Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL

Introduction

On April 25, 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 attended the hearing with T.R. attending as her agent. Both Tenants attended hearing as well. All parties provided a solemn affirmation.

The Landlord advised that she served a Notice of Hearing and evidence package to each Tenant by email on or around May 3, 2020 and the Tenant confirmed that they received these packages. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenants have been served the Notice of Hearing and evidence packages. As such, I have accepted this evidence and will consider it when rendering this Decision.

The Tenants advised that they served their evidence to the Landlord by registered mail on July 31, 2020. The Landlord confirmed that she received this evidence and that she could view the digital evidence as well. As this evidence was served in accordance with Rule 3.15 of the Rules of Procedure, I have accepted this 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

- Is the Landlord entitled to a Monetary Order for compensation?
- Is the Landlord entitled to apply the security deposit towards these debts?
- Is the Landlord 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 October 5, 2019 and that the tenancy ended when the Tenants gave up vacant possession of the rental unit on April 11, 2020. Rent was established at $1,800.00 per month and the Landlord advised that it was due on the fifteenth day of each month. However, Tenant A.L. advised that they had an agreement that rent was due on the first day of each month. A security deposit of $900.00 was also paid. A copy of the signed tenancy agreement was submitted into evidence.

All parties agreed that neither a move-in inspection report, nor a move-out inspection report was conducted. They also agreed that the Tenants provided their forwarding address in writing on their notice to end their tenancy, on April 1, 2020. As well, the Tenants did not provide any written consent for the Landlord to retain any portion of their security deposit.

The Landlord submitted that she was seeking compensation in the amount of **$378.64** because the Tenants used the self-clean function of the oven contrary to the manual, and the glass door broke. As well, the door of the oven remained locked and the fuse blew. She submitted a quote to support the cost to repair this damage.

A.L. confirmed that she read the oven user manual and followed the instructions to the best of her ability, but she confirmed that she left the oven racks in contrary to the instructions and this was likely the cause of the glass to break. She sent screenshots of this damage to the Landlord and she was advised to turn off the breaker. She stated that the oven door was locked as it was in self-clean mode, and she cleaned up the broken glass prior to vacating the rental unit.

The Landlord submitted that she was seeking compensation in the amount of **$525.00** because the Tenants left “chemical damage” on the walls, which required them to be repaired and repainted. She stated that the rental unit was freshly painted prior to the tenancy starting, that a contractor saw the conditions of the walls at the end of the tenancy, and that it was determined that there was chemical damage. The Landlord believed this damage was caused by the use of a magic eraser. She submitted pictures as documentary evidence; however, she did not provide any evidence from the contractor confirming this assessment, nor did she provide an invoice from this contractor confirming the cost to repair this damage.

She also advised that the contractor repaired a dryer vent that appeared to be damaged by the Tenants, and it was allowing hot air to be pumped into the closet. She stated that this was a fire hazard.

Agent T.R. advised that the dryer lint trap required cleaning often and it appeared as if the dryer vent had been ripped out of the wall, allowing hot air to be pumped directly into the closet. This was repaired by the contractor.

A.L. advised that there was no chemical damage to the walls as she simply used a magic eraser to clean them. As per the video evidence, there may have been streaks on the walls from cleaning, but there was no damage. Regarding the dryer vent, she stated that they never moved the dryer or touched the vent. She submitted that building inspectors had done work in the rental unit during their tenancy, that they were pulling vents and checking pipes, and that the vent was pulled out when they came home.

With respect to the Landlord’s evidence to support these claims, she stated that the quote for the repair work was vague, that the pictures submitted were not date stamped, and that there was little evidence to substantiate these issues.

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 report.

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 or move-out 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 April 1, 2020 and that the tenancy ended when the Tenants gave up vacant possession of the rental unit on April 11, 2020. While the Landlord made her Application within the 15-day time 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 still was 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 a result, I grant the Tenants a monetary award in the amount of **$1,800.00**.

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 claim for compensation in the amount of $378.64 to cover the cost of repair to the broken oven glass, as the Tenants acknowledged to being at fault for this damage, I am satisfied from the undisputed evidence that the Landlord should be granted a monetary award in the amount of **$378.64**.

With respect to the Landlord’s claim for compensation in the amount of $525.00 for the repair of damage to the walls and to a dryer vent, I find it important to note that the Landlord neither conducted a move-in nor a move-out inspection report. While she submitted pictures of the walls of what she considered to be damage, I do not find that she has provided sufficient evidence to substantiate that the streaks were actually “chemical damage” that necessitated re-painting. Furthermore, she has also provided no documentary evidence to demonstrate the damage to the dryer vent. As the burden of proof is on the Landlord to justify these claims, based on the scant evidence submitted, I am not satisfied that the Landlord has substantiated these claims. As such, I dismiss these in their entirety.

As the Landlord was partially successful in her claims, I find that the Landlord is entitled to recover $50.00 of the $100.00 filing fee paid for this Application. Under the offsetting provisions of Section 72 of the *Act*, I allow the Landlord to keep a portion of the security deposit to cover the monetary award granted to the Landlord.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Tenants a Monetary Order as follows:

Calculation of Monetary Award Payable by the Landlord to the Tenants

Oven door repair	$378.64
Filing fee	$50.00
Doubling of security deposit	-$1,800.00
TOTAL MONETARY AWARD	**$1,371.36**

Conclusion

The Tenants are provided with a Monetary Order in the amount of **$1,371.36** in the above terms, and the Landlord must be served with **this Order** as soon as possible. Should the Landlord 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: September 4, 2020

Residential Tenancy Branch