Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, FFL

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlords on January 18, 2021 (the "Application"). The Landlords applied as follows:

- To recover unpaid rent
- To keep the security and pet damage deposits
- For reimbursement for the filing fee

The Landlords filed an amendment adding a claim for compensation for damage.

The Landlords appeared at the hearing. The Tenants appeared at the hearing. I explained the hearing process to the parties. I told the parties they were not allowed to record the hearing pursuant to the Rules of Procedure (the "Rules"). The parties provided affirmed testimony.

The Landlords clarified the Application advising that they had deducted the security and pet damage deposits when calculating the total original claim and that the amendment added $500.00 for damage to the rental unit to the claim.

The Landlords submitted evidence prior to the hearing. The Tenants did not submit evidence. I addressed service of the hearing package, amendment and Landlords' evidence and the Tenants confirmed receipt of these.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all testimony provided and reviewed the documentary evidence submitted. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Are the Landlords entitled to compensation for damage to the rental unit?
2. Are the Landlords entitled to recover unpaid rent?
3. Are the Landlords entitled to keep the security and pet damage deposits?
4. Are the Landlords entitled to reimbursement for the filing fee?

Background and Evidence

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. The tenancy started January 25, 2020 and was for a fixed term ending January 24, 2021. Rent was $1,550.00 due on the first day of each month. The Tenants paid a $775.00 security deposit and $500.00 pet damage deposit.

The parties agreed the Tenants vacated the rental unit January 19, 2021.

The Landlords testified that the Tenants texted their forwarding address to the Landlords January 20, 2021. The Tenants testified that they texted their forwarding address to the Landlords and did not know the date of this.

The Landlords did not submit that they had an outstanding monetary order against the Tenants at the end of the tenancy. The Landlords did not submit that the Tenants agreed to the Landlords keeping the security or pet damage deposits.

The Landlords testified that the rental unit was brand new at the start of the tenancy, they don't remember if a move-in inspection was done, there was no Condition Inspection Report ("CIR") done and the Tenants were not offered two opportunities to do a move-in inspection as required.

The Tenants testified that no move-in inspection was done.

The Landlords testified that no move-out inspection was done, and the Tenants were not offered two opportunities to do a move-out inspection as required.

The Tenants testified that no move-out inspection was done.

The Landlords testified that the Tenants failed to pay rent for November, December and January for a total of $4,650.00.

The Tenants agreed they did not pay rent for November, December and January. I had outlined the reasons tenants can withhold rent under the *Residential Tenancy Act* (the "*Act*") and the Tenants acknowledged none of these reasons applied.

As stated, the Landlords sought $500.00 for damage to the rental unit. The Landlords testified as follows. The rental unit was brand new when the Tenants moved in. There was no damage to the rental unit at the start of the tenancy. There was damage at the end of the tenancy. Tape had been peeled off the walls causing damage. The Tenants' dog had scratched areas. There was water damage in the master bedroom. The rental unit had to be cleaned after the Tenants moved out. The kitchen taps didn't work. Having a contractor fix the damage would have cost more; however, the Landlords can fix the damage themselves. Fixing the tap alone would cost $100.00. The remaining $400.00 sought is for painting materials and labour. The Landlords also fixed the towel rack.

The Tenants testified as follows. The faucet broke while they were living in the rental unit. The Tenants could have done repairs if they were allowed back into the rental unit. The Landlords sent a text demanding the keys back as soon as the Tenants were finished cleaning. The Tenants' daughter assumed the keys had to be given back after the rental unit was cleaned. Some of the damage noted was caused by the fridge being moved out of the rental unit.

In reply, the Landlords testified that the Tenants never asked to come back to the rental unit to do repairs.

The Landlords submitted the following relevant documentary evidence:

- A text message dated January 02, 2021 about the Tenants sending written notice ending the tenancy
- Photos of damage to walls, doors and baseboards

Analysis

Security deposit

Under sections 24 and 36 of the *Act*, landlords and tenants can extinguish their rights in relation to security and pet damage deposits if they do not comply with the *Act* and *Residential Tenancy Regulation* (the "*Regulations*"). Further, section 38 of the *Act* sets

out specific requirements for dealing with security and pet damage deposits at the end of a tenancy.

Based on the testimony of the parties in relation to move-in and move-out inspections, I find the Tenants did not extinguish their rights in relation to the security or pet damage deposit pursuant to sections 24 or 36 of the *Act*.

Section 24(2) of the *Act* states:

> (2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord
>
> (a) does not comply with section 23 (3) [2 opportunities for inspection],
>
> (b) having complied with section 23 (3), does not participate on either occasion, or
>
> (c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

I accept that no move-in inspection was done as the Landlords could not remember if one was done, the Tenants testified that one was not done and there is no documentary evidence before me showing that one was done. Therefore, I find the Landlords extinguished their right to claim against the security deposit and pet damage deposit for damage to the rental unit.

Based on the testimony of the parties, I accept that the tenancy ended January 19, 2021 for the purposes of section 38(1) of the *Act*.

Based on the testimony of the parties, I accept that the Tenants provided their forwarding address to the Landlords in writing on January 20, 2021. I accept the Landlords' testimony about the date the forwarding address was received given the Tenants did not know the date and there is no documentary evidence before me calling into question the January 20, 2021 date.

Pursuant to section 38(1) of the *Act*, the Landlords had 15 days from the later of the end of the tenancy or the date the Landlords received the Tenants' forwarding address in writing to repay the security and pet damage deposits or file a claim against them.

However, the Landlords' right to claim against the security and pet damage deposits for damage had been extinguished. The Landlords were still entitled to claim against the security deposit for unpaid rent, which is what the Landlords did. However, the Landlords were only allowed to claim against the pet damage deposit for pet-related damage to the rental unit (see Policy Guideline 31 page 2). Given the Landlords had extinguished their right to claim against the pet damage deposit for damage to the rental unit, the Landlords were required to return the pet damage deposit within 15 days of January 20, 2021. The Landlords did not do so and therefore failed to comply with section 38(1) of the *Act*.

Section 38(6) of the *Act* states:

> (6) If a landlord does not comply with subsection (1), the landlord
>
> (a) may not make a claim against the security deposit or any pet damage deposit, and
>
> (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Given the Landlords did not return the pet damage deposit as required, the Landlords cannot claim against the pet damage deposit and must return double the pet damage deposit to the Tenants. The Landlords therefore owe the Tenants $1,000.00 as double the pet damage deposit. There is no interest owed on the pet damage deposit as the amount of interest owed has been 0% since 2009.

In relation to the security deposit, as stated, the Landlords were allowed to claim against it for unpaid rent despite having extinguished their right to claim against it for damage to the rental unit because unpaid rent is not damage. The Landlords filed the Application prior to the end of the tenancy and prior to receiving the Tenants' forwarding address in writing and therefore complied with section 38(1) of the *Act* in relation to the security deposit.

Compensation

Section 7 of the *Act* states:

> 7 (1) If a…tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying…tenant must compensate the [landlord] for damage or loss that results.
>
> (2) A landlord…who claims compensation for damage or loss that results from the [tenant's] non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

> It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:
>
> - a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
> - loss or damage has resulted from this non-compliance;
> - the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
> - the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Pursuant to rule 6.6 of the Rules, it is the Landlords as applicants who have the onus to prove the claim. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

Section 26 of the *Act* states:

> 26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Based on the testimony of the parties, I accept that the Tenants did not pay rent for November, December and January. The Tenants acknowledged that they did not have authority under the *Act* to withhold rent. Therefore, the Tenants owe the Landlords $4,650.00 in unpaid rent and the Landlords are awarded this amount.

I acknowledge that the tenancy ended prior to January 31, 2021 and that the Landlords are being awarded full rent for January. I note that rent was due on the first day of each month and the parties did not address the issue of the end date of the tenancy during the hearing when discussing unpaid rent and therefore I have awarded the Landlords the amount sought.

Section 37 of the *Act* states:

> (2) When a tenant vacates a rental unit, the tenant must
>
> > (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear…

In relation to damage, I accept that the kitchen faucet broke during the tenancy as the parties agreed on this. The Tenants did not take the position that they did not break the faucet. Further, the Tenants said they would have done repairs in relation to the issues raised if they had been allowed back into the rental unit which indicates to me that the Tenants acknowledge breaking the faucet. I note that I do not accept that the Landlords made the Tenants return the keys prior to fixing the faucet. Further, the Tenants were aware they were moving out January 02, 2021 and therefore could have fixed the faucet at any point over the following 17 days. I am satisfied the Tenants broke the kitchen faucet. I find this is a breach of section 37 of the *Act*.

I accept that the Landlords had to replace the faucet given I accept it was broken.

I do not accept that the kitchen faucet would have been $100.00 as there is no documentary evidence of this before me. I would expect to see some documentary evidence of the cost of a comparable faucet. In the absence of such evidence, I award the Landlords $25.00 for the broken faucet as I am satisfied fixing the faucet would cost at least this amount but cannot be satisfied it would cost more than this in the absence of further evidence to prove this.

The only other damage I am satisfied occurred is the damage shown in the photos which includes damage to walls, doors and baseboards of the rental unit. However, I

am not satisfied the Landlords are entitled to $400.00 for this damage for the following reasons. The Landlords have only submitted nine photos of damage. The damage is not extensive. The Tenants testified that some of the damage was caused by the fridge being removed from the rental unit which I accept may be accurate in relation to some of the photos. The Landlords did not submit any documentary evidence to support that the cost to repair the damage shown in the photos is $400.00.

In the circumstances, I am satisfied the Tenants caused some damage to the walls, doors and baseboards such as the dog damage to the door, the damage caused by tape being peeled off and the water damage to the baseboard. I am satisfied this damage is beyond reasonable wear and tear and therefore the Tenants breached section 37 of the *Act* in relation to this. I am satisfied the Landlords had to repair the damage. I am not satisfied of the cost of the repair given there is no documentary evidence before me to support the cost of the repair for the damage noted. Policy Guideline 16 states at page 2:

> An arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward:
>
> - "Nominal damages" are a minimal award. Nominal damages may be awarded where there has been no significant loss **or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.** (emphasis added)

I award the Landlords $150.00 as nominal damages for the damage noted above.

Given the Landlords were partially successful, I award the Landlords reimbursement for the $100.00 filing fee pursuant to section 72(1) of the *Act*.

Given the above, the Landlords are awarded $4,925.00. The Landlords can keep the security and pet damage deposits pursuant to section 72(2) of the *Act*. The Landlords are considered to hold $1,775.00 in deposits given the finding above that the Landlords owe the Tenants double the pet damage deposit. Therefore, the Landlords are entitled to a Monetary Order for the remaining $3,150.00 pursuant to section 67 of the *Act*.

Conclusion

The Landlords are entitled to $4,925.00. The Landlords can keep the security and pet damage deposits which are considered to equal $1,775.00. The Landlords are entitled

to a Monetary Order for the remaining $3,150.00. This Order must be served on the Tenants. If the Tenants fail to comply with this Order, it 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 *Act*.

Dated: May 31, 2021

Residential Tenancy Branch