Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Tenants: MNSDB-DR, FFT
Landlords: MNDL, FFL

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the "Act") for Orders as follows:

The landlords requested:

- a monetary order for money owed or compensation for damage or loss pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants requested:

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlords pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

At the beginning of the hearing, the landlord confirmed that their legal name was correctly reflected in the style of cause in the tenant's application.

Both parties confirmed receipt of each other's applications for dispute resolution hearing package ("Applications") and evidence. In accordance with sections 88 and 89 of the

Act, I find that both the landlords and tenants duly served with each other's Applications and evidence.

Issue(s) to be Decided

Are the landlords entitled to a monetary order for monetary losses?

Are the tenants entitled to the return of all or a portion of his security deposit?

Are either of the parties entitled to recover the costs of their filing fees for their applications?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of both applications and my findings around it are set out below.

This tenancy originally began as a fixed term tenancy on July 19, 2019, and continued on a month-to-month basis until the tenancy ended on September 30, 2020. Monthly rent was set at $2,500.00, payable on the first of the month. The landlords collected a security and pet damage deposit in the amounts of $1,250.00 each deposit, which the landlords still hold. The tenants had previously filed an application in October 2020 for the return of their deposits, and the Arbitrator had granted their application, but the tenants had provided the incorrect legal names of the landlords, and were not successful in collecting the Monetary Order granted on November 23, 2020.

The tenants filed a new application for the return of their deposits on March 4, 2021. Both parties confirmed in the hearing that the tenants had provided the landlords with their forwarding address on September 30, 2020. The landlords testified in the hearing that they had sent the tenants a cheque by regular mail, which they believe the tenants have not cashed. The landlords confirmed that they did not have tracking information for this mailing. The landlords testified that they had retained $272.25 for recovery of cleaning costs, and had attempted to return the remaining portion of the deposits to the tenants. The landlords filed an application on December 18, 2020 for recovery of the cleaning costs in the amount of $272.25. The landlords provided a receipt dated October 27, 2020 for services performed on October 4, 2020 in the amount of $257.25 for "600-1000 sqft Condo Cleaning Service" as well as pictures of the balcony which the landlords felt were not properly cleaned by the tenants. Both parties provided copies of the inspection reports.

The landlord testified that they had mitigated their losses, and selected the least expensive cleaning option. The landlord testified that the receipt submitted was for cleaning of the entire rental unit. The landlord testified that the tenants failed to properly clean the stove, oven, refrigerator, shelves, and the balcony. The landlord testified that the rental unit was brand new, and that the tenants were the first to occupy the rental unit. The landlords noted the areas that they found were not properly cleaned on the move-out inspection report, which the tenants did not agree with. The tenants testified that they had cleaned for four days, and provided photos of the rental unit. The tenants testified that the landlords had found two crumbs in the freezer, which the tenants had removed during the inspection. The tenants testified that they had attempted to clean the balcony, but the tiles were porous and not sealed, and therefore were stained. The tenants felt that they any heavy duty cleaning was responsibility of the landlords. The tenants testified that they had contacted the cleaning company, and that they confirmed that minimal time was spent cleaning the balcony, and that the receipt was for basic cleaning services.

Both parties requested the return of their filing fees.

Analysis

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must return the tenant's security deposit plus applicable interest and must pay the tenants a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address. Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security or pet damage deposit if "at the end of a tenancy, the tenants agree in writing the landlord may retain the amount to pay a liability or obligation of the tenants."

In this case, I am not satisfied that the landlords had returned the tenants' security and pet damage deposits in full within 15 days of receipt of the tenants' forwarding address. The landlords did not apply for dispute resolution until December 18, 2020, well past the 15 days required by the *Act*. The tenants gave sworn testimony that the landlords had not obtained their written authorization at the end of the tenancy to retain any portion of their deposits.

In accordance with section 38 of the *Act*, I find that the tenants are therefore entitled to a monetary order amounting to double the original security and pet damage deposit in the amount of $5,000.00. As the tenants were successful with their monetary claim, I allow them to recover the filing fee for their application.

Section 37(2)(a) of the *Act* stipulates 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. In light of the disputed facts, I have reviewed the evidence and testimony provided, and I find that on a balance of probabilities, despite the fact that the tenants did attempt to thoroughly clean the rental unit, the rental unit was not thoroughly cleaned at the end of the tenancy. In the tenants' own testimony, the tenants admitted that there were crumbs found at the move-out inspection in the freezer. I find that the landlords had supported their loss by providing a receipt in the amount of $257.25 which was for "600-1000 sqft Condo Cleaning Service" as noted on the receipt. Although the tenants had submitted photos of the rental unit, which the tenants testified was properly cleaned and sanitized, I find that the evidence supports that the rental unit was not thoroughly cleaned as evidenced by the crumbs left in the freezer. I am satisfied that the landlords had made an effort to mitigate the tenants' exposure to the landlord's monetary losses, as is required by section 7(2) of the *Act*, and that they had obtained a reasonable estimate for the service provided. Accordingly, I allow the landlords' monetary claim of $257.25 for cleaning of the rental unit. I note that the landlords had referenced cleaning of the balcony in their claim, which was not referenced in the receipt provided. In a claim for monetary losses, the onus is on the applicant to support the value of their loss. I note that the landlords had filed for a monetary claim of $272.25. In light of the evidence before me, I am not satisfied that the landlords had provided sufficient evidence to support the additional $15.00 claimed in their application, and I dismiss this portion of their claim without leave to reapply.

As the landlords' application also had merit, I allow the landlords to recover the filing fee for their application.

Conclusion

I issue a Monetary Order in the amount of $4,742.75 in the tenants' favour in satisfaction of the monetary orders granted below:

Item	Amount
Monetary Award for Return of Security	$5,000.00

and Pet Damage Deposits and Compensation for Landlords' Failure to Comply with s. 38 of the *Act*	
Filing Fee for Tenants' application	100.00
Monetary Compensation for to Landlords for cleaning	-$257.25
Filing fee for Landlords' application	-100.00
Monetary Award to Tenants	**$4,742.75**

The tenants are provided with this Order in the above terms and the landlords must be served with a copy of 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.

I dismiss the remaining $15.00 claimed by the landlords without leave to reapply.

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: May 26, 2021

Residential Tenancy Branch