Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Landlord under the *Residential Tenancy Act* (the *Act*) on November 11, 2021, seeking:

- Compensation for monetary loss or other money owed;
- Authorization to withhold the Tenant's security and pet damage deposits; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call on June 13, 2022, at 1:30 P.M. (Pacific Time), and was attended by the Landlord and the Tenant, both of whom provided affirmed testimony. The Tenant acknowledged receipt of the Notice of Dispute Resolution Proceeding (NODRP) from the Landlord and raised no concerns with regards to the service method or date, I therefore proceeded with the hearing as schedule. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. Although the parties acknowledged receipt of each other's documentary evidence and raised no concerns with regards to the dates or methods of service, I advised the parties that I did not have a copy of the Tenant's documentary evidence before me. I verified with both parties what was contained in the Tenant's documentary evidence package, and I provided the Tenant with the opportunity to re-submit the documentary evidence to the Residential Tenancy Branch (the Branch) for consideration after the hearing. As the Tenant re-submitted the documentary evidence as requested and the documentary evidence submitted matched the description of the Tenant's documentary evidence at the hearing, I have therefore accepted all the documentary evidence before me from both parties for consideration.

The parties were advised that pursuant to rule 6.10 of the Rules of Procedure, interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The parties were asked to refrain from speaking over one another and to hold their questions and responses until it was their opportunity to speak. The Parties were also advised that pursuant to rule 6.11 of the Rules of Procedure, recordings of the proceedings are prohibited, except as allowable under rule 6.12, and the parties confirmed that they were not recording the proceedings.

Although I have reviewed all evidence and testimony before me that was accepted for consideration in accordance with the Rules of Procedure, I refer only to the relevant and determinative facts, evidence, and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be emailed to them at the email addresses listed in the Application and confirmed at the hearing.

Issue(s) to be Decided

Is the Landlord entitled to compensation for monetary loss or other money owed?

Is the Landlord entitled to withhold any portion of the security or pet damage deposits? If not, is the Tenant entitled to their return or double their amounts?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The parties agreed that the Tenant originally rented the lower suite of a home from the Landlord, beginning in 2017, and that the upper suite was originally occupied by the Tenant's sister under a separate tenancy agreement. Although a copy of the original tenancy agreement from 2017 was not submitted for my review, a one-year fixed-term tenancy agreement for a tenancy commencing on November 1, 2019, was before me, which states that rent in the amount of $500.00 is due on the first day of each month. It also states that at the end of the fixed-term the tenancy will continue on a periodic (month-to-month) basis and that a security deposit in the amount of $250.00 was paid in 2017. A notice of rent increase was also submitted for my consideration stating that rent in the amount of $500.00 per month was originally established on October 15, 2017,

and would be increased to $512.50 effective March 1, 2020. The parties agreed that this rent increase was correct.

The parties agreed that the Tenant's sister vacated the upper rental unit on or before June 26, 2021, after which time the Tenant began occupying the upper suite while their mother began occupying the lower suite. The Landlord stated that no agreement was reached between themselves and the Tenant for the Tenant to occupy the upper unit, and that the Tenant simply moved themselves in without the Landlord's permission after their sister vacated. The Landlord also stated that there was also no communication with them that the Tenant's mother would be moving in. Although the Tenant argued that their mother was a tenant under a separate tenancy agreement, the Landlord disagreed, stating that what really occurred was that the Tenant took over the entire house, initially without authorization, and then took their mother on as a roommate.

The Landlord stated that when they found out that the Tenant had taken over the entire home, they were initially in disagreement as they had intended to rent it out again. However, as the Tenant and their belongings were already upstairs, they stated that they attempted to enter into a new tenancy agreement with the Tenant for the entire home but that the Tenant was unwilling to agree to the $2,500.00 in rent sought by the Landlord. Email correspondence was submitted in support of this testimony. As a result, the Landlord stated that they and the Tenant agreed that the Tenant could continue to rent the entire home at a monthly rate of $1,385.00, but only for another month or so, as they had decided to sell the home. A one-month fixed-term tenancy agreement was submitted for my consideration which states that the tenancy for the entire home commenced on July 1, 2021, and that after the end of the fixed-term on August 1, 2021, the tenancy will continue on a periodic (month-to-month) basis. The tenancy agreement states that rent in the amount of $1,385.00 is due on the first day of each month and that a $692.00 security deposit and a $337.50 pet damage deposit are required. The parties agreed that the Tenant paid these additional deposits, and that the Landlord now holds $1,280.00 worth of deposits in trust for the Tenant, including the $250.00 initially paid by the Tenant in 2017.

The Landlord stated that the house was subsequently sold, and the Tenant was served with a Two Month Notice to End Tenancy for Landlord's Use of Property (Two Month Notice) on August 30, 2021, with an effective date of October 31, 2021. The Tenant acknowledged receipt on August 30, 2021, and agreed that they did not dispute the Two Month Notice. The parties agreed that the Tenant and all occupants moved out on November 4, 2021. Although the parties agreed that a move-in condition inspection and

report were completed at the start of the tenancy in 2017, and provided to the Tenant as required, they agreed that neither a move-out condition inspection or report were completed at the end of the tenancy in 2021. Although the Landlord stated that they had attempted to schedule a move-out condition inspection via e-mail, the Tenant denied receipt of any such email, and the Landlord acknowledged that the #RTB-22 Notice of Final Opportunity to schedule a Condition Inspection was not used as they were unaware of it. Although the Tenant stated that neither a move-in condition inspection nor a move-in condition inspection report were completed when they moved upstairs, the Landlord argued that this was because the Tenant had moved upstairs without their knowledge or consent, and that they only became aware of this after the Tenant was already residing there with all of their belongings.

The parties agreed that the Tenant provided their forwarding address to the Landlord, in writing, on November 8, 2021, and a copy of the forwarding address letter was provided for my consideration. Although the parties agreed that the rental unit was not left reasonably clean at the end of the tenancy, and that the Tenant was responsible for some of the costs incurred by the Landlord, they disagreed on the amounts. The Landlord stated that it took them approximately 10-12 hours per day, over the course of 3 days, and 8 truck and trailer loads to clear out the property and therefore sought reimbursement of the following amounts:

- $48.50 in landfill fees;
- $20.00 for gas;
- $293.39 in disposal costs/fee’s;
- $686.70 in professional cleaning costs;
- $50.00 for 3 days of trailer insurance; and
- $800.00 for labour.

The Landlord provided photographs of the state of the rental unit at the end of the tenancy and proof of the costs incurred to return the rental unit to a state of reasonable cleanliness, such as receipts for gas, cleaning services, and garbage disposal, as well as proof of the cost of trailer insurance. As the Tenant overheld the rental unit by 4 days, the Landlord also sought $253.00 in compensation for overholding. Although the Tenant agreed to pay the amounts sought for landfill and disposal fees, they denied responsibility for all other costs. Finally, the Landlord also sought recovery of the $100.00 filing fee.

Analysis

Section 37(1)(2) of the *Act* states that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean. Section 7 of the *Act* states that if a landlord or tenant does not comply with the *Act*, regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

From the documentary evidence before me from the Landlord, and the testimony of the parties at the hearing, it is abundantly clear to me that the Tenant failed to leave the rental unit reasonably clean at the end of the tenancy, as required by the *Act*. It is also clear to me that the Landlord incurred the costs sought at the hearing to return the rental unit to the required level of cleanliness after the end of the tenancy. As a result, I grant the Landlord the $1,898.59 sought for landfill tipping/disposal fees, gas, trailer insurance, cleaning costs, and labour.

I am also satisfied that the Tenant overheld the rental unit by 4 days, as the effective date of the Two Month Notice, which they did not dispute, was October 31, 2021, and the parties agreed at the hearing that the Tenant did not move out until November 4, 2021. Section 57 of the *Act* states that a landlord may claim compensation from an overholding tenant for any period that the overholding tenant occupies the rental unit after the tenancy is ended. As I am satisfied that rent at the time the tenancy ended was $1,385.00 per month as stated by the parties at the hearing and as set out in the tenancy agreement in the documentary evidence before me, I also grant the Landlord $178.70 in compensation for overholding, pursuant to section 57(2) of the *Act*, calculated at a per diem rate of $1,385.00/31 x 4. As the Landlord was successful in their Application, I also grant them recovery of the $100.00 filing fee pursuant to section 72(1) of the *Act*.

Having made the above findings, I will now turn to the matter of the security and pet damage deposits. The parties agree that the Landlord holds $1,280.00 in deposits and that the Landlord received the Tenant's forwarding address in writing on November 8, 2021. Pursuant to section 49(9) of the *Act*, I am satisfied that the tenancy ended on October 31, 2021, but that the Tenant overheld the rental unit until November 4, 2021. Branch records indicate that the Landlord filed the Application seeking retention of the security and pet damage deposits on November 11, 2021, which I find is within the 15-day period set out under section 38(1) of the *Act*. Although I find that the Landlord extinguished their right to claim against the security deposit(s) in relation to damage to the rental unit pursuant to section 36(2) of the *Act*, as I find that they did not comply with

section 35 of the *Act* in relation to move-out condition inspections and reports, as the Application related to cleaning/disposal costs and compensation for overholding, not simply damage, I find that the Landlord was nonetheless entitled to retain the Tenant's security deposit(s) pending the outcome of the Application.

Although Residential Tenancy Policy Guideline (Policy Guideline) #31 states that pet damage deposits are held as security for damage caused by a pet and that a landlord may apply to an arbitrator to keep all or a portion of the pet damage deposit only to pay for damage caused by a pet, as the photographs submitted by the Landlord clearly demonstrate to my satisfaction that a significant amount of cleanup was required by the Landlords due to pet feces, I find that the Landlord also properly retained the pet damage deposit pending the outcome of this Application.

As a result of the above, and pursuant to section 72(2)(b) of the *Act*, I therefore authorize the Landlord to retain the $1,280.00 in security and pet damage deposits, in partial repayment of the $2,177.29 I find is owed by the Tenant to the Landlord. Pursuant to section 67 of the *Act*, I therefore grant the Landlord a Monetary Order in the amount of $897.29 for the balance owed.

Conclusion

Pursuant to section 67 of the *Act*, I grant the Landlord a Monetary Order in the amount of **$897.29**. The Landlord is provided with this Order in the above terms and the Tenant must be served with this Order as soon as possible. Should the Tenant 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.

Pursuant to section 72(2)(b) of the *Act*, I also authorize the Landlord to retain the $1,280.00 in security and pet damage deposits.

This decision has been rendered more than 30 days after the close of the proceedings, and I sincerely apologize for the delay. However, section 77(2) of the *Act* states that the director does not lose authority in a dispute resolution proceeding, nor is the validity of a decision affected if a decision is given after the 30-day period in subsection (1)(d). As a result, I find that neither the validity of this decision and the associated order, nor my authority to render them, are affected by the fact that this decision and the associated order were issued more than 30 days after the close of the proceedings.

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: August 23, 2022

Residential Tenancy Branch