Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, FFL; MNSD, MNDCT, FFT

Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* ("*Act*") for:

- a monetary order for compensation under the *Act, Residential Tenancy Regulation ("Regulation")* or tenancy agreement, pursuant to section 67;
- authorization to retain the tenants' security deposit, pursuant to section 38; and
- authorization to recover the filing fee for their application, pursuant to section 72.

This hearing also dealt with the tenants' application pursuant to the *Act* for:

- authorization to obtain a return of double the amount of the tenants' security deposit, pursuant to section 38;
- a monetary order for compensation under the *Act, Regulation* or tenancy agreement, pursuant to section 67; and
- authorization to recover the filing fee for their application, pursuant to section 72.

The two landlords, "male landlord" and female landlord ("landlord") and the two tenants, male tenant ("tenant") and "female tenant" attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 49 minutes.

Both parties confirmed receipt of the other party's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that both parties were duly served with the other party's application.

I explained the hearing process to both parties at the outset of the hearing. Both parties had an opportunity to ask questions. Both parties confirmed that they were ready to proceed with the hearing, and they had no objections.

During the hearing, the tenant confirmed that the tenants had received the full security deposit back from the landlords, so they were only seeking the doubled portion of $748.00 from the landlords, not the $1,496.00, for which they originally applied. The tenant confirmed that no other monetary orders were being sought by the tenants, except for the $100.00 filing fee.

As the landlords have already returned the tenants' full security deposit, their application to retain it is dismissed without leave to reapply.

Issues to be Decided

Are the landlords entitled to a monetary order for compensation for damage or loss under the *Act, Regulation* or tenancy agreement?

Are the tenants entitled to obtain a return of a portion of their security deposit?

Is either party entitled to recover the filing fee for their application?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of both parties' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on June 6, 2017 and ended on September 1, 2020. Monthly rent of $2,342.00 was payable on the first day of each month. A security deposit of $1,100.00 was paid by the tenants and the landlords returned the entire deposit to the tenants in two installments: one for $352.00 and another for $748.00. A written tenancy agreement was signed by both parties. No move-in or move-out condition inspection reports were completed for this tenancy. The tenants provided a written forwarding address to the landlords by mail. The landlords did not have written permission to keep any amount from the tenants' security deposit. The landlords filed their application to retain the deposit on October 1, 2020. The rental unit is a 600 square-foot apartment.

The tenants originally applied for a return of $1,496.00, which is double the amount of $748.00, which the tenants said was not returned within 15 days. However, at the hearing, the tenant confirmed that the tenants already received $748.00, so they were only seeking the remaining $748.00 from the doubling provision. The tenants also seek to recover the $100.00 filing fee paid for their application.

The tenant stated that the tenants sent a written forwarding address to the landlords on September 17, 2020, which was delivered on September 22, 2020, as per the tracking of the mail. He claimed that the tenants received $352.00 from the landlords on September 22, 2020, but they did not receive the remaining $748.00 until October 9, 2020, by mail.

The landlords dispute the tenants' application. The landlord claimed that the tenants' forwarding address was received by the landlords on October 2, 2020, due to mail delays from the covid-19 pandemic. She stated that $352.00 was returned to the tenants on September 13, 2020. She claimed that the remaining $748.00 was returned to the tenants on September 30, 2020, by registered mail and the cheque was cashed by the tenants on October 6, 2020. The tenant denied cashing the cheque on October 6, 2020, claiming that he did not have a bank account with the bank that the landlord claimed the cheque was cashed. The tenant looked up his banking information during the hearing, stating that he could not find the date he cashed the cheque, but agreed he received it and cashed it.

The landlords seek a monetary order of $748.00 plus the $100.00 application filing fee. They seek $200.00 for a strata move-out fee, $100.00 for a strata oil spill cleaning fee, and $448.00 for cleaning the rental unit.

The landlord stated that the landlords were charged a $200.00 move-out fee by strata on September 3, 2020, after the rental unit was sold to new owners, as noted in the statement from their notary, which was provided for this hearing. She said that the tenants had suitcases and a bed that they moved out of the rental unit and they would have had to book the elevator to move it out, but they failed to pay the fee, so the landlords were charged for it.

The tenants dispute the landlords' $200 move-out fee. The tenant claimed that the tenants sold all their furniture and they did not need to book the elevator to move. He stated that he thinks the new occupants used the elevator to move in on September 1, 2020, after the rental unit was sold by the landlords. He claimed that no receipt was

provided by the landlords when they sent the tenants a “nasty letter” and returned $352.00 from their security deposit to them in early September 2020.

The landlord stated that the landlords were charged a $100.00 fee to clean an oil spill in the parking stall that the tenants used during their tenancy, as part of their monthly rent. She said that the tenants failed to clean the oil spill, so strata had to do so, and charged the landlords for it. The landlords provided a receipt for the above payment to strata, dated September 16, 2020, as well as photographs of oil in a parking stall with no car present. The landlord questioned whether the tenants sublet the parking stall to other people, since they asked permission to do so.

The tenants dispute the landlords’ $100.00 strata oil clean fee. The tenant denied subletting the stall and claimed that his car “never leaked oil,” as it was “always serviced” and in “perfect, working condition.” He said that the photographs of the oil in the stall submitted by the landlords, was from someone else’s car, not his car. He claimed that no receipt was provided by the landlords when they sent the tenants a “nasty letter” and returned $352.00 from their deposit to them in early September 2020.

The landlord claimed that both landlords cleaned the rental unit for a total of $448.00. She said that they charged $40.00 per hour for 5 hours per landlord, for a total of $400.00, plus 12% GST and PST tax of $48.00. She stated that she was unsure whether to charge the tenants for taxes. She explained that the tenants failed to clean under the sink, the kitchen, the oven and the patio when the moved out. She maintained that she previously worked as a professional cleaner. She pointed to photographs the landlords submitted both before the tenants moved in and after they moved out.

The tenants dispute the landlords’ $448.00 cleaning fee. The tenant claimed that he personally cleaned the rental unit and left it in a better condition than when the tenants moved in, since the landlords never cleaned it. He said that the landlords handwrote the dates on the move-in photographs they submitted. He maintained that when both parties did a move-out walk-through of the rental unit, since no report was completed, the landlords told him that everything was fine and the tenants’ security deposit would be returned to them in full. He claimed that no receipt or breakdown was provided by the landlords when they sent the tenants a “nasty letter” and returned $352.00 from their deposit to them in early September 2020.

Analysis

Landlords' Application

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicants to establish the claim on a balance of probabilities. In this case, to prove a loss, the landlords must satisfy the following four elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the tenants in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the landlords followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

On a balance of probabilities and for the reasons stated below, I dismiss the landlords' application for $748.00 without leave to reapply.

The landlords' claim for a strata move-out fee of $200.00 is dismissed without leave to reapply. The landlords did not provide a copy of the receipt, invoice or letter from strata, related to this cost. They only provided a statement of adjustments from their notary when the sale of the rental unit was completed. There is no documentation indicating whether the fee was related to the tenants or other occupants living at the rental unit after the tenants moved out. There was no move-out condition inspection report indicating this fee, it was charged on September 3, 2020, after the tenants moved out, and the landlords did not provide documentation to the tenants relating to this fee, when they first returned a portion of the deposit to the tenants in early September 2020, before the landlords filed their application in October 2020. I accept the tenants' evidence that they did not book the elevator to move out, since they sold all their furniture, so I find they are not responsible for any strata move-out fees.

The landlords' claim for a strata oil-spill cleaning fee of $100.00 is dismissed without leave to reapply. The landlords did not provide a copy of the invoice or letter from strata, related to this cost. They only provided a receipt from September 16, 2020, after the tenants moved out on September 1, 2020, and after the sale of the rental unit was completed. There is no documentation indicating whether the fee was related to the tenants or other occupants living at the rental unit after the tenants moved out. There

was no move-out condition inspection report indicating this fee and the landlords did not provide documentation to the tenants relating to this fee, when they first returned a portion of the deposit to the tenants in early September 2020, before the landlords filed their application in October 2020. I accept the tenants' evidence that they did not cause the oil spill. I find that the photographs submitted by the landlords are only of an empty parking stall with oil, which does not prove that the oil spill was caused by the tenants during their tenancy.

The landlords' claim for cleaning costs of $448.00 is dismissed without leave to reapply. I find that the photographs submitted by the landlords upon the tenants moving out, show minor issues related to cleaning. I accept the tenant's testimony that he cleaned the rental unit before moving out. I find that the landlords' cleaning is mainly reasonable wear and tear, for which the tenants are not responsible as per Residential Tenancy Policy Guideline 1. I find that the landlords failed to provide move-in and move-out condition inspection reports, in order to prove the condition of the rental unit upon move-in and move-out. I also find that the landlords cannot justify the $40.00 per hour fee charged by them, plus tax, as this is an arbitrary number, when the landlords were not working as professional cleaners.

As the landlords were unsuccessful in their application, I find that they are not entitled to recover their $100.00 filing fee from the tenants.

Tenants' Application

Section 38 of the *Act* requires the landlords to either return the tenants' security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenants' provision of a forwarding address in writing. If that does not occur, the landlords are required to pay a monetary award, pursuant to section 38(6)(b) of the *Act,* equivalent to double the value of the deposit. However, this provision does not apply if the landlords have obtained the tenants' written authorization to retain all or a portion of the deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenants to pay to the landlords, which remains unpaid at the end of the tenancy (section 38(3)(b)).

The tenancy ended on September 1, 2020. The tenants provided the landlords with a written forwarding address on September 17, 2020, which was received by the landlords on October 2, 2020. The landlords returned $352.00 to the tenants on September 13, 2020. The landlords returned $748.00 to the tenants on September 30,

2020. The landlords filed their application to retain the tenants' security deposit on October 1, 2020.

Section 38 of the *Act* states the following, in part (my emphasis added)

> *Return of security deposit and pet damage deposit*
> *38 (1)Except as provided in subsection (3) or (4) (a), 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****, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;*
> *(d)* ***make*** *an application for dispute resolution claiming against the security deposit or pet damage deposit.*

I find that the landlords' application to retain the tenants' security deposit was filed (made) on October 1, 2020, which is within 15 days of receiving the tenants' forwarding address on October 2, 2020. While the tenants claimed that the forwarding address mail was delivered to the landlords' mailbox on September 22, 2020, the landlords did not receive it until October 2, 2020, due to the covid-19 pandemic. The landlords' right to file an application for damages was extinguished for failure to complete move-in and move-out condition inspection reports, as per sections 24 and 36 of the *Act.* However, the landlords' application seeks cleaning, a move-out strata fee, and a strata oil spill cleaning fee, which are not for damages.

I also find that the landlords repaid $352.00 to the tenants on September 13, 2020 and $748.00 to the tenants on September 30, 2020, which is within 15 days of October 2, 2020. The tenants do not dispute that the $352.00 was returned within the 15 days. While the tenants may not have received the $748.00 until October 9, 2020, the tenant did not actually know when it was cashed, despite checking his banking information during the hearing. In any event, section 38 of the *Act* above states that the landlords must repay the tenants and I find that they did on September 13 and 30, 2020, for the entire security deposit of $1,100.00, which is within the 15-day period of October 2, 2020.

Therefore, I find that the tenants are not entitled to double the value of the remainder of their security deposit of $748.00. Over the period of this tenancy, no interest is payable on the tenants' deposit. The tenants already received the regular return of their deposit totalling $1,100.00, from the landlords, so they are not entitled to another monetary order.

As the tenants were unsuccessful in their application, I find that they are not entitled to recover their $100.00 filing fee from the landlords.

Conclusion

Both parties' entire applications are dismissed without leave to reapply.

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: January 14, 2021

Residential Tenancy Branch