Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RE/MAX Penticton Realty and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL, MNRL, FFL

Introduction

This hearing was convened in response to an application and amended application by the Landlord pursuant to the *Residential Tenancy Act* (the "Act") for Orders as follows:

1. A Monetary Order for damages to the unit - Section 67;
2. A Monetary Order for unpaid utilities - Section 67; and
3. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Tenant confirms that its email address as set out in the Landlord's application is correct.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The following are agreed facts: The tenancy under written agreement started on November 30, 2017 and ended on June 30, 2020. Rent of $1,600.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected $800.00 as a security deposit and $800.00 as a pet deposit. The Tenant provided its forwarding address on the move-out report dated July 1, 2020. The Tenant agreed on the move-out report that the Landlord could retain $150.00 for damage to a screen and a front windowsill. On July 28, 2020 the Landlord returned $622.19 of the security deposit to the Tenant.

The Landlord states that it does not know if a move-in inspection was conducted. The Tenant states that no move-in inspection was done. The Landlord confirms that it made its application on July 28, 2020.

The Landlord states that after the move-out inspection additional damage to a bedroom wall and the doors was noticed. The Landlord states that the Tenant left a hole in the bedroom wall. The Landlord claims $300.00 for the repair and painting of this wall. The Landlord states that this repair was done on July 1, 2020 and that the previously estimated cost of $300.00 was paid. The Landlord states that the doors were left marked and required painting. The Landlord claims $200.00 for this cost. The Landlord states that it is unknown when the unit was last painted.

The Tenant states that it is not disputing the original agreed amount of $150.00 for damage noted at move-out to the windowsill and a screen. The Tenant states that there was no hole left in the bedroom wall and that the paint on the unit including the doors was aged and worn. The Tenant states that any washing of the paint caused the paint to peel.

The Landlord claim $427.81 as the costs of unpaid electricity left outstanding at the end of the tenancy. The Landlord states that it paid these costs. The Landlord does not have any copy of the bill from the electrical provider for the cost claimed. The Landlord states that it only has an email from the owner stating that this amount was paid. The Tenant states that the Landlord never provided any bill for this cost to the Tenant.

Analysis

Section 37 of the Act provides that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for

damage or loss that results. Section 21 of the Regulations provides that a duly completed inspection report is evidence of the condition of the rental property, unless either the landlord or tenant has a preponderance of evidence to the contrary. Given the lack of any photo or notation on the move-out report of a hole in the bedroom wall and considering the Tenant's evidence that no hole was left in the wall, I find on a balance of probabilities that the Landlord has not substantiated that the Tenant left damage to the wall. I dismiss the claim for costs to repair the wall.

Policy Guideline #40 sets out that the useful life of interior paint is 4 years. Given the Tenant's evidence that the paint was aged and would peel when washed and as the Landlord gave no evidence of the age of the paint, I find on a balance of probabilities that the interior paint no longer had any useful life remaining at the end of the tenancy and that any costs to paint the doors therefore remains with the Landlord. I dismiss the claim for painting costs.

In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that costs for the damage or loss have been incurred or established. Given the lack of a bill for the electrical costs I find that the Landlord has not substantiated the costs claimed and I dismiss this claim.

Section 38(4) of the Act provides that a landlord may retain an amount from a security deposit or a pet damage deposit if, at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant. Given the undisputed evidence of the Tenant's agreement in writing on the move-out report for the Landlord to retain **$150.00** I find that the Landlord is entitled to this amount leaving $1,450.00 remaining in the combined security and pet deposit. As the Landlord was not required to make an application in order to retain the $150.00 and as none of the other claims in the Landlord's application were successful, I dismiss the Landlord's claim for recovery of the filing fee.

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. Given the undisputed evidence that the Landlord did not return the remaining security deposit of $1,450.00, given the undisputed evidence of the date the Landlord received the Tenant's forwarding address and given the Landlord's evidence of the date of the Landlord's application, I find that the Landlord did not act in accordance with section 38 in relation to the remaining security and pet deposits and that the Landlord must therefore pay the Tenant double the remaining combined security and pet deposit plus zero interest of **$2,900.00** ($1,450.00 x 2). Deducting the **$622.19** already returned to the Tenant leaves **$2,277.81** owed to the Tenant.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **$2,277.81**. If necessary, this order may be filed in the Small Claims 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: November 17, 2020

Residential Tenancy Branch