Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNDCL-S, FFL

Introduction

The landlord filed an application for Dispute Resolution (the "Application") on February 10, 2021 seeking compensation for damage caused by the tenant, and other money owed. Additionally, they asked for reimbursement of the Application filing fee.

The matter proceeded by way of a hearing on June 11, 2021 pursuant to s. 74(2) of the *Residential Tenancy Act* (the "*Act*"). In the conference call hearing I explained the process and provided the attending parties the opportunity to ask questions.

The landlord and one of two tenants attended the hearing. Each prepared documents in advance of the hearing for use as evidence. At the outset, the landlord stated they provided their documents via registered mail to each of the tenants; in the hearing, the tenant who attended confirmed this. This tenant then stated they gave their documents to the landlord one day in advance of the hearing; the landlord confirmed this in the hearing.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for compensation for damage caused by the tenant, or other money owed pursuant to s. 67 of the *Act*?

Is the landlord entitled to reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

Background and Evidence

The landlord provided a copy of the tenancy agreement for this hearing and spoke to its terms. Both the landlord and the tenants signed the agreement on February 1, 2015 for the tenancy that started on that date. The monthly rent was $1,235. The tenants paid a security deposit of $617.50. Over the duration of the tenancy, the rent increased each year. The most recent increase was in 2020, increasing to $1,410.

The landlord submitted a copy of a 'Condition Inspection Report' as a record of the meeting with the tenant on February 1, 2015. Both tenants signed this document to verify that they "agree this report fairly represents the condition of the rental unit." The tenant in the hearing confirmed they received this document, and recalled that some repairs were needed at the start of the tenancy.

The tenants informed the landlord of the pending end of tenancy on January 21, 2021. According to the landlord, this was "just because the tenant wanted to move out." From their perspective this was a late notice from the tenants. The move-out date was February 3; however, the tenant did not provide the rental unit key until the following week. The tenant also returned a copy of the move-out condition inspection report, this being the one they took away from the inspection meeting on its abrupt ending.

The parties met on February 3. The building manager attended on behalf of the landlord. The landlord advised the tenant of this scheduled time and that the meeting must happen on that particular day, with new tenants waiting to enter the unit. This was after the landlord became aware that the tenant had not vacated by February 1st. Emails provided by the landlord reveal the tenant's reluctance to attend with the building manager only. By 11:27am the landlord advised the tenant of applicable deductions from the security deposit, by late afternoon the tenant advised they did not agree with deductions from the deposit. On February 5, the landlord provided more details on a total amount of $1072 including:

- cleaning for $345
- window cover cleaning, $40
- carpet cleaning, $147
- repairs, $155
- mailbox key replacement, $10
- extra rent, $375

By February 9, the landlord asked the tenant for their approval and the tenant responded to say they only agreed with the repair charge ($155) and mailbox key replacement ($10). The landlord responded to this to say that cleaning charges "are stipulated clearly in the tenancy agreement." They charged extra rent because the cleaning and repairs could only be completed prior to new tenants entering and this was completed only on February 8, 2021.

In the hearing, the landlord described that the final move-out date was properly January 31st. They afforded the tenant one extra day on February 1st, so when they visited on that day they "heard the same story" that the tenant was not ready. Moreover, they visited four times on February 1st to see that no work was completed. On both of these days, nothing was cleaned or prepared for move-out in the unit. The landlord maintained that, in proper fashion, all move-out tasks should be completed by the time of the scheduled inspection meeting.

In the hearing, the tenant described cleaning out the unit on the morning of February 3. Around 9:00am, the building manager stated they would have to leave immediately; then, if not completed 1:00pm, the tenant would be kicked out. The tenant initially signed the Condition Inspection Report at the meeting to say they agreed to the unit's condition outlined therein. After this, the building manager allegedly implied that the tenant had signed the document, thereby agreeing to charges to be determined. With this discussion, the tenant grabbed the Condition Inspection Report document and left the meeting, thereafter, calling the police because they would be locked out.

The tenants here had contact with the new tenants who were entering in February. They had an arrangement to leave furniture for them, and the tenant here explained that is why furniture remained in the rental unit, which the landlord then disposed of. In their evidence they presented that they tried to communicate this arrangement to the landlord.

The tenant's response to this was that they were not afforded proper time to complete cleaning or remove furniture. They maintain that "the move out was conducted poorly" by the landlord. The landlord was not aware of amounts to be deducted; however, they required the tenant's own signature up front, prior to any proper assessment of damages. The tenant submitted a copy of an email from February 2 wherein the landlord stated: ". . . the new tenant didn't move in due to the lack of cleaning in the suite, so we hired a cleaning company who is now (today) doing the cleaning inside the suite – you will have to pay for that. . .". The landlord also advised the tenant of extra rent needed for the days required to finalize the new tenant's move in.

The tenant also made their complaint over the move-out inspection meeting, identifying that they signed the Condition Inspection Report, with the building manager then stating that would be the tenant's own tacit approval to whatever deductions were necessary. In this email to another representative of the property management company, the tenant stated they were "totally fine with these deductions" as they were set out in the Condition Inspection Report, these being reflective of what was set out in the original tenancy agreement.

Approximately one week later, the tenant returned with the signed Condition Inspection Report, setting out that they disagreed with the state of the unit as represented in that document.

In the Application, the landlord listed the following items for compensation:

- damage to the unit, walls, toilet lid, closet doors and damaged drawers: $155
- cleaning: $385
- carpet cleaning: $147
- mailbox key: $10
- extra rent, 7 days: $375

The landlord provided 16 pictures showing the damages and need for cleaning. They provided a $515 invoice for cleaning; therein is listed the $155 amount for damages, and $320 for cleaning. There was an invoice for $147 for carpet cleaning.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

The *Act* section 37(2)(a) provides that when vacating a unit, the tenant must "leave the rental unit reasonably clean." Also, the tenant must give the keys to the landlord and allow access to the rental unit.

The tenant raised issues with the final walk-through meeting; however, that is not at issue with respect to damage amounts owing, or reimbursement for cleaning undertaken by the landlord. From the testimony of both parties, I conclude the tenants did not have the rental unit in order when it was necessary to have the rental unit "reasonably clean" as outlined above.

I find the tenancy ended on January 31, 2021. The tenant here has not pointed to any valid legal reason why they are entitled to end the tenancy on the following day, February 1st. I find they are not entitled to do so. On top of this, I accept the landlord's evidence that the tenant was not prepared with the unit reasonably clean on February 1st. This carried over to February 2nd, and ultimately February 3rd. The tenants bear responsibility to end the tenancy in a manner prescribed by the *Act*; I find they did not do so here.

The landlord here claimed for cleaning and damages and applied to use the withheld security deposit for these purposes. The tenant providing their signature on the Condition Inspection Report does not mean they automatically forfeited their security deposit or any part thereof. Conversely, the signature they provided to show their disagreement does not entitle them to a return of the security deposit. The landlord applied for their monetary claim within 15 days of the later of the end of the tenancy or the tenant providing their forwarding address as specified in s. 38(1) of the *Act*. The landlord is thus following the legal procedure to make a claim against that deposit.

It appears the tenant in attendance at the hearing did not like the way in which the tenancy ended; however, this is irrelevant. I find the brusque manner in which the final meeting occurred was brought about by the tenant's own delays and obstructions to the process. I find as fact the tenant was not prepared to move out from the unit as they were obligated to do, this on very short notice to the landlord of ending the tenancy. The simple matter is they did not leave the unit in a state within the meaning of s. 37(2)(a); moreover, there was not a simple return of the keys as the *Act* prescribes.

From the photos provided by the landlord, I find there was damage present requiring repairs. This is outlined on the invoice provided by the landlord showing the amount of $155. The tenant stated in the hearing this was "fine". The mailbox key needed replacement, this is an additional $10 that the tenant acknowledged. I award this portion of the landlord's claim for $165.

The landlord provided an invoice showing individual spaces around the apartment needing cleaning. From these pictures, I conclude the rental unit required cleaning and I find it more likely than not it was to the extent indicated on the invoice that the landlord

provided. This remaining amount from the invoice is $360, including the window coverings. I award this portion of the landlord's claim for compensation to them.

The agreement at paragraph 23 specifies that the tenant will pay for professional cleaning for both window coverings and carpets. The tenant here did not present that they had the carpets cleaned. I find the tenants did not provide for clean carpets at the end of the tenancy. I so award the landlord's claimed cost of $147 to them in line with this.

In the hearing, the landlord accepted that new tenants moved into the rental unit, albeit behind schedule. I find the tenants in this dispute should properly be responsible for any time they left owing to the landlord. Strictly speaking this is the period of time in which they retained the keys for the rental unit. The landlord stated the $375 amount they claimed was "not a loss". They graciously agreed to remove this portion from their claim; therefore, I make no award for this amount to the landlord.

In sum, I accept the landlord's evidence that the tenants left the unit in a state that required a significant amount of clean-up, as well as repairs. I find the landlord provided sufficient evidence to justify an award amount of $672 for their monetary loss.

This amount for $672 represents damages and loss that deserve recompense to the landlord because they stem from the tenants breaching the tenancy agreement and terms of the *Act*. They are significant costs borne and paid for by the landlord. This is the result of the tenant breaching s. 37(2)(a) of the *Act*. The landlord shall receive this amount for compensation.

The *Act* section 72(2) gives an arbitrator the authority to make a deduction from the security deposit held by the landlord. The landlord has established a claim of $672. After setting off the $617.50 security deposit, there is a balance of $54.50. I am authorizing the landlord to keep the security deposit amount and award the balance of $54.50 as compensation to the landlord.

Because the landlord is successful in their claim, I find they are eligible for the $100 Application filing fee.

Conclusion

Pursuant to sections 67 and 72 of the *Act*, I grant the landlord a Monetary Order in the amount of $154.50. The landlord is provided with this Order in the above terms and they must serve the tenants with this Order as soon as possible. Should the tenant fail to comply with this Order, the landlord may file this Order in the Small Claims Division of the Provincial Court and where it will be 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 s. 9.1(1) of the *Act*.

Dated: June 25, 2021

Residential Tenancy Branch