Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The landlord applied for:

- a monetary order for loss under the Act, the Residential Tenancy Regulation or tenancy agreement, pursuant to section 67; and
- an authorization to retain the tenants' security and pet damage deposits (the deposits), under section 38.

Both parties attended the hearing. Tenant DS (the tenant) represents tenant AR. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Preliminary Issue – Service

The landlord affirmed she served the Notice of Hearing and evidence (the materials) to both tenants in separate packages mailed on October 16, 2020 by registered mail. The tenant confirmed receipt of the packages. Based on both parties testimony I find the landlord served the materials in accordance with sections 88 and 89 of the Act.

The tenant stated she attached the response evidence on the landlord's door on January 15, 2021. The landlord confirmed receipt of the response evidence package on January 15, 2021 and stated the response evidence documents were not served in accordance with the Act.

Section 71 of the Act states:

> (1)The director may order that a notice, order, process or other document may be served by substituted service in accordance with the order.

> **(2)In addition to the authority under subsection (1), the director may make any of the following orders:**
> (a)that a document must be served in a manner the director considers necessary, despite sections 88 [how to give or serve documents generally] and 89 [special rules for certain documents];
> (b)that a document has been sufficiently served for the purposes of this Act on a date the director specifies;
> **(c)that a document not served in accordance with section 88 or 89 is sufficiently given or served for purposes of this Act.**
>
> **(emphasis added)**

Based on both parties testimony, I find the landlord was sufficiently served the tenants' response evidence in accordance with section 71(2)(c).

Issues to be Decided

Is the landlord entitled to:

1. a monetary order for loss?
2. an authorization to retain the tenants' deposit?

Background and Evidence

While I have turned my mind to all the evidence provided by the parties, including documentary evidence and the testimony, not all details of the submission and arguments are reproduced here. I explained Rule of Procedure 7.4 to the attending parties; it is the landlord's obligation to present the evidence to substantiate her claims.

Both parties agreed the tenancy started in May 2011, the current landlord purchased the rental unit in March 2020 and the tenancy ended on September 30, 2020. Rent was $775.00 per month, due on the first of the month. At the outset of the tenancy a security deposit of $337.50 and a pet damage deposit of $100.00 were collected. The landlord holds the total amount of $437.50 for the deposits in trust. The tenancy agreement was submitted into evidence.

Both parties agreed the tenant verbally provided the forwarding address on September 30, 2020

A condition inspection form (the inspection form) signed by the parties when the tenancy started was submitted into evidence by the tenant. The landlord signed the move out inspection form and stated the tenant attended the move out inspection but refused to sign it. The tenant testified she was asked to sign it five days after the move

out inspection, the inspection form was completed by the landlord after the inspection and she refused to sign it.

The landlord stated the rental unit had a strong tobacco and marijuana odour and pets feces when the tenancy ended. The landlord hired a gassing company to remove the odour and paid $739.20 for this service. A receipt was submitted into evidence.

The tenant affirmed the building is not smoke-free, she was authorized to smoke in the rental unit, she smoked only on her balcony and the carpet had burn marks when the tenancy started. The rental unit did not have any odour when the tenancy ended. The tenant submitted into evidence a letter signed by neighbours JR and JC stating the rental unit never had odours.

The landlord testified the carpets were filthy when the tenancy ended and needed to be professionally cleaned. The landlord obtained a quote in the amount of $453.81. However, the contractor stated to the landlord that because of the poor conditions the carpet needed to be replaced and the landlord had an expense greater than $453.81 to replace the carpets.

The tenant said her pet urinated on the carpet, but she shampooed it right away. The previous landlord letter dated January 14, 2021 (submitted into evidence) states: “The carpet was replaced in approximately 2008. So of course over 12 years there is going to be wear.”

The landlord affirmed the bathtub was damaged by the tenant. The landlord attempted to have it repaired and got an estimate of $425.00. However, the contractor affirmed to the landlord it needed to be replaced. The tenant stated the bathtub was discolored because of its age. The previous landlord letter states: “The bathtub is original from the time the building was built in 1983. We had always had tenants in the unit, so obviously there is going to be wear over time.”

The tenant stated there was no renovation during her tenancy, and the bathtub and carpet had only regular wear and tear.

The landlord stated the rental unit needed extensive cleaning when the tenancy ended. The landlord cleaned the 2-bedroom, 735 square feet rental unit for 23 hours and is claiming compensation in the amount of $448.00. The tenant testified the rental unit was not properly cleaned because she has health issues.

The landlord submitted into evidence photographs showing a worn-out carpet, a discolored bathtub, dirty walls, windows coverings and a stove.

A worksheet was submitted into evidence listing compensation for gassing, carpet cleaning, professional cleaning and bathtub repairs. The landlord is claiming the total amount of $2,066.01.

Analysis

Section 7 of the Act states:

> Liability for not complying with this Act or a tenancy agreement
> 7 (1)If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
> (2)A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Residential Tenancy Branch Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

> The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:
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> - a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
> - loss or damage has resulted from this non-compliance;
> - the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
> - the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Gassing

The parties offered conflicting testimony about the odour in the rental unit when the tenancy ended. 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.

Based on the coherent tenant's testimony and letters signed by neighbours JR and JC, I find the landlord did not prove, on a balance of probabilities, the tenants caused odours to the rental unit at the end of the tenancy and did not breach the Act, the regulation or the tenancy agreement. Thus the landlord has not met the first test to establish a claim for compensation.

As such, I dismiss the landlord's application for compensation for the gassing service.

Carpet cleaning

Section 37(2) of the Act states:

> 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

Based on the tenant's testimony and the previous landlord letter, I find the carpet was 12 years old when the tenancy ended and is expected to have a reasonable amount of wear and tear.

Residential Tenancy Branch Policy Guideline 40 indicates the useful life of a carpet is 10 years.

I find that the tenants are not responsible for cleaning a carpet which was past its useful life when the tenancy ended and the landlord replaced shortly after the tenants moved out. Thus, I find the tenant did not breach the Act, the regulation or the tenancy agreement. The landlord has not met the first test to establish a claim for compensation.

I dismiss the landlord's application for a monetary award for compensation for carpet cleaning.

Bathtub repairs

Based on the tenant's testimony and the previous landlord letter, I find the bathtub was 37 years old when the tenancy ended.

Residential Tenancy Branch Policy Guideline 40 indicates the useful life of a 'whirlpool, jacuzzi' is 15 years.

I find it is regular wear and tear for a 37-year-old bathtub to be discoloured, specially after a 9-year tenancy.

I find that the tenants are not responsible for repairing a bathtub which was discoloured when the tenancy ended because it was past its useful life and it was replaced by the landlord shortly after the tenants moved out.

Thus, I find the tenant did not breach the Act, the regulation or the tenancy agreement. The landlord has not met the first test to establish a claim for compensation.

I dismiss the landlord's application for a monetary award for compensation for bathtub repairs.

Cleaning

Residential Tenancy Branch Policy Guideline 1 states:

> The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard. The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises), or for cleaning to bring the premises to a higher standard than that set out in the Residential Tenancy Act.

Both parties agreed the rental unit was not clean when the tenancy ended.

Based on the landlord's coherent testimony and the photographs, I find the landlord needed to clean the rental unit because the tenant failed to clean it when the tenancy ended, breaching section 37(2)(a) of the Act. I find it reasonable to award the landlord compensation in the amount of $448.00 for 23 hours of cleaning.

Thus, I award the landlord $448.00 in compensation for cleaning.

Security deposit

Section 38(1) and (6) of the Act states:

> (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.
> […]
> (6)If a landlord does not comply with subsection (1), the landlord
> (a)may not make a claim against the security deposit or any pet damage deposit, and
> (b)must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Per section 38(1) of the Act, the tenant must provide the forwarding address in writing. Thus, I find the tenant did not properly serve the forwarding address and the tenant is not entitled to receive double the security deposit.

Residential Tenancy Branch Policy Guideline 17 states:

> The Residential Tenancy Act provides that where an arbitrator orders a party to pay any monetary amount or to bear all or any part of the cost of the application fee, the monetary amount or cost awarded to a landlord may be deducted from the security deposit held by the landlord and the monetary amount or cost awarded to a tenant may be deducted from any rent due to the landlord.

Thus, the landlord is authorized to retain the $437.50 deposit to offset the monetary award.

Summary

In summary:

Cleaning	$448.00
Minus security deposit	$437.50 (subtract)
Total monetary award	**$10.50**

Conclusion

Pursuant to sections 38 and 67 of the Act, I authorize the landlord to retain the $437.50 security deposit and grant the landlord a monetary order in the amount of $10.50.

The landlord is provided with this order in the above terms and the tenants must be served with this order in accordance with the Act. Should the tenants 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: February 02, 2021

Residential Tenancy Branch