Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDL-S, FFL, MNSD, FFT**

Introduction

This hearing was set to deal with monetary cross applications. The landlords applied for a Monetary Order for cleaning and damage costs; and, authorization to retain the tenant's security deposit and pet damage deposit. The tenants applied for return of double the security deposit and pet damage deposit less a deduction for carpet cleaning they were agreeable to.

Both parties appeared or were represented at the hearing and had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

The hearing was held over two dates and an Interim Decision was issued on December 11, 2020. The Interim Decision should be read in conjunction with this decision.

Issue(s) to be determined

1. Have the landlords established an entitlement to compensation from the tenants, as claimed?
2. Are the tenants entitled to doubling of the security deposit and/or pet damage deposit?
3. Award of the filing fees.
4. Disposition of the security deposit and pet damage deposit.

Background and Evidence

The parties entered into a tenancy agreement for a tenancy set to commence on May 1, 2018 although the tenants were given possession of the rental unit earlier, on April 24,

2018. The tenants paid a security deposit of $1200.00 and a pet damage deposit of $1200.00. The tenancy ended on August 15, 2020.

A move-in inspection report was prepared with the tenants on April 24, 2018.

A move-out inspection was prepared by the landlord and there is no signature of the tenants. The parties were in dispute as to whether a move-out inspection report was prepared together. The landlord testified that a move-out inspection report was prepared on August 15, 2020 and emailed to the tenants. The tenant testified that there was no move-out inspection report prepared; that the landlord did not email it to her (only quotes were given in an email) and the first time the tenant saw the move-out inspection report is when it was included in the landlord's evidence package for this proceeding. The landlord provided a string of emails that refers to an attachment but there is no attachment visible on the evidence provided to me.

Below, I have summarized the parties' respective claims against the other party.

Landlord's claim

Cleaning -- $367.50

The landlord submitted that she contacted the cleaning company who had cleaned the rental unit before the tenancy started and based on square footage the cleaning company estimated it would cost $367.50 ($350.00 plus tax) to clean the rental unit. The landlord acknowledged that the cleaning company did not view the property in providing the quote.

The landlord ended up getting a "deep cleaning" of the rental unit by a different cleaning company at an expense of $735.00 ($700.00 plus tax) but the landlord's claim is limited to the lesser amount of $367.50.

The landlord provided photographs in an effort to demonstrate the tenants did not leave the rental unit sufficiently clean and that "extensive cleaning" was required. The landlord pointed out that she is asking to recover only a portion of the actual $735.00 they spent to have the house cleaned.

The tenant was of the position that the rental unit was left reasonably clean at the end of the tenancy and that they had spent 6 hours cleaning the unit at the end of the tenancy. The tenant pointed out that the landlords sold the property shortly after the tenancy

ended and that the landlords were preparing the property to be show home ready but the tenants are not required to leave it in that condition. The tenant was of the position that when the tenancy started the rental unit was reasonably clean but it was not spotless.

The tenant stated that they had rented from the landlord before and that cleaning was an issue under the previous tenancy as well. The tenants were of the view that the landlord was overly particular about the cleaning standard as the landlord is in the business of buying and selling properties.

Carpet cleaning -- $236.25

The landlord seeks recovery of the cost to have the carpets cleaned. The landlord presented a quote in the amount of $236.25 in support of the claim. The tenant was agreeable to compensating the landlord this amount.

Window seat damage -- $200.00

The landlord submitted that the window seat in the north facing smaller bedroom was damaged by water. The landlord suspects the damage was the result of the tenants placing an air conditioner in the window. The landlord had the window seat and other items repaired at a cost of $440.00 but estimated the cost associated to this window seat to be $200.00. The landlord testified that the window seat was made of MDF and a section had to be removed, replaced, and then sanded and painted.

The tenant acknowledged placing a window air conditioning unit in the window but claims the air conditioner did not leak. The tenant stated that the water damage could have been from rain entering the window.

The tenant pointed out that the move-in inspection report shows pre-existing water damage on the master bedroom windowsill. The landlord responded that the water damage on the master bedroom windowsill was not overly apparent given the large size of the master bedroom windowsill and it was not repaired after the tenancy ended.

Countertop damage -- $1617.00

The landlord submitted that the tenants are responsible for damaging the granite countertops in the kitchen, powder room, main bathroom, and master bathroom. The landlord pointed to photographs that depict darkened areas on the countertops. The

landlord is uncertain as to the cause of the darkening but suggested it could have been from a chemical or soap product left on the countertops. The landlord testified that she lived in the rental unit before the tenancy started and the darkening was not there then. The landlord also testified that the countertops were sealed regularly.

The landlord submitted that she obtained quotes to have the countertops replaced with new granite countertops but her contractor was able to source used countertops that were "passable" for selling the house. The landlord paid $1540.00 + tax ($1617.00) for the salvaged countertops and their installation and she seeks to recover this amount from the tenants.

The tenant denied damaging the countertops and stated she did not notice discolouration occurring during the tenancy. The tenant testified that they wiped down the countertops every day. The tenant also testified that their tenancy was over two years in duration and during that time the landlord never sealed the countertops. The tenant stated that at the start of the tenancy there were faint areas of discolouration but she thought that is how granite countertops looked.

The tenant remained of the position that the landlord was trying to make the house look show home ready in order to sell it and the tenants are not responsible for such costs.

Tenant's application

The tenants seek return of double the security deposit and pet damage deposit, less the carpet cleaning cost they are agreeable to.

The tenants submit that they provided their forwarding address to the landlord on August 24, 2020, via email, and they did not receive the landlord's Application for Dispute Resolution until September 9, 2020 which is 16 days after providing their forwarding address.

I noted that the landlord filed her Application for Dispute Resolution on August 30, 2020 and the proceeding package was generated by the Residential Tenancy Branch on September 2, 2020.

Analysis

Upon consideration of everything that is before me, I provide the following findings and reasons with respect to each of the applications filed by the parties.

Landlord's application

A party that makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

- That the other party violated the Act, regulations, or tenancy agreement;
- That the violation caused the party making the application to incur damages or loss as a result of the violation;
- The value of the loss; and,
- That the party making the application did whatever was reasonable to minimize the damage or loss.

The burden of proof is based on the balance of probabilities. It is important to note that where one party provides a version of events in one way, and the other party provides a version of events that are equally probable, the claim will fail for the party with the onus to prove their claim.

Cleaning

Section 37 of the Act requires that a tenant leave a rental unit "reasonably clean" at the end of the tenancy. Reasonably clean is a standard that is less than spotless perfectly clean or impeccably clean and it may be less than a standard the landlord provides to an incoming tenant or new purchaser. Where a landlord seeks to bring the rental unit to a level of cleanliness that exceeds "reasonably clean" the additional cost is that of the landlord and the tenant is not responsible for the cost to do so.

In this case, the landlord asserts the tenants did not leave the unit sufficiently clean and the landlord spent $735.00 to clean the unit although the landlord's claim is limited to a lesser amount of $367.50 based on a quote of 10 hours estimated by a cleaning company. The tenant was of the position the rental unit was left reasonably clean and the tenants are not responsible for bringing the rental unit to a level of cleanliness the landlord expects to have the house show-home ready.

Upon review of the landlord's photographs and the cleaner's invoice, I find there is consistent evidence that there was a significant amount of dog hair left in the rental unit. Other than dog hair, the cleaning invoice does not make mention of any other specific areas that required cleaning. The landlord's photographs also depict some dirty cupboards and faceplates, toilet, and some trim that I find should have been cleaned by the tenants. However, other photographs labelled as being pictures of dirty areas required me to strain to try to see dirty areas. Overall, I find some additional cleaning was required to bring the rental unit to a level of "reasonably clean".

As for the amount claimed by the landlord, I find the cleaning estimate of $367.50 is not overly helpful as it was generated based on square footage and cleaning all appliances and fixtures without the cleaning company viewing the property and it does not necessarily reflect the tenant's obligation to leave the rental unit "reasonably clean" as opposed to very clean or perfectly clean. The actual cleaning invoice for $735.00 indicates it is for a "deep clean" which is not the standard the tenants are responsible. Therefore, I find I am unsatisfied that the amounts provided in the estimate, nor the invoice, reflects the loss the landlord suffered as a result of the tenant's failure to leave the rental unit "reasonably clean".

In light of the above, I deny the landlord's request to recover $367.50 for cleaning as that amount is not sufficiently supported. Rather than dismiss the landlord's claim for cleaning entirely, in recognition that additional cleaning was required to bring the rental unit to a reasonably clean condition, I award the landlords $147.00. I arrive at that sum by estimating 4 hours of cleaning at the hourly rate of $35.00 plus tax, as changed by the cleaning company that provided the estimate, or $147.00.

Carpet cleaning

The tenants were agreeable to compensating the landlord for the amount claimed for carpet cleaning and I grant the landlord's request to recover $236.25.

Window seat damage

Section 32 of the Act provides that a tenant is required to repair damage caused to the rental unit or residential property by their actions or neglect, or those of persons permitted on the property by the tenant. Section 37 of the Act requires the tenant to leave the rental unit undamaged at the end of the tenancy. However, sections 32 and 37 provide that reasonable wear and tear is not considered damage. Accordingly, a landlord may pursue a tenant for damage caused by the tenant or a person permitted

on the property by the tenant due to their actions or neglect, but a landlord may not pursue a tenant for reasonable wear and tear or pre-existing damage.

Upon review of the landlord's photographs of the window seat, I find the damage does not appear significant; however, there does appear to be some damage, likely from water. The move-in inspection report reflects damage on the master bedroom windowsill but not the smaller north facing bedroom. Therefore, I accept that there was some water damage on the smaller north facing bedroom that occurred during the tenancy.

The tenant submitted that their air conditioner did not cause the damage but that rain may have entered the rental unit. I find the tenant's position that the damage may be from rain to be unlikely given the area of damage is not in front of the opening section of window; however, if the tenants permitted rain to enter the window that would be negligent on part of the tenants. Therefore, I accept the tenants are responsible for damage to the window seat.

In support of the amount claimed by the landlord, the landlord provided an invoice for painting, drywall repairs and replacement of countertops dated November 17, 2020 despite the work taking place on August 22, 2020 and August 25, 2020. I note that on the invoice, the contractor indicates that "multiple drywall repairs" were made under the charge for painting and the charge for the drywall repairs, including to the north facing bedroom, was $440.00. Below, I have reproduced the contractor's details for painting and drywall repairs:

> August 22, 2020
> Full painting 2 levels and media room – approximate 2300 sqft. - All walls, doors and trims. Colour to match. Two coats required due to soiled walls and multiple drywall repairs.
>
> Drywall repairs, including water damaged mdf window seat, North bedroom (bay window) and removal of tape/ /adhesive from 2 North bedrooms closets and walls which tape was painted over.

The landlord submitted to me that of the $440.00 charge, $200.00 is attributable to the window seat damage as a section had to be removed and replaced; however, the contractor does not describe the work performed to repair water damaged window seat and I find there is a lack of corroborating evidence that a section had to be removed and replaced. Further, the fact that "multiple drywall repairs" were included in the charge of $440.00 and the photographs provided to me depict what appears to be insignificant

damage, I find I am unsatisfied the landlord suffered a loss of $200.00 due to the tenants damaging the window seat.

Rather than dismiss the landlord's claim for damage to the window seat in its entirety, I find it appropriate to award the landlord a nominal award in recognition of the damage for which I find the tenants responsible. I provide the landlords a nominal award of $50.00 for window seat damage.

Countertop damage

The landlord asserts the tenants are responsible for damaging the granite countertops during the tenancy and seeks compensation to have the countertops that were stained with darkened spots replaced. The tenants deny responsibility for causing the damage by way of their actions or neglect.

Upon review of the photographs of the countertops, I accept that there were several blotchy areas on the countertops that appear darker than the rest of the countertop. I also accept that the landlords had the countertops replaced with countertops salvaged from another house at a cost of $1540.0 plus tax based on the invoice provided by the contractor.

The issue for me to determine is whether the landlord has proven the tenant's actions or neglect caused the countertops to be damaged.

The photographs show the darkened areas as being near the sinks in the bathrooms and beside the stove in the kitchen. The landlord speculated that the darkening could have been caused by a chemical or soap put on the countertop by the tenants. The tenant denied placing a chemical on the surface of the countertops and suggested they used the countertops ordinarily and wiped the countertops regularly.

Both parties raised the issue of sealing the sealing the countertops. Given the landlord's speculation that a chemical or soap was placed on the surface of the countertops and that doing so caused the staining or darkening, I accept that properly sealing the granite countertops is important to prevent staining and relevant to determining responsibility for the staining. The landlord stated she had sealed the countertops regularly but the tenant testified that were never sealed by the landlord during their two year tenancy and the landlord did not refute that sealing occurred during the tenancy. Other than her verbal testimony, the landlord did not provide any

corroborating evidence with respect to sealing the countertops before the tenancy started.

Overall, I find the landlord's speculation as to what the tenants may placed on the countertops, unopposed testimony that the landlord did not seal the countertops during the two year tenancy, and lack of corroborating evidence to demonstrate the landlords sealed the countertops before the tenancy stated, I find the landlords have not satisfied me that the tenant's actions or neglect is the reason the granite countertops became darkened or stained. Therefore, I dismiss the landlord's claim against the tenants for countertop damage.

Filing fee

The landlord's claim against the tenants had limited success, and the tenants were agreeable to a portion of the landlord's claim. I award the landlord recovery of 25% of the filing fee paid by the landlords, or $25.00, from the tenants pursuant to the discretion afforded me under section 72 of the Act.

Security deposit and pet damage deposit

In keeping with all of the awards and findings above, I authorize the landlords to deduct the sum of $458.25 [$147.00 + $236.25 + $50.00 + $25.00] from the tenant's security deposit. In keeping with Residential Tenancy Policy Guideline 17, I order the landlords to return the balance of the tenant's security deposit and the full amount of the tenant's pet damage deposit, in the net amount of $1941.75 [$2400.00 – $458.25], to the tenants without delay.

Tenant's application

Section 38(1) of the Act provides that the landlord has 15 days, from the date the tenancy ends or the tenant provides a forwarding address in writing, whichever date is later, to either refund the security deposit, get the tenant's written consent to retain it, or make an Application for Dispute Resolution to claim against it. Section 38(6) provides that if the landlord violates section 38(1) the landlord must pay the tenant double the security deposit.

The tenancy ended on August 15, 2020 and the tenants gave a forwarding address to the landlord on August 24, 2020, via email. The landlords filed a claim against the tenant's deposits on August 30, 2020. Accordingly, I find the landlords met their

obligation to make a claim against the tenant's deposits within the time limit permitted under section 38(1) and I dismiss the tenant's application for return of doubling of the deposits.

I make no award for recovery of the filing fee paid by the tenants for their Application for Dispute Resolution.

Conclusion

The landlords are authorized to deduct $458.25 from the tenant's security deposit and the landlords are ordered to return the balance of the tenant's deposits in the net amount of $1941.75 to the tenants without delay.

Provided to the tenants with this decision is a Monetary Order in the amount of $1941.75 to ensure the landlords make the payment, as ordered.

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: March 16, 2021

Residential Tenancy Branch