Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNDCL-S, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Landlords on October 8, 2020, under the Residential Tenancy Act (the Act), seeking:

- Compensation for damage caused by the Tenant, their pets or their guests;
- Compensation for monetary loss or other money owed;
- Recovery of the filing fee; and
- Authorization to withhold the security deposit and pet damage deposit.

The hearing was convened by telephone conference call and was attended by the Landlords and the Tenant, all of whom provided affirmed testimony. The Tenant acknowledged receipt of the Notice of Dispute Resolution Proceeding Package, including a copy of the Application and the Notice of Hearing, from the Landlords and except as otherwise stated in this decision, the parties acknowledged receipt of each other's documentary evidence. Based on the above, and as neither party raised concerns regarding service or timelines, the hearing proceeded as scheduled and I accepted the documentary evidence before me from both parties for consideration. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

Although I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Rules of Procedure, I refer only to the relevant and determinative facts, evidence, and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be emailed to them at the email addresses provided in the hearing and the Application.

Preliminary Matters

Preliminary Matter #1

Although the Tenant submitted an audio recording taken during the move out condition inspection for my review, I could not listen to the recording despite it having been submitted to the Branch in an approved format.

Although the Landlords initially denied receipt of the recording from the Tenant, the Tenant testified that it was properly served along with the rest of their documentary evidence. The Landlords subsequently agreed that it had been received but stated that they did not listen to it as they did not think it was relevant. Later in the hearing the Landlords referenced a portion of the audio recording, which they had previously denied listening to.

Based on the numerous contradictions by the Landlords at the hearing with regards to whether they received and listened to the audio recording from the Tenant, I find their testimony in this regard largely unreliable. As the Landlords referenced a portion of the audio recording in their own testimony, I am satisfied that they both received and listened to the recording.

As a result, I granted the Tenant authorization to re-submit a copy of the recording to the Residential Tenancy Branch (the Branch) for my review within one week after the date of the hearing. As the Tenant re-submitted a functional copy to the Branch within the timeline set out above, I have accepted it for consideration.

Preliminary Matter #2

Although the Landlords sought compensation for a light fixture that no longer works properly, the recessed light fixture appears to be physically undamaged and the Landlords acknowledged at the hearing that the light fixture has not been repaired and that no assessment has been completed to determine if the cause of the issue is damage from the Tenant, their pets, or their guests, or another cause, such as an old or faulty fixture or connections, or wear and tear. As a result, I find that the Landlords' Application seeking costs for damage to the light fixture is premature, and I therefore dismiss it with leave to reapply.

Issue(s) to be Decided

Are the Landlords entitled to compensation for damage caused by the Tenant, their pets or their guests to the rental unit, site, or property?

Are the Landlords entitled to compensation for monetary loss or other money owed?

Are the Landlords entitled to recovery of the filing fee?

Are the Landlords entitled to withhold all or a part of the security deposit and/or pet damage deposit and is the Tenant entitled to the return of all, some, none or double the amount of the deposits?

Background and Evidence

The tenancy agreement in the documentary evidence before me, which was entered into by the previous landlord and the Tenant, states that the fixed term tenancy commenced on October 1, 2019, and at the hearing the parties confirmed that it continued on a periodic (month to month) basis, after the end of the fixed term on September 30, 2020. The tenancy agreement states that rent in the amount of $1,800.00 is due in advance, on the first day of each month, and that a security deposit in the amount of $900.00 and a pet deposit in the amount of $100.00 were to be paid. At the hearing the parties confirmed that the above noted deposits were paid and are still held in trust by the Landlord.

The parties were in agreement that a move in condition inspection and report were properly completed at the start of the tenancy with the previous landlord and the Tenant, and the Tenant acknowledged receipt of a copy of the move in condition inspection report as required by the Act and the regulations from the previous landlord. The parties also agreed that the tenancy ended on October 4, 2020, when the Tenant exercised their right to end the tenancy early under section 50(1) of the Act after having been served with a Two Month Notice to End Tenancy for Landlord’s Use of Property (the Two Month Notice) under section 49 of the Act.

The parties agreed that a move out condition inspection was completed as required at the end of the tenancy on October 4, 2020, and that the Tenant provided their forwarding address to the Landlord in writing that same date, by writing it on the move out condition inspection report. Although the parties agreed that a condition inspection report was completed by the Landlords during the inspection, a copy of which was

provided to the Tenant by email the same day, they disagreed about whether the document was the final and accurate version of the condition inspection report. The Tenant argued that it was a properly completed condition inspection report and that it accurately reflected the condition of the rental unit at the end of the tenancy. The Landlords disagreed, referring to this initial condition inspection report as their “notes” taken during the inspection and a “draft report”. The Landlords stated that the properly completed and “final” and “valid” move out condition inspection report was sent to the Tenant the following day on October 5, 2020, by email.

Although the Tenant acknowledged receipt of the email on October 5, 2020, and the attached document referred to by the Landlords as the final condition inspection report, they stated that it did not accurately reflect the condition of the rental unit at the end of the tenancy and the time of the inspection as the Landlords had altered the first report to include additional things that were inaccurate and were never discussed or noted by the Landlords during the move out inspection or on the move out condition inspection report emailed to them on October 4, 2020, and signed by them and returned to the Landlords on October 5, 2020.

The Landlords stated that the Tenant did not leave the rental unit reasonably clean at the end of the tenancy as required, and as a result, they sought $470.99 in cleaning costs.

The Tenant denied that the rental unit was not left reasonably clean at the end of the tenancy, stating that they had cleaned it for a whole day. The Tenant pointed to the audio file they submitted in support of their testimony. In particular the Tenant pointed to sections of the recording at approximately 14 minutes and 15 minutes and 35 seconds where they state the Landlords acknowledged that their only concerns regarding cleaning were a few spots in the kitchen and that professional cleaning was not required. Further to this, the Tenant stated that only the kitchen was indicated to have any cleanliness issues on the first condition inspection report completed and emailed to them on October 4, 2020.

The Landlords argued that the Tenant has too narrowly parsed the recording by referring to the comments at the above noted times as accurate reflections of the condition of the rental unit in general, as the recording is only a partial recording of the condition inspection, and therefore does not accurately reflect either the entirety of the interactions or the full extent of the condition of the rental unit at the end of the tenancy. The Landlords also reiterated their position that the first condition inspection report completed at the time of the inspection with the tenant and emailed to them on October

4, 2020, was a draft version, and that the second amended copy emailed to the Tenant on October 5, 2020, is the final, valid, and accurate version. The Landlords also stated that they felt intimidated at the time of the condition inspection as the Tenant had brought a person with them to the inspection, whom the Landlords did not know, without the Landlords' knowledge or consent, and that this person was large, rude, and did not introduce themselves.

Both parties submitted documentary evidence for my consideration in support of their positions. The Landlords submitted copies of move in and move out condition inspection reports, an outstanding electricity bill, a video of the improperly functioning light fixture, a large number of photographs of the rental unit allegedly taken at the end of the tenancy, copies of email correspondence with a realtor regarding terms of the tenancy agreement, quotes and invoices for cleaning and repairs, the tenancy agreement, the Two Month Notice, the buyers notice to seller for vacant possession of a tenant occupied property, the Tenant's notice to end the tenancy early and proof of receipt of this notice by the Landlords.

The Tenant submitted an audio recording taken during the condition inspection and several documents detailing the relevant sections of the recording, as well as copies of the condition inspection reports, and email correspondence between themselves and the Landlords regarding the condition inspection, reports, outstanding utilities, paint damage and the return of their deposits.

The parties agreed that the Tenant owes $45.16 to the Landlords for outstanding utilities and $20.00 for paint repairs.

Analysis

Based on the documentary evidence before me and the affirmed testimony at the hearing, I am satisfied that a tenancy to which the Act applies existed, the terms of which are as set out in the tenancy agreement in the documentary evidence before me and by the parties at the hearing. I am also satisfied that the tenancy ended on October 4, 2020, and that the Tenant provided the Landlords with their forwarding address in writing that same day, by recording it on the move out condition inspection report.

Section 7 of the Act states that if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. However, it also states that a

landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with the Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Section 37(2)(a) of the Act states 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. Policy Guideline #1 defines reasonable wear and tear as natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. Policy Guideline #1 also states that 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 and to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. Further to this, it states that the tenant is not responsible for reasonable wear and tear to the rental unit or site or for cleaning to bring the premises to a higher standard than that set out in the Act.

I agree with the Landlords that the audio recording does not capture the entire condition inspection. However, it is clear to me from the audio recording that the Landlords were completing the condition inspection report during the inspection on October 4, 2020, and that by their own words, they took issue with only a little bit of cleaning required in the kitchen and a little bit of paint damage in the master bedroom. It is also clear to me from the audio recording that a copy of this condition inspection report was to be scanned and emailed to the Tenant for their review and signature that same date.

Although the Landlords argued that the copy of the report completed at the time of the inspection and emailed to the Tenant that same day, was in fact a “draft” version, and that a different version amended by the Landlord after the condition inspection, without the presence of the Tenant, and emailed to them on October 5, 2020, is the final and valid version, I do not accept this argument.

Section 35 of the Act requires that landlords and tenants inspect the rental unit together at the end of the tenancy, or on another mutually agreed day, and before a new tenant begins to occupy the rental unit. It also requires that landlords complete a condition inspection report in accordance with the regulations, that the parties sign the condition inspection report and that landlords give their tenants a copy of that report in accordance with the regulations. As a result, I find that the purpose of the condition inspection is to allow the parties to, at the same time, thoroughly and diligently inspect the rental unit and that the purpose of the condition inspection report is to accurately record, at that same time, the condition of the rental unit so that both parties have an

opportunity to register their agreement or disagreement about its state and condition before possession of the rental unit is relinquished and a new occupant moves in.

If the Landlords took issue with the condition of the rental unit, I find that it was therefore incumbent upon them, at the time the original move out condition inspection and report were completed with the Tenant on October 4, 2020, to make that clear to the Tenant. I find that it was therefore not open to the Landlords, after the condition inspection was completed and after a copy of the condition inspection report completed by the Landlords during the inspection was sent to the Tenant by email on October 4, 2020, to change their minds regarding the state of the rental unit, or to in any way alter, amend, or change the condition inspection report completed at the time of the inspection on October 4, 2020, without the express written consent of the Tenant, unless there was hidden damage that could not have reasonably been discovered during the inspection through the exercise of due diligence on the part of the Landlords, which I do not find is the case with cleaning.

At the hearing the Landlords indicated that they felt intimidated by a person brought to the condition inspection by the Tenant without their knowledge or consent, because this person was large, rude, and did not introduce themselves, which I have taken to mean that they felt uncomfortable thoroughly inspecting the rental unit and/or bringing issues to the attention of the Tenant at the time of the inspection. While I acknowledge that it may have been uncomfortable for the Landlords to have a party unknown to them attend the condition inspection, I find that the Tenant had a right to bring a witness with them and that there was no requirement under the Act or regulations for the Tenant to have forewarned the Landlords of the presence of their witness at the inspection. I also acknowledge that it can be difficult and uncomfortable to bring up matters at an inspection that may be contentious, such as whether damage has occurred or whether the rental unit has been left reasonably clean. However, I do not find any discomfort that the Landlords might have felt as a result of bring up or addressing contentious issues regarding the state of the rental unit with the Tenant at the time of the inspection, or the presence of the Tenant's witness during the inspection, in any way waives or diminishes the Landlords' requirements to properly and diligently inspect the rental unit with the Tenant and accurately record the condition of the rental unit on the original condition inspection report as required by the Act and the regulations.

Although the Landlords submitted an updated version of the condition inspection report, sent to the Tenant on October 5, 2020, listing items and deficiencies not originally recorded on the condition inspection report emailed to the Tenant on October 4, 2020, and photographs of the rental unit, I do not find that this altered report completed after

the condition inspection and after a copy of the condition inspection reported completed with the Tenant during the inspection had already been given to the Tenant, or the photographs submitted, amount to a preponderance of evidence that the condition of the rental unit was contrary to that set out by the Landlords in the original condition inspection report completed by the Landlords during the inspection and emailed to the Tenant on October 4, 2020.

As a result, I accept that the condition of the rental unit at the end of the tenancy and at the time of the move out condition inspection on October 4, 2020, was as set out in the original condition inspection report emailed to the Tenant on October 4, 2020, and signed by them on October 5, 2020, and as stated by the Landlords in the audio recording submitted by the Tenant, in accordance with section 21 of the regulations. Further to this, and as already stated above, I find that it was incumbent upon the Landlords to, at the time of the condition inspection and completion of the original condition inspection report, make any concerns they had about the condition of the rental unit known to the Tenant and that it was therefore not open to them to, at a later time, to either change their minds about the condition of the rental unit or to re-inspect the rental unit without the Tenant in a more thorough and diligent manner.

As both the original condition inspection report and the audio recording indicate that cleaning was only required in the kitchen, and that the only damage was to paint in the master bedroom, I find that the Tenant is only responsible for kitchen cleaning costs and the costs for repairing paint damage in the master bedroom. As the parties were agreed that the Tenant owes $20.00 for the cost of the paint repairs, I award the Landlords recovery of this amount.

Although the Landlords sought $470.99 in professional cleaning costs for the entire rental unit, as stated above, I find that the Tenant is only responsible for cleaning costs associated with the kitchen. In the quote obtained from the cleaning company used to clean the rental unit, it states that $160.00 per hour, plus GST, is charged and that they anticipate that it will take 2.75 hours to clean the entire rental unit. While the Landlords did not submit a detailed invoice indicating how long it took to clean the kitchen, I am satisfied that only a portion of these costs related to the kitchen. From the photographs submitted, I find that one hour of cleaning costs is reasonable for a team of professional cleaners to clean the kitchen. As such, I award the Landlords only $168.00 in cleaning costs; $160.00, plus 5% GST.

As the parties were agreed that the Tenant owes $45.16 in outstanding utilities, I award the Landlords recovery of this amount. As the Landlords were at least partially

successful in their Application, I also award them recovery of the $100.00 filing fee pursuant to section 72 of the Act. As a result, I find that the Landlords are entitled to $333.16 in compensation for damaged paint, cleaning costs, outstanding utilities, and recovery of the filing fee. Having made this finding, I will now turn my mind to the matter of retention of the $900.00 security deposit and $100.00 pet damage deposit.

Policy Guideline #31 states that pet damage deposits are generally treated the same as security deposits in terms of retention by a landlord. As a result, I find that Policy Guideline #17 applies to both security deposit and pet damage deposits. Policy Guideline #17 states that the arbitrator will order the return of the deposit or balance of the deposit, as applicable, on a landlord's application to retain all or a part of the deposit, whether or not the tenant has applied for dispute resolution for its return, unless the tenant's right to the return of the deposit has been extinguished under the Act. It also states that unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit, if applicable.

Based on the documentary evidence before me and the testimony of the parties at the hearing, I am satisfied that the tenancy ended on October 4, 2020, which is the same date that the Tenant provided the Landlords with their forwarding address in writing, and that neither party extinguished their rights in relation to the security deposit. Based on the above, I find that the Landlord's Application filed on October 8, 2020, was filed in accordance with section 38(1) of the Act, and that the Landlords therefore had the authority to withhold the Tenant's $900.00 security deposit pending the outcome of the Application. However, the Landlords also withheld a $100.00 pet damage deposit paid by the Tenant and Policy Guideline #31 states that a landlord may only apply to the Branch to keep all or a portion of a pet damage deposit for damage caused by a pet. As there was no indication at the hearing or in the Application that there was any damage to the rental unit as the result of a pet, I find that the Landlords therefore did not have a right to retain the $100.00 pet damage deposit pending the outcome of the Application and were therefore required to return it to the Tenant in full, no later than October 19, 2020, which is 15 days after the date that the tenancy ended and the Tenant provided their forwarding address in writing to the Landlords.

Based on the above and pursuant to section 38(6) of the Act, I find that the Tenant is entitled to the return of double the amount of the pet damage deposit, which equals $200.00.

As a result of the above, I authorize the Landlords to withhold $331.16 from the $900.00 security deposit paid by the Tenant and retained by the Landlords at the end of the tenancy. I also grant the Tenant a Monetary Order in the amount of $768.84; $568.84 for the return of the balance of their security deposit and $200.00 for double the amount of the pet damage deposit improperly retained by the Landlord at the end of the tenancy. As stated in the preliminary matters section of this decision, the Landlords' Application seeking recovery of costs associated with an improperly functioning light fixture is dismissed with leave to reapply.

Conclusion

The Landlords are entitled to retain $333.16 from the Tenant's $900.00 security deposit.

Pursuant to section 67 of the Act, I grant the Tenant a Monetary Order in the amount of **$768.84**. The Tenant is provided with this Order in the above terms and the Landlords must be served with this Order as soon as possible. Should the Landlords 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.

Although this decision has been rendered more than 30 days after the close of the proceedings, section 77(2) of the Act states that the director does not lose authority in a dispute resolution proceeding, nor is the validity of a decision affected, if a decision is given after the 30 day period in subsection (1)(d). As a result, I find that neither my authority to render this decision or the validity of the decision are affected by the fact that it was rendered more than 30 days after the close of the proceedings.

This decision is made on authority delegated to me by the Director of the Branch under Section 9.1(1) of the Act.

Dated: March 3, 2021

Residential Tenancy Branch