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 the landlords' application pursuant to the *Residential Tenancy Act* ("*Act*") for:

- a monetary order for damage and for compensation under the *Act, Residential Tenancy Regulation ("Regulation")* or tenancy agreement, pursuant to section 67;
- authorization to retain the tenants' security and pet damage deposits (collectively "deposits"), pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlords' agent ("landlord") and the two tenants, female tenant ("tenant") and "male tenant" attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that he had permission to represent the two landlords named in this application, as an agent at this hearing. This hearing lasted approximately 65 minutes.

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

I explained the hearing and settlement processes to both parties. Both parties had an opportunity to ask questions. Neither party made any adjournment or accommodation requests. Both parties confirmed that they were ready to proceed with the hearing, they wanted me to make a decision, and they did not want to settle this application.

The tenant confirmed receipt of the landlords' application for dispute resolution hearing package and the landlord confirmed receipt of the tenants' evidence. In accordance with sections 88, 89 and 90 of the *Act*, I find that both tenants were duly served with the landlords' application and both landlords were duly served with the tenants' evidence.

During the hearing, the landlord stated that the landlords were not pursuing their utilities claim of $83.28 against the tenants, because the landlords already received that payment from the tenants. This portion of the landlords' application is dismissed without leave to reapply.

Issues to be Decided

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

Are the landlords entitled to retain the tenants' deposits?

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

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, 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. This tenancy began on September 15, 2019 and ended on December 31, 2020. Monthly rent in the amount of $1,450.00 was payable on the first day of each month. A security deposit of $725.00 and a pet damage deposit of $725.00 were paid by the tenants and the landlords continue to retain both deposits. A written tenancy agreement was signed by both parties. The tenants did not provide written permission to the landlords to keep any amount from their deposits. The tenants provided a written forwarding address, by way of email, to the landlords on January 11, 2021. Move-in and move-out condition inspection reports were completed for this tenancy.

The landlords' application to keep the tenants' deposits was filed on January 15, 2021.

The landlords seek a monetary order of $1,810.69 plus the $100.00 application filing fee. The tenants agreed to pay for $887.95 towards the above cost and disputed the remaining $922.74 and the $100.000 filing fee.

The landlords seek dog door and carpet damage of $850.50, lightbulbs of $22.70, and kitchen bulbs of $14.75 from the tenants. The tenants agreed to pay the above amounts during this hearing.

The landlords seek $65.00 for dog feces cleanup and $29.17 for dog lawn damage from the tenants. The landlords submitted photographs of same. The landlord said that the tenants were given a caution notice regarding the grass stains in July 2020. He explained that the tenants' dog is likely to have caused this damage because the dog is female. He maintained that he did not notice the grass stains at the time of the move-out condition inspection because it was snowing at the time, but he noticed it later when the grass was exposed.

The tenants dispute the landlords' claims of dog lawn damage and dog feces cleanup. The tenant stated that these claims were added to the move-out condition inspection report thirteen days after the tenants moved out and after the report was already signed by the tenants.

The landlords seek costs for a toilet replacement of $828.57. The landlord claimed that the incident occurred on the July 1, 2020 long weekend. He said that he got information on the Monday after the weekend from the neighbours, that the tenants were having a weekend party, there were lots of people over at their place, and there were noise complaints. He stated that the tenants' neighbour provided photographs to him, showing tents in the backyard. He explained that there were too many people there since the rental unit is a two-bedroom, one-bathroom basement suite. He maintained that the tenants called saying there was a water leak. He said that the plumber told him that the upper not the lower tank was cracked, the tenants needed the toilet because of all the people over at their place, and the toilet had to be replaced. He claimed that the plumber told him that it was not a mechanical but a crack repair and something had to be done to crack the toilet because it cannot crack by itself. He confirmed that the landlords wanted to pursue the tenants for the damage, as it could have been their guests that caused the damage, for which the tenants are still responsible. He stated that the cost is high because it was an overtime call on the long weekend. He said that the landlords submitted photographs of the toilet which are self-explanatory, a receipt indicating that the toilet was cracked, and information regarding cracked toilets which shows that they cannot crack on their own. He claimed that the tenants refused to pay

or to split the cost with the landlords by 50/50. He confirmed that when he asked the plumber to be a witness at this hearing, the plumber refused saying that he did not want to be involved in this dispute.

The tenants dispute the landlords' claim for the toilet replacement. The tenant claimed that the tenants did not have a party on the long weekend, as one of the neighbours is a police officer and he could have called it in if there was a party. The male tenant said that there was no evidence that the tenants broke the toilet and no receipt was submitted to show that the above cost was paid by the landlords, only an invoice was given. The male tenant stated that his family of four members were visiting, they stayed in tents in the tenants' backyard, his family did not damage the toilet, and the landlords have no proof that they did. He claimed that the toilet damage is not visible in the landlords' photographs, he does not know how old the toilet is, and he does not know how it broke. He maintained that the landlord complimented him on the tents in the backyard, completed a visual inspection of the toilet and left, and only sent caution notices to the tenants after. He said that the plumber was not a witness at this hearing, and neither was the neighbour who took the photographs of the tents in the backyard. The female tenant claimed that the landlord was fixing the toilet and replacing the handle for a long time, on April 23, 2020, so there were previous problems with the toilet, which the landlords are obligated to fix.

Analysis

Landlords' Application

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 on a balance of probabilities. In this case, to prove a loss, the landlords must satisfy the following four elements:

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.

I award the landlords costs for dog door and carpet damage of $850.50, lightbulbs of $22.70, and kitchen bulbs of $14.75, totalling $887.95. The tenants agreed to pay the above amounts during the hearing. I order the landlords to retain $887.95 from the tenants' security and pet damage deposits, in full satisfaction of the monetary award.

On a balance of probabilities and for the reasons stated below, I dismiss the remainder of the landlords' application for $922.74 without leave to reapply. This includes the landlords' claims for dog lawn damage of $29.17, dog feces cleanup of $65.00, and toilet replacement of $828.57.

The landlords did not provide a receipt to show if or when any payment was made for the invoice of $65.00 for the dog feces cleanup. The landlords provided a copy of an invoice with a balance due, with the credit card information and payment section incomplete and blank. The landlords did not provide a detailed invoice with a breakdown of tasks completed, who completed the tasks, how many workers completed the tasks, the rate per worker, the rate per hour, or other such information.

The landlords provided a receipt for $29.17 indicating "lawnsoil" and "weed." The landlords did not provide any invoice or explanation during this hearing, as to what cleanup was completed, who completed it, when it was completed, or other such information.

I find that the landlords did not provide sufficient evidence that the tenants' dog caused the lawn damage and cleanup. The landlords added this information to the move-out condition inspection report after it was completed and signed by the tenants. The landlords were apparently aware of this issue in July 2020, when they claim that a caution notice was issued to the tenants. The landlord claimed that he only noticed the lawn damage in the tent photograph from the tenants' neighbour, during this hearing. The neighbour did not testify at this hearing to authenticate the photograph that the tenants disputed, despite the fact that this issue was raised by the tenants during this hearing.

I find that the landlords did not provide sufficient evidence that the tenants or people permitted on the property by the tenants, caused the crack in the toilet, requiring a toilet replacement. The landlord's plumber did not testify at this hearing as to the verbal statements he made according to the landlord, despite the fact that the issue was raised by the tenants. I do not find a photograph of tents in a backyard or the tenants' admission that their family was visiting them, to be proof that the tenants or their guests cracked the toilet wilfully or negligently. The landlords did not provide a receipt to show

if or when any payment was made for the invoice of $828.57. The landlords only provided a copy of an invoice with a balance due.

As the landlords were only successful in this application based on what the tenants agreed to pay during the hearing, I find that the landlords are not entitled to recover the $100.00 filing fee from the tenants.

Deposits

Section 38 of the *Act* requires the landlords to either return the tenants' deposits or file for dispute resolution for authorization to retain the deposits, within 15 days after the later of the end of a tenancy and the tenants' provision of a forwarding address in writing. If that does not occur, the landlords are required to pay a monetary award, pursuant to section 38(6)(b) of the *Act,* equivalent to double the value of the deposits. However, this provision does not apply if the landlords have obtained the tenants' written authorization to retain all or a portion of the deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenants to pay to the landlords, which remains unpaid at the end of the tenancy (section 38(3)(b)).

I make the following findings on a balance of probabilities and based on the evidence of both parties.

The tenancy ended on December 31, 2020. The landlords did not have written permission to retain any amount from the tenants' deposits. The tenants provided a forwarding address by way of email, which was not an acceptable written method as per section 88 of the *Act*, at that time. However, I find that the landlords were sufficiently served with the tenants' forwarding address on January 11, 2021, by email, as per section 71(2)(c) of the *Act*, as the landlord confirmed that he received the address and he used email as a method of communications with the tenants.

The landlords applied to retain the tenants' deposits on January 15, 2021, which is within 15 days of the later forwarding address date of January 11, 2021. Therefore, I find that the tenants are not entitled to double the amount of their deposits.

The landlords continue to hold the tenants' deposits totalling $1,450.00. Over the period of this tenancy, no interest is payable on the deposits. In accordance with section 38 of the *Act* and Residential Tenancy Policy Guideline 17, I find that the

tenants are entitled to the regular return of their deposits of $1,450.00, minus the $887.95 that I ordered the landlords to retain above, for their monetary award.

I issue a monetary order to the tenants for the balance remaining of $562.05 from their deposits. Although the tenants did not apply for the return of their deposits, I am required to consider it on a landlords' application to retain the deposits, as per Residential Tenancy Policy Guideline 17.

Conclusion

I order the landlords to retain $887.95 from the tenants' security and pet damage deposits totalling $1,450.00, in full satisfaction of the monetary award.

The remainder of the landlords' application is dismissed without leave to reapply.

I issue a monetary order in the tenants' favour in the amount of $562.05 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: May 20, 2021

Residential Tenancy Branch