Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT
MNDL-S, MNDCL-S, FFL

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the "*Act*"). The matter was set for a conference call.

The Tenant's Application for Dispute Resolution was made on January 24. 2020. The Tenant applied for a monetary order for damages or compensation under the *Act*, and the return of their filing fee.

The Landlord's Application for Dispute Resolution was made on March 13, 2020. The Landlord applied a monetary order for damages or compensation under the *Act*, permission to retain the security deposit and to recover the filing fee.

The Landlord and three witnesses as well as the Tenant and their witness attended the hearing and were each affirmed to be truthful in their testimony. The Tenant and the Landlord were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The parties agreed that they exchanged the documentary evidence that I have before me in this case.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Is the Tenant entitled to a monetary order for damages or compensation under the *Act*?
- Is the Tenant entitled to recover the filing fee for their application?

- Is the Landlord entitled to a monetary order for damages or compensation under the Act?
- Is the Landlord entitled to retain the security deposit?
- Is the Landlord entitled to recover the filing fee for their application?

Background and Evidence

While I have turned my mind to all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The parties agreed that the tenancy began on August 1, 2013, as a month-to-month tenancy. Rent, in the amount of $1,435.00, was due on the first day of each month, and the Tenant paid the Landlord a security deposit of $650.00 at the outset of the tenancy. The parties also agreed that the Tenant moved out of the rental unit as of March 1, 2020, in accordance with the Act. The Landlord submitted a copy of the tenancy agreement and the move-in/move-out inspection report for this tenancy, into documentary evidence.

The Tenant testified that as of November 21, 2019, they were unable to park in one of their two assigned parking spots as they could no longer access the spot due to the Landlord's failure to make requested repairs to the parking area. The Tenant is requesting the recovery of their parking fees, which had been included in there rent, in the amount of $580.00, due to not being able to use this parking spot between November 21, 2019, until March 1, 2020.

The Tenant testified that the parking spot provided with this tenancy was located in a poorly lit area of the driveway and that there were no markings to distinguish their parking spots from that of the other renter who lived in the rental property. The Tenant testified that they had requested that the Landlord refresh the reflective paint that had been installed on a supporting pole of the rental unit, so they could see where to park when they were returning home in the dark. The Tenant testified that they sent three letters requesting this repair to the Landlord and that the repair was never completed during their tenancy. The Tenant submitted copies of the three letters they sent the Landlord and 36 pictures of the parking area into documentary evidence.

The Landlord testified that they had received the Tenant's requests for this repair and that they had completed this repair on October 27, 2019, and that they had also installed two additional reflective posts in the parking area on January 5, 2020. The

Landlord submitted their log of repairs to the rental unit, 13 pictures and one video into documentary evidence.

The Tenant testified that they are also seeking $19.72 in compensation due to the loss of quiet enjoyment for the Landlord, not completing the requested repairs in a timely manner. The Tenant referenced the three letters requesting this repair they previously submitted to this proceeding, testifying that as of the end of this tenancy, the Landlord had not repaired the fire escape, the toilet, the gate door or the parking area. The Tenant submitted 40 pictures of the rental unit and three videos into documentary evidence.

The Landlord testified that they had completed all the repairs as requested except one, referencing the log of repairs to the rental unit, they previously submitted to these proceedings, and submitted an additional 21 pictures of the completed repairs into documentary evidence.

The Landlord also testified that the requested repair to the fire escape had not been completed as it was not required by local building or fire code. The Landlord submitted emails from the local building and fire inspectors into documentary evidence that they testified will support their claim that the tenants requested repair was not required.

The Landlord testified that the Tenant had returned the rental unit damaged and with dirty carpets at the end of this tenancy. The Landlord testified that they are requesting the recovery of their cost to have damaged carpets repaired, in the amount of $420.00 and to have the carpets cleaned in the amount of $346.50.

The Landlord testified that they had noted that the carpets in the rental unit had started to bunch during an inspection of the rental unit they completed on April 7, 2018. The Landlord testified that they believe that the carpet was bunching due to water damage caused by the Tenant improperly cleaning the carpets during the tenancy. The Landlord testified that they had spoken to the company that installed the carpets and had been advised that the carpets had been installed properly and that this type of damage was generally caused by the use of excess water during cleaning. The Landlord submitted and email statement from the company into documentary evidence.

The Landlord testified that the Tenant had the carpets cleaning in April 2015 and that they believe that during this cleaning to much water was used and that this improper cleaning resulted in the bunching damage to the carpets. The Landlord submitted a copy of the April 2015 carpet cleaning receipt into documentary evidence.

The Landlord also testified that they had made several requests to the Tenant to repair the damage during the tenancy but that the Tenant had refused to repair the damage. The Landlord submitted 8 pictures of the carpets at the end of tenancy into documentary evidence.

The Tenant testified that they agreed that the carpets in the rental unit were bunching, as described by the Landlord, and that they had received the Landlord's request to repair the carpets. However, they refused to repair the bunching carpets as they had not caused this damage and should, therefore, not be responsible for the repair. The Tenant testified that they had requested the carpets in the rental unit be repaired several times during this tenancy, but the Landlord had refused as they were trying to get the tenant to pay for the repair.

The Tenant testified that they did have one area of the carpets cleaned during this tenancy, one-bedroom, in April 2015, but that they did not conduct a full carpet cleaning until late February 2020, right before they moved out.

The Tenant testified that they believe that there was a defect in either how the carpet and underlay were manufactured, or that the installation of the carpet and underlay had been completed improperly; and that one of these reasons had caused the carpet to bunch.

The Landlord testified that the carpets were also returned dirty at the end of tenancy, the Landlord referred to the previously submitted move-out inspection report and pictures of the carpet that they had submitted into documentary evidence.

The Tenant testified that they had cleaned the carpets at the end of this tenancy as required. The Tenant submitted a copy of an invoice for cleaning.

The Landlord argued that the Tenant’s carpet cleaning invoice was not from a professional carpet cleaning company and that professional carpet cleaning was required at the end of this tenancy.

The Landlord testified that the Tenant had returned the rental unit to the with a hole in one of the doors in the rental unit. The Landlord testified that they are requesting the recovery of their cost to have the hole repaired, in the amount of $80.00. The Landlord referred to the previously submitted move-out inspection report and submitted one picture of the door into documentary evidence.

The Tenant testified that they agreed that there was a door with a hole in it at the end of this tenancy, but that the hold was there when they moved in, and that they had not damaged the door during this tenancy.

Analysis

Based on the above, testimony and evidence, and on a balance of probabilities, I find as follows:

I find that these parties entered into a periodic tenancy agreement that started on August 1, 2013, and ended on March 1, 2020, for a monthly rent, which started at $1,300.00 and a security deposit payment of $650.00, in accordance with the *Act*.

Tenant's Claim

The Tenant has claimed for $580.00 in compensation for the loss of the use of a parking spot that was included with their tenancy. During this hearing, the parties, in this case, offered conflicting verbal testimony regarding the serviceability of the parking spot in question. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim on this item, that is the Tenant.

I have reviewed the tenancy agreement and 36 photographs of the parking spot submitted into documentary evidence by the Tenant, as well as four photographs submitted by the Landlord and one video of the parking spot. I find that this tenancy included the use of two parking spots, in a shared driveway, containing three parking spots. The pictures and video show a standard driveway, containing, at times, three parked vehicles, and that the parking spot in question during these proceedings, to be a half paved, dimly lit, yet accessible parking spot.

I acknowledge the Tenant's arguments that they were uncomfortable parking in the small spot provided due to the lack of lighting and puddles that would form in the unpaved section of this parking spot; however, I find that the Tenant used this same parking spot for 2425 days before the Tenant determined that the parking spot was no longer serviceable. The Tenant offered no explanation as to change had happened to the parking spot on day 2426 of this tenancy, which made the parking spot now

inaccessible. I do not accept the Tenant's argument that they had just had enough of parking in the small dimly lit, as a reasonable ground for this portion of their claim.

I find that the Tenant chose to stop using the parking spot provided, in this tenancy agreement, and that there is insufficient evidence to support the Tenant's claim that this parking spot became inaccessible as of November 21, 2019. Consequently, I dismiss this portion of the Tenant's claim in its entirety.

The Tenant has also claimed for 19.72 in compensation for loss of quiet enjoyment due to the Landlord not completing requested repairs to the rental unit. These parties again offered conflicting verbal testimony regarding the completion of requested repairs to the rental unit. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim, and on this matter, again it is the Tenant who holds the burden of proof on this item.

I have reviewed the three letters sent to the Landlord requesting repairs to the rental unit and compared them to the timeline of completed repairs submitted by the Landlord, and I find that the timeline of completed repairs shows that each of the repairs requested by the Tenant, had been completed by the Landlord in a reasonable amount of time.

Additionally, after reviewing the entirety of the Tenant's submissions to these proceedings, I find that there is no evidence before to show that the requested repairs had not been completed by the Landlord. In fact, after reviewing the Landlord submissions to these proceedings, I find that the Landlord a satisfactorily shown that all the Tenant's requests for repairs had been addressed in a reasonable amount of time. Consequently, I dismiss this portion of the Tenant's claim.

The Tenant claims for compensation for Canada Post fees in the amount of $35.28 for costs to mail documents related to these proceedings to the Landlord, as address during these proceedings. The Tenant was advised that with the exception of compensation for filing the Application for Dispute Resolution. the Act does not permit a party to claim for compensation for other costs associated with participating in the dispute resolution process. Therefore, I dismiss the Tenant's claim to recover Canada post fees.

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenant has not been successful in their

application, I find that the Tenant is not entitled to the recovery of their $100.00 filing fee paid for their application.

Landlord's claim

The Landlord is claiming for $420.00 in compensation due to their costs to have the carpets stretched in the rental unit. The Landlord has claimed that the Tenant damaged the carpets during this tenancy, resulting in a loss of their cost to have the carpets repaired.

In order for a claim for the recovery of costs due to damage, the claimant, a Landlord, holds the burden to show that either deliberately or as a result of neglect, a tenant had caused damage to the rental unit.

I accept the agreed-upon testimony of these parties that the carpets in the rental unit were "bunching" and required a repair at the end of this tenancy. However, during the hearing, these parties offered conflicting verbal testimony of the cause of the needed repair. As stated above, in cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

The Landlord argued that the Tenant had the carpets cleaned during the tenancy and that in this cleaning, too much water had been used, which resulted in the damage to the carpets.

I have reviewed the carpet cleaning receipt, dated April 7, 2015, that the Landlord has submitted into evidence, and I note that this receipt recorded that carpet cleaning had been completed in one of the bedrooms, and not the entire rental unit. Even if I were to accept the possibility that this carpet cleaning had been completed improperly and had caused the damage that the Landlord is claiming for, there should only be damage in the one-bedroom, not the entire rental unit.

It is insufficient to offer an assumption of how something was damaged during a Tenancy; a claim must show that on at least a balance of probabilities, an action happened that caused the damage.

I have reviewed the totality of the Landlords documentary evidence, and I find that there is insufficient evidence, to satisfy me, that on a balance of probabilities, it was this one

cleaning in 2015, to this one room, that caused damage to the carpets throughout the entire rental unit.

Additionally, I am unable to reconcile the Tenant's rebuttal to the Landlord's claim that it was a possibility that there was a defect in either the manufacturing of the carpet or underlay or an error in the installation of this carpet and underlay that had caused the carpet to bunch during their tenancy.

Overall, I find that there is insufficient evidence before me to prove to my satisfaction that the Tenant had damaged the carpets during this tenancy. Accordingly, I dismiss the Landlord's claim for the recovery of their costs to have the carpets stretched at the end of this tenancy.

As for the Landlord's claim for the recovery of there costs to have the carpets professionally cleaned at the end of the tenancy, I have reviewed the tenancy agreement signed between these parties, and I note that there was no requirement to have the carpets professionally cleaned at the end of this tenancy. I acknowledge that the Act requires a tenant to return the rental unit clean at the end of their tenancy; however, the Act does not require a tenant to have a rental unit professionally cleaned. If a landlord wants professionally cleaning at the end of a tenancy, they must specifically contract to that requirement and be willing to ensure that the rental unit is provided to the Tenant professionally cleaned at the beginning of the tenancy. I find that there was no requirement on this Tenant to return the rental unit to the Landlord with professionally cleaned carpets at the end of this tenancy.

I acknowledge the Landlord's claim that the carpets were dirty at the end of this tenancy; however, these parties offered conflicting verbal testimony on the cleanliness of the carpets at the end of this tenancy. Again, as the recovery of carpet cleaning cost is part of the Landlord's claim, it is the Landlord who must provide sufficient evidence over and above their testimony to establish their claim.

I have reviewed the eight pictures submitted into documentary evidence of the carpets at the end of this tenancy by the Landlord, and I find that these pictures show a reasonably clean carpet, with some additional wear and tear, which should be expected after a six-year and eleven-month tenancy.

I accept the Tenant's verbal testimony supported by their document evidence, that they cleaned the carpets at the end of this tenancy, as required by the Act. Therefore, I find

that the Landlord is not entitled to the recovery of their cost for professional cleaning of the carpets in the rental unit.

The final item the Landlord has claimed for is for the recovery of $80.00 in their costs to have a whole in a door repaired at the end of the tenancy. I accept the agreed-upon verbal testimony of these parties that there was a hold in this door at the end of this tenancy. I have reviewed the move-in inspection report and noted that there was not a hole in that door noted at the beginning of the tenancy. Therefore, I find that the Tenant did return the rental unit to the Landlord damaged, section 37 of the *Act* requires that a tenant return a rental unit to a landlord undamaged, stating the following.

> ***Leaving the rental unit at the end of a tenancy***
>
> *37 (1) Unless a landlord and tenant otherwise agree the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.*
>
> *(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, and*
>
> *(b) give the landlord all 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.*

I find that the Tenant breach section 37 of the *Act* when they returned the rental unit damaged. Consequently, I award the Landlord the recovery if their cost, $80.00, to repair this damage at the end of this tenancy.

I acknowledged the Tenant's argument that the hole had been there at the beginning of this tenancy, and that the Landlord had neglected to record that hole on the move-in inspection. I agree with the Tenant that the move-in inspection report had not been completely filled out by the Landlord; however, I find that the Tenant did sign the move-in report and that the Tenant had a responsibility to ensure all the deficiencies they found in the rental unit were included on the report before they signed it.

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord has been partially successful in their application, I find that the Landlord is entitled to the recovery of their $100.00 filing fee paid for their application.

Overall, I grant the Landlord permission to retain $180.00 of the security deposit they are holding for this tenancy, in full satisfaction of the amounts awarded above.

I order the Landlord to return the remaining $470.00 of the security deposit that they are holding for this tenancy to the Tenant within 15 days of receiving this decision.

If the Landlord fails to return the security deposit to the Tenant as ordered, the Tenant may file for a hearing with this office to recover their remaining security deposit for this tenancy. The Tenant is also granted leave to apply for the doubling provision pursuant to Section 38(6b) of the Act if an application to recover their remaining security deposit is required.

Conclusion

The Tenant's application is dismissed without leave to reapply.

I grant permission to the Landlord to retain $180.00 from the security deposit for this tenancy.

I order the Landlord to return the remaining $470.00 of the security deposit to the Tenant, within 15 days of receiving this decision.

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: July 9, 2020

Residential Tenancy Branch