Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, MNDL-S, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution (the "Landlord's Application") that was filed by the Landlord under the *Residential Tenancy Act* (the "*Act*"), seeking:

- Compensation for monetary loss or other money owed;
- Compensation for damage caused by the Tenants, their pets or their guests;
- Authorization to withhold all or a part of the security deposit; and
- Recovery of the filing fee.

This hearing also dealt with a Cross-Application for Dispute Resolution (the "Tenants' Application") that was filed by the Tenants under the *Residential Tenancy Act*, seeking:

- The return of their security deposit; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by the Tenants and the Landlord, all of whom provided affirmed testimony. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. Neither party raised any concerns about service or receipt of the Notice of Dispute Resolution Proceeding Packages or the documentary evidence before me for consideration.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure"); however, I refer only to the relevant facts, evidence and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be emailed to them at the email address provided in the hearing.

Preliminary matters

Although the parties engaged in settlement discussions during the hearing, ultimately a settlement agreement could not be reached between them. As a result, I proceeded with the hearing and rendered a decision in relation to this matter under the authority delegated to me by the Director of the Residential Tenancy Branch (the "Branch") under Section 9.1(1) of the *Act*.

Issue(s) to be Decided

Is the Landlord entitled to compensation for monetary loss or other money owed?

Is the Landlord entitled to compensation for damage caused by the Tenants, their pets or their guests?

Is the Landlord entitled to withhold all or a part of the security deposit in full or partial recovery of any money owed?

Are the Tenants entitled to the return of all, some or double the amount of their security deposit?

Is either party entitled to recovery of the filing fee?

Background and Evidence

Although no copy was before me for consideration, the parties agreed that a written tenancy agreement exists. The parties agreed that the fixed-term tenancy began on March 5, 2018, and became month-to-month (periodic) after the end of the fixed-term on February 28, 2019. They also agreed that rent in the amount of $1,600.00 was due at the start of the tenancy, that rent was due on the first day of each month, and that a condition inspection and report were completed and that a copy of the condition inspection was provided to the Tenants in compliance with the *Act* and the regulations at the start of the tenancy.

Despite the above, the parties disputed the condition of the rental unit at the start of the tenancy. The Landlord stated that it was in generally good condition, except for some minor scratches to the flooring in the living room and some wear and tear on the bathtub and that the rental unit had been painted prior to the start of the tenancy. The Tenants disputed this testimony stating that the rental unit was unclean and damaged, resulting

in a rent reduction from the advertised price, and pointed to the move-in condition inspection report in support of their testimony that the condition of the rental unit was poor at the start of the tenancy. The Tenants stated that the previous occupant had a dog and as a result, the floors were significantly scratched before the star of the tenancy and stated that the bathtub was stained, the fridge was dirty and that there were cockroaches.

The Landlord denied that the rent reduction was a result of the state of the rental unit and stated that it was actually because the Tenants did not require the parking stall that came with the rental unit.

The Landlord stated that the Tenants did not leave the rental unit reasonably clean or undamaged at the end of the tenancy and sought $367.50 in cleaning costs, $778.82 for replacement of a damaged cooktop, and $1,500.00 for flooring repairs. The Landlord also sought $1,800.00 in lost rent for December 2019 as they stated that the Tenants failed to return the keys and fobs for the rental unit until almost one month after the end of the tenancy and left the rental unit in such a state of uncleanliness and disrepair that it could not be occupied by the new occupant in December 2019, as per their tenancy agreement, and that the Landlord therefor lost one months rent. The Landlord stated that as rent for the new occupant was set at $1,800.00 and the new occupant was unable to occupy the rental unit until January 2020 as a result of the Tenants' failure to clean and damage cause by them, their guests or their pets to the rental unit, the Tenants are therefore responsible for reimbursing them for the $1,800.00 in lost rent for December 2019. The Landlord also sought $250.00 for the cost of an additional key fob they stated was issued to the Tenants and never returned.

The Tenants denied leaving the rental unit unclean and stated that any damage either pre-existed their tenancy or constitutes reasonable wear and tear. The Tenants denied that the rental unit was not reasonably clean at the end of the tenancy and stated that the pictures submitted by the Landlord showing that the rental unit was unclean were taken by the Landlord when they entered the rental unit without the Tenants' consent prior to the end of the tenancy. The Tenants stated that the rental unit was cleaned after these photographs were taken and they should not be responsible for any cleaning costs. The Tenants also stated that the scratch in the ceramic glass cooktop constitutes reasonable wear and tear and therefore they should not be responsible for the cost of fixing or replacing the cooktop. Further to this the Tenants stated that the cooktop is still functional and does not require replacement and that they did not damage the floors.

The Landlord denied that the cooktop is simply scratched or that it is functional. The Landlord stated that it is a significant crack, not a scratch, extending a significant distance across the cooktop and rendering one burner inoperable and the cooktop unsafe to use. The Landlord also denied that floors were significantly damaged by the previous occupant and stated that this damage was caused by the Tenants, their guests, or their pets during the tenancy.

As a result, the Tenants sought the return of their full $800.00 security deposit. The Tenants also denied ever receiving an additional fob or failing to return one.

Both parties sought recovery of the filing fee.

The parties agreed that written notice to end the tenancy was never given. The Tenants stated that they told the Landlord in mid October, 2019, that they were ending the tenancy effective at the end of November 2019, or start of December 2019, and that the Tenants moved out of the rental unit on November 27, 2019. The Tenants stated that when they advised the Landlord verbally that they were ending the tenancy, the Landlord thanked them for giving more than one month notice and advised them that they would start looking for a new tenant immediately. The Tenants stated that when they paid November rent, the Landlord advised them that they had already found a new tenant for December.

The Landlord stated that the Tenants advised them in October that they were looking to buy their own place and that they would give official notice to end the tenancy once they had purchased a place. The Landlord stated that they advised the Tenants that they would need to give a proper written one month notice to end the tenancy, and that this was never received. In any event, the Landlord acknowledged signing a new tenancy agreement with a new tenant for December 1, 2019, at a monthly rent of $1,800.00. A copy of this tenancy agreement was submitted for my consideration.

The Tenants stated that on or about November 27, 2019, the Tenant G.R. saw the Landlord at a local market and that the parties agreed to meet on December 1, 2019, to do the condition inspection. The Tenants stated that the Landlord contacted them the following day to advise them that they had left the place unreasonably dirty and damaged, indicating that the Landlord had entered the rental unit prior to the end of the tenancy and without their consent. The Tenant G.R stated that they had not yet finished cleaning the rental unit and as a result, the photographs before me from the Landlord are inaccurate as they were taken before the end of the tenancy and before the rental unit had been fully cleaned.

The Landlord denied that they entered the rental unit without authorization as they stated that the agreement reached regarding the condition inspection was for November 30, 2019, not December 1, 2019, and that when the Tenants failed to attend the condition inspection as scheduled on the morning of November 30, 2019 and the subsequent rescheduled appointment for 5:00 P.M., they entered the rental unit and took the photographs submitted to the Branch for consideration. Although the Landlord alleged that the Tenant G.R. denied that cleaning was their responsibility and read me what they stated were social media messages from G.R. stating this, copies of these messages were not submitted for my review.

The Tenants denied that any condition inspections were scheduled for November 30, 2019, and stated that it is actually the Landlord who failed to attend the condition inspection as scheduled on December 1, 2020, at 10:00 A.M. The Tenant G.R. stated that when the Landlord failed to attend as scheduled, they called them, and the inspection was rescheduled to 5:00 P.M. as the Landlord's daughter was unable to attend. The Tenant G.R. stated that no one attended at 5:00 P.M. and that after waiting for half an hour, they took their own photographs and videos of the rental unit and left.

The parties were in agreement that the keys for the rental unit and a fob for entry were not returned to the Landlord until late December, when they were received by mail, and blamed one another for failing to follow through with or make arrangements to meet for their exchange. The Landlord stated that it costs $350.00 to replace a key and $250.00 to replace a fob, which is why they were not immediately replaced. The Landlord stated that the late return of these items also contributed to the new occupant's inability to occupy the rental unit as scheduled on December 1, 2019.

The parties agreed that the Tenants provided their forwarding address to the Landlord via text message sometime between November 28th – November 30th, 2019.

Analysis

Section 52 of the *Act* states that in order to be effective, a notice to end a tenancy must be in writing and when given by a tenant, must be signed and dated by the tenant giving the notice, give the address of the rental unit, and state the effective date of the notice. As the parties agreed in the hearing that no written notice was ever given, I find that the Tenants did not give proper written notice to end the tenancy under the *Act*. However, I accept as fact that the Landlord accepted the Tenant's verbal notice to end tenancy as

the Landlord found a new occupant for the rental unit and signed a new tenancy agreement with that occupant for December 1, 2019.

Although the Tenants argued that the condition inspection report shows that the rental unit was in poor condition at the start of the tenancy, I disagree. The majority of the report shows that the rental unit was in good or fair condition, with the exception of the need for some cleaning, the replacement of light bulbs, some minor damage to the fridge/freezer, some damage to the walls and trim in the entry, and scratches on the living room floor. While I accept that the rental unit may have required cleaning at the star of the tenancy, the Tenants were still required under section 37 (2)(a) of the *Act* to leave the rental unit reasonably clean at the end of the tenancy.

Although the Landlord argued that the floor was damaged by the Tenants, I am not satisfied that this is the case. The condition inspection report clearly shows that the living room floor was scratched before the start of the tenancy and I am not satisfied that the damage claimed by the Landlord in the Application did not pre-exist this tenancy. As a result, I dismiss the Landlord's claim for $1,500.00 in floor repair costs without leave to reapply. I am however satisfied that the Tenants damaged the cooktop and that this damage constitutes more than reasonable wear and tear. Although the Tenants characterized the damage as a scratch, having reviewed the photographic evidence before me, I am satisfied that it is a crack, and not a scratch, and that it is very significant in nature, as it fully crosses one of the elements and represents damage to between approximately 20%- 25% of the cooktop. Wear and tear is defined by Residential Tenancy Policy Guideline (the "Policy Guideline") #1 as natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. I do not find it reasonable to conclude that this serious of a crack was caused by natural deterioration due to aging or reasonable use. Instead I find that the Tenants damaged the cooktop and are therefore responsible for its repair or replacement. As a result, I grant the Landlords claim for $778.82 in replacement costs.

The Landlord argued that the Tenants left the rental unit unclean at the end of the tenancy and submitted photographic evidence in support of this testimony, such as photographs of a dirty oven, fridge and tub. Although the Tenants argued that the photographs taken by the Landlord were taken prior to their final relinquishment of the property and prior to their cleaning of the rental unit, they submitted little evidence in support of this testimony and the photographs submitted by them do not address the areas the Landlord claimed were dirty. Although the Tenants stated that a video was submitted showing the state of the rental unit at the end of the tenancy, only

photographs were before me for review. As a result, I am satisfied that the rental unit required some cleaning at the end of the tenancy as stated by the Landlord and I award them the $367.50 sought for cleaning costs.

Although the Tenants provided excuses for why the keys and fobs for the rental unit were not returned to the Landlord at the end of the tenancy in November, ultimately they agreed that they did not return them until sometime in late December, when they were sent to the Landlord by mail. Section 37 (2)(b) of the *Act* states that when a tenant vacates a rental unit, they must return to the landlord the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property and I do not find it reasonable for the Tenants to have withheld them for almost one month after the end of the tenancy. The Landlord also sought $250.00 for the cost of an extra fob, however, the Tenants denied ever being issued one and the Landlord did not submit any documentary evidence to corroborate their testimony that one was issued or not returned. As a result, I dismiss this $250.00 claim without leave to reapply.

The Landlord argued that the Tenants' failure to return the keys, along with their failure to leave the rental unit reasonably clean and undamaged at the end of the tenancy resulted in a rental loss of $1,800.00 for the month of December when the new occupant was not able to move in on time. While I agree that the Tenants' failure to return the keys was a breach of the *Act* and contributed to the new occupant's inability to take possession of the rental unit, I find that the Landlord failed to mitigate their loss when they failed to obtain new keys and fobs, although they admitted in the hearing that this option was available to them, as the cost of replacing the keys and fobs would have been significantly cheaper than the loss of one month's rent. I am also not satisfied that the rental unit was so unclean or so damaged that the new occupants would not have been able to move in as scheduled, or shortly thereafter, if the Landlord had received the keys and fobs from the Tenant or replaced them immediately when the Tenant failed to return them. As a result, I grant the Landlord only $600.00 in lost rent for December 2019, which represents 1/3 of their $1,800.00 claim.

As the Landlord was successful in at least some of their claims, I award them recovery of the $100.00 filing fee pursuant to section 72 of the *Act*.

Although the parties were in agreement that a move-out condition inspection was not completed together at the end of the tenancy, they provided opposing testimony regarding the agreed upon dates and times for the inspection and who failed to attend. However, I find that it was the Landlord's responsibility to schedule the condition

inspection with the Tenants in accordance with section 35 of the *Act* and the regulations, and I am not satisfied based on the testimony and documentary evidence before me that the Landlord met their legislative duty in this regard. As a result, I find that the Landlord extinguished their right to claim against the security deposit for damage to the rental unit pursuant to section 36 (2) of the *Act*. However, as the Landlord filed their claim for more than damage to the rental unit, and the application was filed within the timeline set out under section 38(1) of the *Act*, I find that the Landlord was entitled to withhold the $800.00 security deposit when filing the Application and that the Tenants are therefore not entitled to the return of double the amount of their $800.00 security deposit.

As I have already found above that the Landlord is entitled to $1,846.32 in compensation, $1,067.50 of which was for claims other than damage to the rental unit, I therefore authorize them to withhold the Tenants' $800.00 security deposit and I dismiss the Tenant's claim for the return of their security deposit and recovery of the filing fee without leave to reapply. Pursuant to section 67 of the *Act*, The Landlord is therefore entitled to a Monetary Order in the amount of $1,046.32; $1,846.32 in compensation owed for damage, cleaning, loss of rent and recovery of the filing fee, less the $800.00 security deposit.

Conclusion

Pursuant to section 67 of the *Act*, I grant the Landlord a Monetary Order in the amount of **$1,046.32**. The Landlord is provided with this Order in the above terms and the Tenants must be served with this Order as soon as possible. Should the Tenants 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: June 11, 2020

Residential Tenancy Branch