Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, MNDL-S, FFL / MNSDB-DR, FFT

Introduction

On November 6, 2020, the Landlords submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") to request a Monetary Order for damages, for compensation, and to be reimbursed for the filing fee.

On December 8, 2020, the Tenant submitted an Application for Dispute Resolution under the Act to request a Monetary Order for the return of the security deposit, and to be compensated for the cost of the filing fee. The Tenant's Application was crossed with the Landlords' Application and the matter was set for a participatory hearing via conference call.

Both Landlords and the Tenant's agent attended the hearing and provided affirmed testimony. They were provided the opportunity to present their relevant oral, written and documentary evidence and to make submissions at the hearing.

Preliminary Matters - Evidence

The Tenant's agent (to be referred to as the "Agent") provided testimony and supporting evidence that she sent the Tenant's exhibit package to the Landlords, via registered mail, on December 16, 2020.

The Agent submitted a report from Canada Post which indicated a notice card had been left at the Landlords' residence, on December 23, 2020, with instructions where and when to pick up the package. The report also noted that the package was unclaimed and sent back to the Tenant as of January 8, 2021.

The Landlords stated they did not receive the evidence package, said that it was up to the Tenant to prove that the evidence package was received, and asked to adjourn the proceedings.

The Agent requested to proceed with the hearing as there had been previous challenges with an earlier hearing and the subsequent service to the Landlords. The

Agent claimed that the only address for service that the Landlords had provided was that of the rental unit, where the Landlords did not live at the time.

When considering the admissibility of evidence for this hearing, I referenced the *Residential Tenancy Policy Guideline – 12. Service Provisions* which notes the following:

Where a document is served by Registered Mail, the refusal of the party to accept or pick up the Registered Mail, does not override the deeming provision. Where the Registered Mail is refused or deliberately not picked up, receipt continues to be deemed to have occurred on the fifth day after mailing.

In the event of disagreement between the parties about the date a document was served and the date it was received, an arbitrator may hear evidence from both parties and make a finding of when service was affected.

A party wishing to rebut a deemed receipt presumption should provide to the arbitrator clear evidence that the document was not received. For example, if a party claimed to be away on vacation at the time of service, the arbitrator would expect to see evidence to prove that claim, such as airplane tickets, accommodation receipts or a travel itinerary. It is for the arbitrator to decide whether the document has been sufficiently served, and the date on which it was served.

In this case, I find that the Landlords' failed to provide sufficient evidence that they did not receive the notice from Canada Post. As a result, I find that the Tenant has served the Landlords in accordance with the Act. Regardless of the Landlords' testimony that they did not receive the Tenant's evidence package, I find that the Landlords were aware of this pending hearing and failed to retrieve the evidence package from Canada Post. I deem the Landlords received the evidence package on December 23, 2020; the date that Canada Post left a notice card at the Landlords' address.

I advised all parties that we would be proceeding with the hearing and that the evidence from all parties would be admissible. I did advise the Landlords that if they had a specific concern about the admissibility of a piece of evidence that was presented by the Agent, they could raise their concerns during the hearing and the concern would be noted and discussed.

Issues to be Decided

Should the Landlords receive a Monetary Order for unpaid rent, in accordance with section 67 of the Act?

Should the Landlords receive a Monetary Order for damages, in accordance with section 67 of the Act?

Should the Landlords be authorized to apply the security deposit to the monetary claims, in accordance with section 72 of the Act?

Should the Landlords be compensated for the cost of the filing fee, in accordance with section 72 of the Act?

Should the Tenant have the security deposit returned, in accordance with section 38 and 67 of the Act?

Should the Tenant be compensated for the cost of the filing fee, in accordance with section 72 of the Act?

Background and Evidence

Although I have reviewed all evidence and testimony before me that was accepted for consideration in accordance with the Act and the Rules of Procedure, I refer only to the relevant and determinative facts, evidence, and issues in this decision. Unless otherwise stated in this decision, only documentary evidence presented or referred to by the parties during the hearing has been considered, pursuant to rule 7.4 of the Rules of Procedure.

All parties agreed to the following terms of the tenancy:

The one-year, fixed-term tenancy began on February 1, 2019 and continued as a month-to-month tenancy. The rent was $1,050.00 and due on the first of each month. The Landlords collected and still hold a security deposit in the amount of $525.00 and a pet damage deposit in the amount of $525.00. The Tenant moved out of the rental unit on August 31, 2020.

The Landlords acknowledged that they bought the residential property in March of 2020 and that the original landlord did not complete a move-in inspection report. The Landlords stated that when they took over the tenancy, they did not complete an inspection report with the Tenant when a new Tenancy Agreement was established.

The Landlords submitted a bylaw letter from the city, dated September 14, 2020, that stated that a bylaw enforcement officer conducted an inspection of the residential property on September 11, 2020. In the letter, the city reported that they had received a complaint regarding “furniture and discarded wood material” on the residential property

and asked the Landlord to clean up and maintain the property by September 25, 2020. The Landlords testified that the Tenant had left a load of furniture on the residential property when she moved out of the unit and that if it wasn't cleaned up, the Landlords could be fined $150.00 per day. The Landlord submitted two photos; one showing 2 couches, a table, two chairs and a tire placed at the front edge of the property, near the street. The second photo showed a couch, tire, and wood debris near the back of the property.

The Landlords stated that they hired a disposal company to remove the Tenant's furniture on September 22, 2020. The Landlords stated that they paid the company $500.00 cash for the removal of the furniture and submitted a picture of the bins present on the residential property. The Landlords are claiming compensation of $500.00 from the Tenant.

The Landlords submitted a hand-written note, dated August 29, 2020. The Landlords testified that they conducted a move-out inspection with the Tenant on this date and noted that there were holes in the living room walls and a split in the bedroom floor that must be fixed. The Landlords stated that the Tenant agreed to fixing the noted damages by initialling and signing the note.

The Landlord submitted four photos that demonstrated there were some nail holes, larger screw holes and minor gouges to several of the living room walls, as well as a picture of the laminate flooring where the boards appeared to slightly split apart.

The Landlord submitted an estimate that included the repair of the walls and replacement of the laminate flooring planks. The estimate did not differentiate the scope of work between the patching and painting of the walls versus the replacement of the laminate flooring. The Landlord stated the estimate was between $790.00 and $980.00 and is claiming $1000.00 in compensation.

The Tenant and her Agent are disputing the Landlords' claims and submitted an invoice, dated September 14, 2020, from a junk disposal company, which indicated the company attended the residential property to remove a load of material that cost the Tenant $352.80. The Agent testified that the Tenant had placed her furniture by the street for potential donation. As the furniture did not get picked up, the Tenant attended to the residential property on September 14, 2020, met the junk disposal company and directed them to remove her furniture from the residential property.

The Agent submitted that the Landlord pressured the Tenant to conduct a move-out inspection while the Tenant still had her possessions in the rental unit and before the end of the month when the tenancy ended.

The Agent testified that the damage to the laminate flooring was minor, likely as a result of wear and tear and were present before the Tenant moved into the rental unit. The

Agent stated that the damage to the walls are no more than nail holes from hanging pictures.

The Agent submitted a Tenant's Notice of Forwarding Address for the Return of the Security and/or Pet Damage Deposit form, dated November 8, 2020. The Agent for the Tenant is requesting that the Landlords return the security deposit to the Tenant.

Analysis

Section 67 of the Act establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order the responsible party to pay compensation to the other party. In order to claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof. The Applicant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the Tenancy Agreement or a contravention of the Act on the part of the other party. Once that has been established, the Applicant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I accept the Landlords' evidence that they did not have a move-in inspection report from the original landlord and that the Landlords did not complete an inspection when they inherited the tenancy and signed a new Tenancy Agreement with the Tenant. This fact complicates the assessment of what damage was present at the beginning of the tenancy and what damage may have occurred during the tenancy.

I find that there was conflicting testimony about the scheduling of the move-out inspection and that the Landlords did not comply with the *Residential Tenancy Regulations* (the "Regulations") regarding service of the condition inspection report; the form of the report; and, standard information that must be included in a condition inspection report.

Section 14 of the Regulations states that the landlord and tenant must complete a condition inspection, described in section 23 or 35 of the Act, when the rental unit is empty of the tenant's possessions, unless the parties agree on a different time.

I accept the Tenant's testimony that the move-out inspection was not completed when the rental unit was empty. This is supported by the Landlords' testimony that the Tenant left behind a load of her furniture on the residential property. I find that the move-out inspection was not completed when the rental unit was empty, on the correct form, or in relation to a move-in inspection. Based on this, I accept the Tenant's testimony, based on a balance of probabilities, that she was pressured to conduct the

inspection early and as such, do not find her agreement to fix the damage as acceptance that she was responsible for the noted damage.

I accept the evidence from all parties that the Tenant left some of her furniture outside of the residential property upon vacating the rental unit. I accept the Landlords' evidence that the city's bylaw enforcement sent them a warning letter to remove the "furniture and discarded wood material". The Landlords are claiming the full $500.00 bill for the removal of debris from their yard and asking for compensation from the Tenant for this amount. Section 67 of the Act notes that the Landlords bear the burden of proof and must prove the existence of the damage/loss, and that it stemmed directly from a violation of the Tenancy Agreement or a contravention of the Act on the part of the other party.

In this case, I find that the Landlords have failed to provide sufficient evidence to demonstrate that the debris they had removed was that of the Tenant's. The pictures the Landlords submitted showed two different areas of the residential property with discarded furniture and wood debris. The city bylaw letter referred to "furniture and discarded wood material" and I find there was no evidence presented to me that the Tenant was responsible for any wood material. I also find it compelling that the Agent provided a receipt and provided testimony that the Tenant met with a junk disposal company on September 14, 2020, to remove the Tenant's furniture from the residential property. For these reasons, I dismiss this part of the Landlords' claim; compensation for debris removal in the amount of $500.00.

The Landlords have claimed losses for the damage to the rental unit. The Landlords submitted pictures of holes in the wall that appeared to be larger than small nail holes to hang art, as well as a few other gouges. During the hearing, the Agent did acknowledge that this damage was as a result of the Tenant, but claimed that they were only nail holes to hang art. Based on the evidence presented by both parties and based on a balance of probabilities, I find that the Tenant is responsible for the damage to the walls and find that the Landlords have established a monetary claim in this regard.

The Landlords submitted a photo of the laminate floor which showed some minor separation between a few of the seams. I find that the Landlords failed to demonstrate that this damage was as a result of the Tenant violating the Tenancy Agreement or the Act and that it was anything beyond normal wear and tear. I dismiss this part of the Landlords' claim.

The Landlords submitted a quote to fix the holes in the walls and the damaged laminate floor but did not provide evidence that can verify the actual monetary amount specific to the repair of the walls. As such, I find that the Landlords have failed to fully establish their claim for compensation, pursuant to section 67 of the Act.

However, in this case, I find that the Landlords are deserving of at least an award of nominal damages. Although the Landlords were unable to prove significant loss, pursuant to section 67 of the Act, I find that it has been proven that there has been an infraction of a legal right; specifically, that the Tenant caused damage to the living room walls by placing large holes that will require repair. As such, I award the Landlords $300.00 in compensation.

The Landlords have established a monetary claim in the amount of $300.00.

Pursuant to section 72(2) of the Act, I authorize the Landlords to keep $300.00 of the Tenant's security deposit.

Based on these determinations I order the Landlords to return the balance of the security deposit, in the amount of $225.00, and the entire pet damage deposit, in the amount of $525.00, for a total of $750.00, to the Tenant.

As both parties were partially successful with their Application, I make no awards for compensation for the filing fees.

Conclusion

I order the Landlords to return the balance of the Tenants' security deposit and pet damage deposit, in the amount of $750.00 within 15 days of receiving this Decision. If the Landlords fail to do so, they may be at risk of owing the Tenant double the amount of the security deposit.

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 3, 2021

Residential Tenancy Branch