Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL

Introduction

On January 14, 2020, the Landlord made an Application for Dispute Resolution seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the "*Act*"), seeking to apply the security deposit towards these debts pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Landlord and both Tenants attended hearing. All parties provided a solemn affirmation.

The Landlord advised that she served a Notice of Hearing and evidence package to each Tenant separately, by registered mail on or around January 20, 2020. However, the Tenants advised they only received one registered mail package with the Notice of Hearing documents for both of them. I.G. advised that it was his position that the Application be dismissed on this basis, but if it could not, then they were prepared to proceed. As I am satisfied that both Tenants were aware of the nature of this hearing in January 2020, and as both Tenants attended the hearing, despite a Notice of Hearing and evidence package not being served to each Tenant individually pursuant to Rule 3.1 of the Rules of Procedure, I am satisfied that the Tenants have been served the Notice of Hearing and evidence package.

The Landlord advised that she served additional evidence to the Tenants by email on May 26, 2020 and this same evidence was served to them by registered mail on May 27, 2020. The Tenants confirmed that they received this evidence and did not raise any issues with the timing of when this was served. The Landlord also advised that she could not remember if she served her digital evidence to the Tenants, and the Tenants advised that they did not receive any digital evidence. Based on this testimony, I am

satisfied that the Tenants have been served the Landlord's documentary evidence, and as a result, this evidence will be accepted and considered when rendering this Decision. However, I am not satisfied that the Landlord's digital evidence was served to the Tenants. As a result, this digital evidence will be excluded and not considered when rendering this Decision.

The Tenants advised that they served their evidence to the Landlord by registered mail on May 20, 2020 and more evidence by email on May 28, 2020. The Landlord confirmed that she received both of these packages of evidence. As a result, I have accepted the Tenants' evidence and will consider it when rendering this Decision.

All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Are the Landlords entitled to a Monetary Order for compensation?
- Are the Landlords entitled to apply the security deposit towards these debts?
- Are the Landlords entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on April 1, 2016, and that the tenancy ended when the Tenants gave up vacant possession of the rental unit on December 31, 2019. Rent was established at $2,300.00 per month and was due on the first day of each month. A security deposit of $1,150.00 was also paid. A copy of the signed tenancy agreement was submitted into evidence.

All parties agreed that a move-in inspection report was never conducted. Furthermore, both parties agreed that a move-out inspection report was conducted on December 31, 2019. A copy of this report was submitted as documentary evidence.

Both parties also agreed that the Tenants provided a forwarding address in writing on the move-out inspection report. The Landlord advised that she sent the Tenants a cheque in the amount of $880.50 on or around January 20, 2020 and that she deducted $269.50 from the Tenants' security deposit without their written consent.

The Tenants confirmed that they received a cheque from the Landlord in the amount of $880.50 sometime after January 20, 2020 and that they did not give the Landlord any authorization in writing for her to deduct any amount from their security deposit.

The Landlord submitted that she was seeking compensation in the amount of **$269.50** to cover the cost of a repair of the clothes dryer due to the Tenants' negligence. She stated that a dryer was provided at the start of the tenancy and the Tenants used dryer sheets or fabric softener in the dryer; however, this dryer was replaced with a brand-new dryer in June 2018. As this new dryer was a specialty appliance, the Landlord advised them not to use dryer sheets or fabric softeners in it, and the Tenants were provided with the manual for this appliance. She was advised by the Tenants in November 2019 that there was a problem with the new dryer, and there was a subsequent dispute over who was responsible for the repair cost. At the move-out inspection, the Landlord happened to see boxes of dryer sheets or fabric softener that had fallen behind the dryer. She stated that a repair person serviced the dryer, that he washed the filter of the dryer, and that this repair person advised that the dryer was not functioning properly because the filter was clogged from the by-products of dryer sheets or fabric softener.

Tenant M.G. advised that in June 2018, the washer had leaked, so she reported it to the Landlord. The Landlord replaced the old washer and dryer with new appliances, and she was advised by the technician not to use dryer sheets or fabric softeners as it could damage the dryer. While she had used these products in the past, she did not use them in the new appliances. However, she saved the unused products and placed the boxes on top of the dryer. In November 2019, she advised the Landlord that the dryer was no longer drying their clothing, and there was a dispute with the Landlord over who would pay for the repair cost. It was the Landlord's belief that as the dryer was only a year old, the Tenants must have been negligent for the damage.

She stated that she spoke with a representative of the appliance company, and this person advised her that there were many reasons why the dryer may not be working such as: the building ducts needing cleaning, the area where the dryer is located being too small, the lint trap not being emptied, or the use of dryer sheets or fabric softener. M.G. advised that she always emptied the lint trap and never used dryer sheets or fabric

softener. In addition, she stated that the boxes of dryer sheets or fabric softener that were found behind the dryer were there because they had fallen back there, and she could not retrieve them. Finally, she referenced the invoice of the repair company that the Landlord had submitted as documentary evidence, and she stated that the cause of the dryer issue was not determined to be definitively from the use of dryer sheets or fabric softener. The comment on the invoice from the repair person states “you need to take pictures of the surroundings in case it is from wax sheets… please explain to the tnt if it is their error.”

Tenant I.G. advised that during the move-out inspection, they had talked with the Landlord for a long time about the dryer, and the Landlord eventually agreed to repair the dryer at her own cost. They made a note on the report, they signed it, and then they took a picture of the report. As the Tenants were never provided with a copy of this report from the Landlord, there is no way they could have altered it to include any notes on it. As the Landlord had not submitted a copy of the inspection report as documentary evidence, this supports their position that the Landlord is not being truthful about agreeing to pay for the repair. It is the Tenants’ position that the Landlord has not established the cause of the dryer issue, and it is only her assertion that the problem was caused by the use of dryer sheets or fabric softener.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 23 of the *Act* states that the Landlord and Tenants must inspect the condition of the rental unit together on the day the Tenants are entitled to possession of the rental unit or on another mutually agreed day.

Section 35 of the *Act* states that the Landlord and Tenants must inspect the condition of the rental unit together before a new tenant begins to occupy the rental unit, after the day the Tenants cease to occupy the rental unit, or on another mutually agreed day. As well, the Landlord must offer at least two opportunities for the Tenants to attend the move-out inspection.

Section 21 of the *Residential Tenancy Regulations* (the “*Regulations*”) outlines that the condition inspection report is evidence of the state of repair and condition of the rental

unit on the date of the inspection, unless either the Landlord or the Tenants have a preponderance of evidence to the contrary.

Sections 24(2) and 36(2) of the *Act* state that the right of the Landlord to claim against a security deposit for damage is extinguished if the Landlord does not complete the condition inspection reports. As these Sections pertain to a Landlord's right to claim for damage, and as the Landlord did not conduct a move-in inspection report with the Tenants, I find that the Landlord extinguished her right to claim against the security deposit.

Section 38(1) of the *Act* requires the Landlord, within 15 days of the end of the tenancy or the date on which the Landlord receives the Tenants' forwarding address in writing, to either return the deposit in full or file an Application for Dispute Resolution seeking an Order allowing the Landlord to retain the deposit. If the Landlord fails to comply with Section 38(1), then the Landlord may not make a claim against the deposit, and the Landlord must pay double the deposit to the Tenants, pursuant to section 38(6) of the *Act*.

The undisputed evidence is that the forwarding address in writing was provided to the Landlord on December 31, 2019 and that the tenancy ended when the Tenants gave up vacant possession of the rental unit on the same day. While the Landlord made her Application within the 15-day frame to claim against the deposit, as she extinguished her right to claim against the security deposit, I find that she has not complied with the requirements of the *Act*. While she was still permitted to make an Application for compensation for damages, as she did not return the deposit in full within the 15 days due to her extinguishing her right to claim against the deposit, I find that the doubling provisions do apply in this instance. As per Policy Guideline # 17, as the Tenants paid a security deposit of $1,150.00, and as the Landlord held back $269.50 without the Tenants' written authorization, the monetary award granted shall be calculated as follows: $1,150.00 X 2 = $2,300.00 – $880.50 = $1,419.50. Under these provisions, I grant the Tenants a monetary award in the amount of **$1,419.50**.

With respect to the Landlord's claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

Regarding the Landlord's claims for compensation in the amount of $269.50 to cover her expenses in repairing the dryer, as per above, the burden of proof is on the Landlord to prove that the Tenants were negligent and caused the dryer to function improperly. While the Landlord testified that the repair person advised her that the filter was clogged as a result of the use of dryer sheets or fabric softener, as the Landlord did not serve this video evidence to the Tenants, these videos were not able to be considered when rendering this Decision.

While I acknowledge that boxes of dryer sheets and fabric softener were found behind the dryer, I do not find that this necessarily proves that the Tenants used these products with the new dryer. I find it more likely than not that these fell behind there and were not easily retrievable until the dryer was pulled out by the Landlord. Furthermore, I find it important to note that while the invoice from the repair company, that the Landlord submitted as documentary evidence, does indicate that the filter was clogged with wax, I do not find that this conclusively supports the Landlord's allegation that the Tenants used dryer sheets or fabric softener as the repair technician also indicated in the work description on the invoice that it was not definitively due to the use of "wax sheets" by the Tenants. This appears to be more of a suggestion or speculation by the technician.

While I find it curious how the repair technician could have discovered wax buildup on the dryer filter if such products were never used, I am not satisfied that the Landlord has submitted sufficient evidence that supports her claim, on a balance of probabilities, that dryer sheets or fabric softener were definitively used by the Tenants, and that the use of these products caused damage to the dryer. Consequently, I dismiss her claim in its entirety.

As the Landlords were not successful in this claim, I find that the Landlords are not entitled to recover the $100.00 filing fee paid for this Application.

Pursuant to Sections 38 and 67 of the *Act*, I grant the Tenants a Monetary Order in the amount of **$1,419.50**.

Conclusion

The Tenants are provided with a Monetary Order in the amount of **$1,419.50** in the above terms, and the Landlords must be served with **this Order** as soon as possible. Should the Landlords 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.

The Landlords' claim for compensation is dismissed in its entirety.

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 9, 2020

Residential Tenancy Branch