications, I decline to order that either pay the filing fees of the other.

Conclusion

Both the tenants and the landlord were successful in their respective applications. The monetary orders made in each must be offset against one another.

Pursuant to sections 38, 65, and 67 of the Act, I order that the landlord pay the tenants $738, representing the following:

Double the balance of the deposit	$900
Cleaning costs (less amount of deposit landlord permitted to retain by tenants)	-$162
Total	**$738**

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: February 5, 2020

Residential Tenancy Branch