



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNDL-S

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlords on December 16, 2019 (the "Application"). The Landlords applied for compensation for damage to the rental unit, to keep the security deposit and for reimbursement for the filing fee.

The Landlords appeared at the hearing. The Tenant appeared at the hearing with S.S. to assist. I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

The Landlords submitted evidence prior to the hearing. The Tenant did not. I addressed service of the hearing package and Landlords' evidence and no issues arose.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all testimony provided and reviewed the documentary evidence submitted. 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 rental unit?
2. Are the Landlords entitled to keep the security deposit?
3. Are the Landlords entitled to reimbursement for the filing fee?

Background and Evidence

On the Monetary Order Worksheet, the Landlords sought \$157.50 for junk removal and \$504.00 for cleaning the rental unit for a total of \$661.50. The Landlords also sought reimbursement for the filing fee of \$100.00 for a total of \$761.50. However, at the

hearing, the Landlord advised that the Landlords are only asking to keep the security deposit and not seeking a further Monetary Order.

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. The tenancy started May 01, 2012 and was a month-to-month tenancy. Rent at the start was \$1,300.00 per month due on the first day of each month. The Tenant paid a \$650.00 security deposit.

The parties agreed the tenancy ended November 30, 2019.

The Tenant testified that she provided the Landlords with her forwarding address in writing but was not sure of the date. The Landlord testified that the forwarding address was received by text message around December 03, 2019. The Tenant testified that this date sounds correct.

The Landlord testified that the Landlords did not have an outstanding monetary order against the Tenant at the end of the tenancy.

The Landlord testified that there was no written agreement at the end of the tenancy about the Landlords keeping some or all of the security deposit but that the Tenant's partner agreed to some costs verbally. The Landlord testified that there was no discussion about the amount of the security deposit that could be kept. The Tenant could not speak to this issue as she was not aware of what her partner said to the Landlord.

The parties agreed no move-in inspection was done and they did not discuss doing a move-in inspection.

In relation to a move-out inspection, the Landlord testified as follows. He did one December 04, 2019 without the Tenant. The Tenant was offered an opportunity to do a move-out inspection over text. A second opportunity was provided on the RTB form which was sent by text to the Tenant. A copy of the Condition Inspection Report ("CIR") was sent to the Tenant by registered mail and Tracking Number 1 relates to this. The CIR was also sent to the Tenant by text the day of the inspection.

The Tenant testified as follows. She did not participate in a move-out inspection. She was given an opportunity by text to participate. She did not receive a second opportunity on the RTB form. She received the CIR by registered mail and text.

Junk Removal

The Landlord testified as follows. The Tenant left garbage in the rental unit at the end of the tenancy. The Tenant was given multiple opportunities to clean it up. The Tenant should have cleaned the garbage up at the end of the tenancy. He called junk removal companies and used the cheapest one. The company attended and removed the garbage.

The Landlord relied on photos submitted. The Landlords submitted an invoice for the junk removal.

The Tenant testified as follows. She did leave garbage in the rental unit at the end of the tenancy. She was happy to discuss paying for the removal and made efforts to do so. She was concerned about a lack of a move-in inspection and something to compare to. She is not averse to paying for the removal. She offered more than the \$157.00 sought.

Cleaning

The Landlord testified as follows. The rental unit had to be cleaned at the end of the tenancy. He called the Tenant to ask if she would clean and the Tenant indicated she had no intention of returning to the rental unit to clean. He completed the CIR and took photos. He called a few companies about cleaning and chose the cheapest option. He gave the cleaning company a budget of \$500.00 and asked them to clean what they could for this amount. The cleaner cleaned about three-quarters of the mess and he cleaned the rest. The cleaner did not clean appliances or the carpet.

The Landlord relied on photos in evidence. In relation to the invoice submitted, the Landlord testified that the cost was for one cleaner.

The Tenant testified as follows. She cleaned the rental unit at the end of the tenancy. She was shocked at the amount sought for cleaning. The photos do not support that the rental unit needed cleaning to the extent done. The rental unit was left reasonably clean. The Landlords were selling the house and said they would be renovating. There was no move-in inspection done to compare the issues noted on the move-out CIR, such as mold and mildew, to.

Analysis

The Landlords as applicants have the onus to prove the claim pursuant to rule 6.6 of the Rules of Procedure. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

When one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Security deposit

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 Regulation* (the “*Regulations*”). Further, section 38 of the *Act* sets out specific requirements for dealing with a security deposit at the end of a tenancy.

Based on the testimony of the parties, I am not satisfied the Tenant was offered two opportunities to do a move-in inspection and therefore the Tenant did not extinguish her rights in relation to the security deposit under section 24 of the *Act*.

I am not satisfied the Tenant was provided a second opportunity to do a move-out inspection on the RTB form. The parties disagreed about this. The Landlords did not submit a copy of the RTB form or a copy of the text showing it was sent to the Tenant, both of which I would expect to see in the circumstances.

Given I am not satisfied the Tenant was provided a second opportunity to do a move-out inspection on the RTB form, I find the Tenant did not extinguish her rights in relation to the security deposit under section 36 of the *Act*.

I do not find it necessary to determine whether the Landlords extinguished their rights in relation to the security deposit under sections 24 or 36 of the *Act*. Extinguishment only relates to claims for damage. Here, the Landlords have only claimed for garbage removal and cleaning. I do not find these the equivalent of damage, which I would consider to be issues such as scratches to the floor, dents in the wall or broken appliances.

Based on the testimony of both parties, I accept that the tenancy ended November 30, 2019.

Based on the testimony of both parties, I accept that the Tenant provided her forwarding address to the Landlords December 03, 2019.

Pursuant to section 38(1) of the *Act*, the Landlords had 15 days from the later of the end of the tenancy or the date the Landlords received the Tenant's forwarding address in writing to repay the security deposit or claim against it. The Application was filed December 16, 2019, within 15 days of December 03, 2019. I find the Landlords complied with section 38(1) of the *Act*.

Section 38(4) of the *Act* states:

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant...

For section 38(4) of the *Act* to apply, the Tenant must have agreed to the Landlords keeping a specific amount of the security deposit. I am not satisfied section 38(4) of the *Act* applies here for three reasons. First, there is no written agreement between the parties. Second, there is no further evidence to support the Landlord's testimony that the Tenant's partner agreed to the Landlords keeping some of the security deposit. I would expect to have some evidence of this before me when a tenant does not or cannot agree that this occurred. Third, based on the Landlord's own testimony, I am not satisfied the Tenant's partner agreed to the Landlords keeping a specific amount of the security deposit.

Compensation

Section 7 of the *Act* states:

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

(2) A landlord...who claims compensation for damage or loss that results from the [tenant's] non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

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* states:

(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...

Junk Removal

I am satisfied based on the Landlord's testimony and photos that the Tenant left items in the rental unit at the end of the tenancy. The Tenant did not dispute this and agreed she left garbage in the rental unit.

The Tenant was required to remove all belongings and garbage from the rental unit at the end of the tenancy pursuant to section 37 of the *Act*. This is part of leaving a rental unit reasonably clean. I am satisfied the Tenant breached section 37 of the *Act* by leaving belongings and garbage in the rental unit.

I do not find it relevant that there was no move-in inspection done as the Tenant was required to remove belongings and garbage from the rental unit at the end of the tenancy regardless of the state of the rental unit at the start of the tenancy as is clear from section 37 of the *Act*.

I am satisfied the Landlords had to have the belongings and garbage removed. I am satisfied based on the invoice submitted that this cost \$157.50. I find this cost reasonable given the amount of belongings and garbage left in and around the rental unit as shown in the photos. I find the Landlords are entitled to \$157.50.

Cleaning

I am satisfied based on the Landlord's testimony and photos submitted that the rental unit was not left reasonably clean at the end of the tenancy.

The photos show the following. The carpet had debris on it such that it appears it was not vacuumed. A baseboard heater was not clean. The porch was not clean. The kitchen counters were dirty. The inside of the fridge was dirty. The Tenant left items in the fridge. Under and around the stove and fridge was dirty. Doors and windows were dirty. The Tenant left items in the bathroom. Window sills were dusty and had items left on them. The oven was not cleaned. There was dust and debris left in the area of the banister.

Based on the photos, I am satisfied the rental unit was not left reasonably clean. I find the Tenant breached section 37 of the *Act* by failing to leave the rental unit reasonably clean.

Again, the lack of a move-in inspection does not change the analysis as the Tenant was required to leave the rental unit reasonably clean regardless of the state of the rental unit at the start of the tenancy.

Further, I do not find the fact that the Landlords were selling or renovating the house relevant. The obligation in section 37 of the *Act* is clear and applies unless the parties come to an agreement otherwise. There is insufficient evidence before me that there was such an agreement between the parties in this matter.

I am satisfied the Landlords had to have cleaners attend to clean the rental unit. I am satisfied based on the invoice that this cost \$504.00. The Tenant took issue with this amount.

The invoice shows the cleaning took 12 hours. The invoice sets out what cleaning was done. The Landlord testified that one cleaner attended. I am satisfied based on the photos and invoice that 12 hours of cleaning was reasonable. I find this in part given the belongings and garbage left throughout the rental unit which indicate that the Tenant

did not even pick up or remove items let alone clean the areas where those items were left. Further, the photos show that basic cleaning, such as dusting and vacuuming, was not done.

Further, I am satisfied the Landlords minimized their loss by not having the cleaner clean areas that were dirty such as the carpet and appliances.

I am not satisfied the rate of \$40.00 per hour for one cleaner was reasonable as the average rate for one cleaner is around \$20.00 to \$25.00 per hour. Therefore, I award the Landlords \$315.00 for 12 hours of cleaning at \$25.00 per hour.

Filing fee

Given the Landlords were successful in the Application, I award the Landlords reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

Summary

In summary, the Landlords are entitled to \$572.50. The Landlords can keep \$572.50 of the security deposit pursuant to section 72(2) of the *Act*. The Landlords must return the remaining \$77.50 to the Tenant. The Tenant is issued a Monetary Order for this amount.

Conclusion

The Landlords are entitled to \$572.50. The Landlords can keep \$572.50 of the security deposit. The Landlords must return the remaining \$77.50 to the Tenant. The Tenant is issued a Monetary Order for this amount. This Order must be served on the Landlords. If the Landlords fail to comply with this Order, it 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 *Act*.

Dated: May 27, 2020

Residential Tenancy Branch