Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, MNDL-S, FFL

Introduction

The landlord filed an application for dispute resolution (the "Application") on February 18, 2020 seeking an order for compensation for damage caused by the tenant, and compensation for monetary loss or other money owed. The landlord applies to use the security deposit towards compensation on these two claims. Additionally, the landlord seeks to recover the filing fee for the application.

The landlord provided evidence showing their delivery of this dispute's notice via Canada Post registered mail. Postal information provided shows the delivery on February 27, 2020, and its receipt and signatures by one of the tenants on March 11, 2020. This information verifies that the landlord's material was sent to the tenant. The landlords sent more evidence to the tenants via registered mail on May 15; the tenants received this material on May 19, 2020.

The tenants did not submit documents as evidence for this hearing.

The matter proceeded by way of a hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the "*Act*") on June 9, 2020. Both parties attended the conference call hearing. I explained the process and offered both parties the opportunity to ask questions. Both parties had the opportunity to present oral testimony and present evidence during the hearing.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for damage or compensation pursuant to section 67 of the *Act*?

Is the landlord entitled to retain the security deposit pursuant to section 38 of the *Act*?

Is the landlord entitled to recover the filing fee for this Application pursuant to section 72 of the *Act*?

Background and Evidence

I have reviewed all written submissions and evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this section.

There is evidence of the tenancy agreement between the parties. The tenancy started on October 1, 2017. The agreement was for $1,200.00 per month, with payment on the first of each month. An email dated October 2, 2017 shows the landlord sending a copy of the tenancy agreement to the tenants via email. In the hearing the landlords presented that they asked the tenants if they were okay typing the tenants' names into the agreement, with the consent of the tenants. The tenants verified this detail on the completion of the tenancy agreement.

A receipt shows the tenants paid one-half the security deposit on September 30, 2017. The initial email on October 2, 2017 attaching the tenancy agreement to the tenants gives instruction to them on how to make future payments for rent and the remainder of the security deposit. The tenancy agreement itself provides that "The tenant is required to pay a security deposit of $600 by 2 Oct 2017."

The tenancy ended by agreement of the parties on February 1, 2020. This was the agreement reached in a prior arbitration on the issue of the landlord's Order of Possession of the rental unit. The landlord stated that the tenants provided a forwarding address by email to them on February 13, 2020. The tenants verified this date as true in the hearing.

The landlords here presented that the tenants moved out of the unit later in the evening on February 1, 2020, and then did not want to undertake the condition inspection meeting for the rental unit after that. They presented a form giving notice to the tenants of a final meeting for this purpose on that date, at 1 p.m. They also stated they gave the date of February 7, 2020 to the tenants personally as the last option; however, the tenants refused by stating this meeting was not to occur after the end of tenancy, making it "illegal".

Another party on the landlords' behalf attended on February 1, 2020 to conduct the final meeting with the tenants. They wrote up what they experienced in a signed document dated February 8, 2020. The detailed account provides that the tenants informed them that they were not removing excess items of garbage, furniture and mattresses. There was no access to the garage at that time.

The landlords submitted a copy of a 'Condition Inspection Report' for the move-out inspection date of February 1, 2020. This lists a number of items in "dirty" condition and other significant damage to the garage, walls, and ceiling. The document indicates the tenants did not sign on move-out, and the indication is that the landlord "emailed" it to the tenants at the start of the tenancy.

The landlords summarized their claim for compensation by including a table:

Cleaning Expenses		
Activity		Cost
Steam Cleaning Carpet		$155.90
Dump Fees		$323.00
Hired Labour for Dump Trips		$420.00
Cleaning House		$1,102.50
	Total	$2,001.40

Loss of revenue (1.5 months)		$1,500.00
Unpaid Utilities		$409.95

Damages		
Item	What	Cost
Carpets	Replace	$610.99
Insurance Company (See report)	See Insurance report	$2,138.27
	Total	$2,749.26

Total Loss	$6,660.61

Some items contain receipts and others stem from estimates. There are bills for utilities showing a total one-half amount of $370.98 after adding up the totals paid. There are receipts for the cleaning expenses outlined above.

The landlords provided photos as evidence, with two sets showing the unit at the day and night before the tenants' move in. Other photos show pictures from the cleaner, and those taken by an insurance estimator. The photos from the insurer are compiled as part of an insurance preparation package investigating the claim of vandalism. The estimate for work on an insurance document is as set out in the table above.

The tenants did not provide documentary evidence for this hearing. In their oral statements, the tenants presented that they were not messaged about a move-out inspection until February 12, and their move-out on the day took much longer than expected.

They take issue with the state of the unit as presented by the landlords, and provided that the carpets in particular were not in a clean state at the start of the tenancy. In their minds, this is "normal wear and tear" in the unit. This is not vandalism; the unit was not clean at the start of the tenancy.

Analysis

The relevant portion of the Act regarding the return of the security deposit is section 38:

> (1) . . .within 15 days after the later of
> (a) the date the tenancy ends, and
> (b) the date the landlord receives the tenant's forwarding address in writing;
> The landlord must do one of the following:
> (c) repay. . .any security deposit. . .to the tenant. . .;
> (d) make an application for dispute resolution claiming against the security deposit. . .

Subsection 4 sets out that the landlord may retain an amount from the security deposit with either the tenant's written agreement, or by a monetary order of this office.

In this hearing, I find the landlord properly applied for dispute resolution on February 18, 2020. This is within the 15 days set out in the *Act*. I am satisfied that the tenancy ended on February 1, 2020 and the tenant provided their forwarding address on February 13, 2020. The issue then is the assignment of responsibility, if at all present, for the damages to the rental unit.

The Act sections 23 and 24 set out the requirements for the landlord and tenant together at the start of a tenancy, and the consequences if the report requirements are not met. The same requirements are present at the end of a tenancy, set out in sections 35 and 36. The right of the tenant to the return of the deposit is extinguished where the landlord has complied with the requirement for 2 opportunities for inspection and the tenant has not participated in either occasion. The right of the landlord to claim against the deposit is extinguished where the landlord does not complete the report nor give a copy of it to the tenant.

Section 37(2) of the *Act* requires a tenant, when vacating a rental unit to leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and give the landlord all the keys and other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

I note that for the purposes of this claim, the landlord must provide sufficient evidence to establish any alleged damage occurred during the tenancy and as such, must have provided evidence of the condition of the rental unit at the start of the tenancy. However, there is no requirement for the landlord to meet the same burden when it relates to any cleaning required at the end of the tenancy.

I find the evidence shows it is more likely than not that the tenants paid the full amount of a security deposit, despite a receipt in the evidence showing $300 initially, with no follow-up that the other half of the security deposit was paid. I find there was a full amount of $600.00 that was paid by the tenants, though not in one piece as the tenancy agreement appears to show. The email from the landlords to the tenants containing their copy of the tenancy agreement identifies to them how they can continue with future rent payments. Minus evidence to the contrary, I find the full amount of security deposit was paid by the tenants; this is $600.00 in total.

I reduce the weight of the copy of the Condition Inspection Report presented by the landlords. The document contains a primary flaw: the move-in inspection date is “01/02/2020”. For this reason, I find it more likely than not the document was prepared by the landlord after the end of the tenancy: that date was not in question and did not have relevance at the start. It is not an accurate assessment of the condition of the rental unit at the beginning. However, this does not reduce the weight of the photos provided by the landlord showing the state of the unit at the start of the tenancy. I find they stand as significant evidence of the condition immediately prior to the start of the tenancy.

I give more weight, accordingly, to the landlords’ evidence regarding the end of tenancy and the tenants’ move out. I accept that the tenants did not dutifully attend to an inspection with the person in attendance on the landlord’s behalf on that date. The landlord submitted 2 documents that reveal their efforts at scheduling a condition inspection meeting. Additionally, the landlords stated they verbally provided the date of February 7, 2020 as a date to finally walk through the unit. I find this evidence shows the tenants were aware of the need for a Condition Inspection meeting. I find it reasonable they anticipated the need for a meeting of this nature to occur at the end of the tenancy. Their statements that they did not know of this scheduled meeting is outweighed by the testimony and evidence of the landlord on this point.

Given these findings, I find the landlord is not precluded from making a claim against the security deposit for damages or other monetary loss. They also abided by the provisions of the *Act* in making this claim within the timeline established in the *Act*.

The landlords' worksheet identifies four separate needs: recovery of utilities; cleaning; loss of revenue; and damages to the unit. To determine the landlords' eligibility for compensation, I carefully examine the evidence they have presented for each item, to establish whether they have met the burden of proof.

The landlord applied initially for the amount of $409.94 in "unpaid utilities". The copies of bills from gas and hydro, reduced by half as per the tenancy agreement, shows $370.98. These two amounts do not match. I award the amount of $370.98 as compensation because there is evidence in place to establish that amount as a verifiable claim. The amount of $409.94 has no reference or calculation in the materials the landlords provided.

An insurance company estimate – for $2,138.27 – is not matched with any receipts showing actual work completed, or actual expense to the landlord. Therefore, I cannot establish the value of damage or loss, and dismiss this portion of the landlord's claim for compensation. I cannot determine whether the landlords undertook to have the work completed as identified by the estimator. The estimate document, however, does assist and adds weight to the landlords' claim for cleaning costs. It is supplemented fully by photos showing the state of the unit.

Similarly, while the landlords have shown damage to the carpets, and provided receipts for cleaning, there is no receipt or proof that landlords paid for carpet replacement in the amount of $610.99. For this reason, I dismiss this portion of the claim.

The landlords claim a monetary loss of revenue for $1,500.00, this for "1.5 months". Presumably this is for the following months' loss of rent income from their having to clean the suite and attend to other duties. This claim is not quantified – that is to say, the landlords have not shown a breakdown of this amount or how they precisely arrived at the dollar amount. I appreciate the unit required substantial work after the end of tenancy; however, the landlords have not established a timeline and did not present their work in obtaining other tenants to minimize the loss of revenue here.

I find the photos provided by the landlords lend significant weight to their claim for cleaning costs. That amount is verified with receipts for work completed. For these reasons, I grant the compensation for these amounts to the landlords.

I find the landlord is entitled to the costs for cleaning due to the actions of the tenants on move out. This is due to the tenants' breach of section 37 of the *Act*. The amount I award is $2001.40. I find the landlords presented a preponderance of evidence to show on a balance of probabilities that the clean-up of the rental unit is the responsibility of the tenant.

The landlords have properly made a claim against the security deposit and have the right to do so. With the landlord holding this amount of $600.00, I order this amount deducted from the recovery of the utility and cleaning amounts totalling $2,372.38. This is an application of section 72(2)(b) of the *Act*.

The landlords are free to reapply for recovery of repair and loss of income in a separate dispute process.

As the landlord is successful in this application for compensation, I find that the landlord is entitled to recover the $100.00 filing fee.

Conclusion

Pursuant to sections 67 and 72 of the *Act*, I grant the landlord a Monetary Order in the amount of $1,872.38 for cleaning costs, prior utility reimbursement, and a recovery of the filing fee for this hearing application. The landlord is provided with this Order in the above terms and the tenant must be served with **this Order** as soon as possible. Should the tenant 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 *Act*.

Dated: June 19, 2020

Residential Tenancy Branch