Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

FINAL DECISION

Dispute Codes MNDL-S, MNDCL, FFL

Introduction

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

- a monetary order for damage to the rental unit and for compensation for damage or loss under the *Act, Residential Tenancy 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 this application, pursuant to section 72.

The "first hearing" on March 29, 2021 lasted approximately 13 minutes and the "second hearing" on April 30, 2021 lasted approximately 23 minutes.

The "male tenant" did not attend both hearings. The two landlords (male and female) and the female tenant ("tenant") attended both hearings and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

At the second hearing, the tenant confirmed that she had permission to represent the male tenant (collectively "tenants").

At the outset of the second hearing, I informed both parties that they were not permitted to record the second hearing, as per Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure*. During the second hearing, the two landlords and the tenant all affirmed under oath that they were not recording the second hearing.

During the second hearing, I explained the hearing and settlement processes to both parties. Both parties had an opportunity to ask questions. Both parties confirmed that they were ready to proceed with the second hearing, they did not have any objections, they did not want to settle this application, and they wanted me to make a decision regarding this application. Both parties did not make any adjournment or accommodation requests at the second hearing.

Preliminary Issue - Adjournment of First Hearing and Service of Documents

The first hearing on March 29, 2021 was adjourned because the tenant had a Court appearance to attend, pursuant to a subpoena. The landlords consented to the adjournment.

By way of my interim decision, dated March 29, 2021, I adjourned the landlords' application to the second hearing date of April 30, 2021. At the second hearing, both parties confirmed receipt of my interim decision and the notices of rescheduled hearing to the April 30, 2021 date and the second hearing occurred on this date.

At both hearings, the tenant confirmed receipt of the landlords' application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that both tenants were duly served with the landlords' application.

At the first hearing, the female landlord confirmed receipt of the tenants' evidence but claimed that some of the documents were unclear and cut-off. On March 29, 2021, at the first hearing and in my interim decision, I directed the tenants to re-serve their evidence to the landlords by April 9, 2021, by registered mail.

At the second hearing, the tenant said that she re-served the landlords with the tenant's evidence around April 2, 2021, but she did not have a Canada Post tracking number for this service. The tenant sent a message to the male tenant during the second hearing, in order to obtain this information, but she did not receive a response by the end of the second hearing after 23 minutes. The female landlord stated that the landlords did not receive this evidence from the tenants. I informed both parties that I could not consider the tenants' evidence at the second hearing or in my final decision because the tenants failed to confirm service information and I find that the landlords were not served with the tenants' evidence, as per my direction in the interim decision.

Issues to be Decided

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

Are the landlords entitled to retain the tenants' security deposit?

Are the landlords entitled to recover the filing fee for this application?

Background and Evidence

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

Both parties agreed to the following facts at the second hearing. This tenancy began on August 31, 2020 and ended on November 29, 2020. A written tenancy agreement was signed by both parties. Monthly rent in the amount of $1,250.00 was payable on the first day of each month. A security deposit of $625.00 was paid by the tenants and the landlords continue to retain this deposit in full. A move-in condition inspection report was completed for this tenancy. A move-out condition inspection report was only completed by the landlords' agent, as the tenants were not present. The landlords did not provide the tenants with a Residential Tenancy Branch ("RTB") approved form for a final opportunity to schedule a move-condition inspection. The tenants provided the landlords with a forwarding address on December 2, 2020, by way of text message. The landlords did not have written permission to keep any part of the tenants' security deposit. The landlords' application to retain the tenants' security deposit was filed on December 7, 2020.

As per their application, the landlords seek a monetary order of $2,533.42, to retain the tenants' security deposit of $625.00, and to recover the $100.00 application filing fee. The tenants dispute the landlords' application.

The female landlord testified regarding the following facts at the second hearing. The tenants had a lease until the end of June. The landlords seek a "re-rent levy" because the tenants left the tenancy early. The landlords seek compensation for cleaning the rental unit because the tenants left it "filthy" and the landlords have a receipt for $400.00 plus GST. The landlords seek a replacement couch, because the tenants left the couch

up against the baseboard heaters and turned the heat up high when they vacated the rental unit. The back of the couch got burnt and the landlords provided photographs of the "filth" in the rental unit and the couch. The landlords seek the cost to replace the mattress covers that the tenants drew on and cut up. The landlords seek to recover the $100.00 fling fee from the tenants.

The tenant testified regarding the following facts at the second hearing. The tenants asked the landlords what temperature to set the thermostat before they left the rental unit and the landlords told the tenants to turn it up. The landlords can just "twist up the dial" and take a photograph of it. The couch was already burnt because of the heater, from before. There were four mattress prorectors, and the tenants put their own brand new one on top of the landlords' one, because it was "dirty" and "destroyed." The tenant's daughter drew on one of the mattress protectors by mistake, but it did not ruin the use of the mattress protector. The border around the chair rail is reasonable wear and tear. There was no option for the tenants to do a move-out condition inspection because the landlords told the tenants not to contact them, they called the tenant a "loser" in text messages, and there is a police file number for harassment and threats. The tenant had to leave the rental unit because she was being abused by her daughter's father. The police helped the tenants to get an end to tenancy document. The tenants gave notice to the landlords in October 2020 that they were leaving in November 2020, which was re-sent to the landlords on November 1, 2020. The landlords claim they never got the tenants' letter and when the tenant checked with the post office, they told her that letters were delayed because of the covid-19 pandemic. The tenant contacted the landlords' cleaning lady, who told her that it was only $150.00 for five to six hours of cleaning at $20.00 per hour, so the landlords' charge of $400.00 was "malicious." The tenants cleaned the rental unit before vacating, but because there is no move-out condition inspection, the landlords cannot prove that the place was not cleaned.

In response to the tenant's submissions, the female landlord stated the following facts at the second hearing. The landlords' photographs are "time-stamped" to show the "filthy state" of the rental unit. The landlords got a text message from the tenants on November 1, 2020, that the tenants were vacating the rental unit and the landlords told the tenants that they owe a re-rent levy. After, the tenant gave the landlords information from the police regarding her situation, which did not coincide with proper timing. Previously, there was only a small scorch on the couch, but the tenants burnt the entire back of the couch. The cheaper cleaning fee is only for a quick and simple clean, not for the condition of this rental unit. It looked like a "beaver chewed" through the chair rail.

Analysis

Legislation and Rules

During the second hearing, I notified the landlords that as the applicants, they were required to present the landlords' application, including their documents and claims. The following RTB *Rules of Procedure* state, in part:

> *7.4 Evidence must be presented*
> *Evidence must be presented by the party who submitted it, or by the party's agent…*
> …
> *7.17 Presentation of evidence*
> *Each party will be given an opportunity to present evidence related to the claim. The arbitrator has the authority to determine the relevance, necessity and appropriateness of evidence…*
>
> *7.18 Order of presentation*
> *The applicant will present their case and evidence first unless the arbitrator decides otherwise, or when the respondent bears the onus of proof…*

I find that the landlords did not properly present their evidence, as required by Rule 7.4 of the RTB *Rules of Procedure*, despite having the opportunity to do so during the second hearing, as per Rules 7.17 and 7.18 of the RTB *Rules of Procedure.* During the second hearing, the landlords failed to properly go through specific claims and the amounts for each claim.

The second hearing lasted 23 minutes, so the landlords had ample opportunity to present their application. However, the female landlord did not go through the landlords' documents. The female landlord only mentioned that photographs were provided but failed to go through these or other documents during the second hearing.

During the second hearing, I notified the landlords about the below test. 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. To prove a loss, the landlords must satisfy the following four elements on a balance of probabilities:

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 make the following findings based on the testimony and evidence of both parties at the second hearing.

Re-Rent Levy Fee

Subsection 45(2) of the Act sets out how tenants may end a fixed term tenancy:

> *A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that*
>
> *(a) is not earlier than one month after the date the landlord receives the notice,*
>
> *(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and*
>
> *(c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.*

The above provision states that tenants cannot give notice to end the tenancy before the end of the fixed term. If they do, they may have to pay for rental losses to the landlords.

In this case, the tenants ended the tenancy, prior to the end of the fixed term on June 30, 2021. I find that the tenants breached the fixed term tenancy agreement. As such, the landlords may be entitled to compensation for losses they incurred as a result of the tenants' failure to comply with the terms of their tenancy agreement and the *Act*.

Section 7(1) of the *Act* establishes that tenants who do not comply with the *Act*, *Regulation* or tenancy agreement must compensate the landlords for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on landlords claiming compensation for loss resulting from tenants' non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

I dismiss the landlords' application of $1,250.00 for a "re-rent levy fee," without leave to reapply. The landlords did not explain this amount or provide any detail regarding this claim during the second hearing. This amount was taken from the landlords' description in their online application.

I find that the parties' written tenancy agreement states the following regarding this cost, which does not explain what this charge is for, why this amount was chosen, or why this cost was being claimed from the tenants:

> *51. If the Tenant moves out prior to the natural expiration of this Lease, a re-rent levy of $ 1,250.00 will be charged to the Tenant.*

At the second hearing, the female landlord said that she received notice from the tenants on November 1, 2020, that they were vacating the rental unit. She did not state if or when the landlords re-rented the unit to new tenants. She did not explain what costs, if any, were incurred by the landlords, to re-rent the unit. She did not reference any documents or indicate whether any advertisements were posted, whether inquiries from prospective tenants were answered, or whether showings to prospective tenants were completed, in order to re-rent the unit. She did not reference whether any written tenancy agreements were signed with any new tenants.

Damages, Cleaning and Other Costs

I dismiss the landlords' application of "$400.00 plus GST" for "cleaning fees," $367.95 for "mattress cover replacements," $1,040.47 for a "scorched loveseat replacement" and $100.00 for a "chair rail repair," without leave to reapply. These amounts were indicated in the landlords' description in their online application but were not reviewed by the landlords during the second hearing. The landlords did not explain these amounts during the second hearing, nor did they review any receipts, invoices or other documentary evidence to substantiate these claims during the second hearing.

I find that the landlords cannot prove the condition of the rental unit when the tenants moved out, since the landlords did not conduct a move-out condition inspection or report with the tenants. The landlords did not provide the tenants with a final opportunity to schedule a move-out condition inspection on the approved-RTB form, as required by section 17(2)(b) of the *Regulation*.

I accept the tenant's testimony at the second hearing, that the tenants properly cleaned the rental unit before they vacated, that they did not burn the couch, which previously had a burn mark, and that the chair rail and mattress covers were reasonable wear and tear.

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

Tenants' Security Deposit

The landlords continue to hold the tenants' security deposit of $625.00. Over the period of this tenancy, no interest is payable on the deposit. I find that the tenants provided a written forwarding address to the landlords on December 2, 2020, by way of text message. I find that the landlords were sufficiently served as per section 71(2)(c) of the *Act*, with the tenants' forwarding address by text message. Although text message is not a permitted service method under section 88 of the *Act*, the landlords received the tenants' forwarding address and used it to serve this application and evidence to the tenants.

I find that the landlords applied to retain the tenants' security deposit within 15 days of December 2, 2020, as this application was filed on December 7, 2020. I find that the landlords did not have written permission to keep any amount from the tenants' security deposit.

The landlords' right to retain the tenants' security deposit for damages was extinguished for failure to provide an opportunity to complete a move-out condition inspection, using the approved RTB form, as required by section 36(2)(a) of the *Act* and section 17(2)(b) of the *Regulation*. However, the landlords also applied for other costs, aside from damages, including cleaning and a re-rent levy fee.

In accordance with section 38 of the *Act*, I find that the tenants are entitled to the return of their full security deposit of $625.00 from the landlords. The tenants are provided with a monetary order for same. Although the tenants did not apply for their security deposit return, I am required to consider it on the landlords' application to retain it, as per Residential Tenancy Policy Guideline 17.

Conclusion

The landlords' entire application is dismissed without leave to reapply.

I issue a monetary order in the tenants' favour in the amount of $625.00 against the landlord(s). The landlord(s) must be served with this Order as soon as possible. Should the landlord(s) 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: April 30, 2021

Residential Tenancy Branch