Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDL-S, MNRL, FFL**

Introduction

This hearing dealt with the Landlords' application pursuant to the *Residential Tenancy Act* (the "Act") for:

1. An Order for the Tenant to pay to repair the damage that they, their pets or their guests caused during their tenancy - holding security and/or pet damage deposit pursuant to Sections 38, 62 and 67 of the Act;
2. A Monetary Order to recover money for unpaid rent pursuant to Sections 26, 46 and 67 of the Act; and,
3. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord and the Tenants attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

The Landlord testified that he served the Tenants with the Notice of Dispute Resolution Proceeding package and evidence by Canada Post registered mail one or two days after receiving it from the RTB (the "NoDRP package"). The NoDRP package was issued on January 12, 2022. The Tenants confirmed receipt of the NoDRP package on January 22, 2022. I find that the Tenants were sufficiently served with the NoDRP package on January 22, 2022 in accordance with Section 71(2)(b) of the Act.

The Tenants served the Landlord with their evidence by Canada Post registered mail on April 10, 2022. The Tenants referred me to the Canada Post registered mail tracking number as proof of service. I note that the registered mail tracking number provided did not coincide with the date sent; however, the Landlord confirmed receipt of the Tenants' evidence. I find that the Tenants' evidence was sufficiently served on the Landlord on April 15, 2022 pursuant to Sections 71(2)(b) and 90(a) of the Act.

Issues to be Decided

1. Is the Landlord entitled to an Order for the Tenant to pay using their security deposit to repair the damage that they, their pets or their guests caused during their tenancy?
2. Is the Landlord entitled to a Monetary Order to recover money for unpaid rent?
3. Is the Landlord entitled to recovery of the application filing fee?

Background and Evidence

I have reviewed all written and oral evidence and submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The parties confirmed that this tenancy began as a fixed term tenancy on June 15, 2021. The fixed term ended on December 31, 2021. Monthly rent was $2,500.00 payable on the first day of each month. A security deposit of $1,250.00 and a pet damage deposit of $1,000.00 were collected at the start of the tenancy. The Tenants moved out of the rental unit on November 26, 2021. The Landlord retained $311.07 to pay an outstanding gas bill, and returned $938.93 of the security deposit. The Tenants agreed to the Landlord keeping the $311.07. The Landlord kept the pet damage deposit as a penalty for the Tenants moving out early.

The Landlord signed a Mutual Agreement to End a Tenancy form #RTB-8 (the "Agmt to End") on August 30, 2021. The mutually agreed date to end the tenancy was set for November 26, 2021. The Landlord stated that on August 30, 2021, he thought the Agmt to End was legal but later changed his mind. The Landlord testified that a new tenant moved into the rental unit on November 30, 2021.

The Landlord testified that a move-in condition inspection, and a move-out condition inspection were not completed at the start or end of the tenancy. The parties confirmed that the Tenants provided their forwarding address to the Landlord on the date that the Tenants moved out of the rental unit on November 26, 2021.

The Landlord claimed unpaid rent of $2,500.00 for December 2021. The Landlord argues that the Mutual Agreement to End a Tenancy was not properly signed by the Tenants. He stated that he believes that every notice be served in writing, if not in writing, then it is not a proper notice.

The Tenants uploaded emails with the Landlord where on September 20, 2021 he stated he planned to install vinyl on the floors, and do some other renovation work prior to a new tenant moving into the rental unit. The Landlord asked if the Tenants were taking some vacation and whether he could get in to do the renovation work on those days, otherwise they would wait until the Tenants moved out. The Tenants were not agreeable.

The Landlord testified that the Tenants left the rental unit with a dirty carpet. The Landlord stated that the carpet smelled of curry because of the Tenants cooking. This was the reason the Landlord said he had to replace the carpet. The Landlord said the cost to replace the carpet was $14,000.00 which also included some other minor renovations. The Landlord said his handyman sent a text of what was owing by the Landlord, but it was not in English.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 44 of the Act specifies how a tenancy can end. The parties signed a mutual Agmt to End tenancy on August 30, 2021. I find the digitally executed document falls in line with the email discussion between the parties and the document signed, and the tenancy ended pursuant to Section 44(1)(c) of the Act on November 26, 2021. The Tenants were not legally required to pay December’s rent to the Landlord, anyways, the Landlord had secured a new tenant on November 30, 2021. I dismiss the Landlords’ claim to recover December’s rent.

The Landlord did not complete a move-in condition inspection of the rental unit pursuant to Section 23 of the Act, and the Landlord did not complete a move-out condition inspection of the rental unit at the end of the tenancy pursuant to Section 35 of the Act. The Tenants provided their forwarding address to the Landlord on November 26, 2021. I find the Landlord's claim against the pet damage deposit is extinguished as the Landlord did not complete either move-in or move-out condition inspections in accordance with Sections 24 and 36 of the Act. Either way, the pet damage deposit can only be held by the Landlord as security for damage caused by a pet. The Landlord claims the pet damage deposit served as a penalty or to help off set the cost to replace the carpet which was damaged, the Landlord claims, by smells from the Tenants' cooking.

RTB Policy Guideline #31-Pet Damage Deposits state that Pet Damage deposits are generally treated the same as security deposits. It states:

> ***When is a deposit repaid?***
>
> *As with security deposits, a landlord must return any remaining pet damage deposit and any statutory interest within 15 days after the tenancy ends or the landlord receives the tenant's forwarding address in writing, whichever is later.*
>
> *A landlord does not have to comply with this 15 day rule if the landlord has applied for an arbitrator's order within the 15 days, in which case the landlord can hold the deposit and any statutory interest until the arbitrator's decision. Similarly, a landlord does not have to comply with the 15 day rule if the tenant fails to provide a forwarding address in writing within a year after the end of the tenancy.*
>
> *If a landlord is required to return a pet damage deposit and fails to do so, the tenant may apply to an arbitrator for an order for double the amount of the deposit plus any statutory interest.*

As the Landlord's right to claim against the pet damage deposit is extinguished, he must pay the pet damage deposit back to the Tenants by December 11, 2021. As the Landlord did not return the pet damage deposit by December 11, 2021, pursuant to Section 38(6) of the Act, the Landlord must pay the Tenants double the amount of the pet damage deposit, therefore **$2,000.00.** There is no interest owed on the pet damage deposit as the amount of interest owed on deposits has been 0% since 2009.

RTB Policy Guideline #16-Compensation for Damage or Loss addresses the criteria for awarding compensation to an affected party. This guideline states, "*The purpose of*

compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due." This section must be read in conjunction with Section 67 of the Act.

Policy Guideline #16 asks me to analyze 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.

The Landlord claims that the Tenants left him with a dirty carpet. On September 20, 2021, the Landlord sent the Tenants an email that he planned to install vinyl on the floors, and do some other renovation work prior to a new tenant moving into the rental unit. The Landlord asked if the Tenants were taking some vacation and whether he could get in to do the renovation work on those days, otherwise they would wait until the Tenants moved out. The Tenants were not agreeable. The Landlord did not provide any evidence proving the amount or value of the damage to the carpets. I find that the Landlord planned to change the flooring between the outgoing tenants and the new tenant coming in. Accordingly, I decline to award compensation to the Landlord for replacing the carpets as this was a job he planned to do anyways, and he could not prove the amount to replace the flooring. I dismiss this part of the Landlord's monetary claim.

As the Landlord was unsuccessful in his claim, he must bear the cost of the application filing fee.

Conclusion

I grant a Monetary Order to the Tenants in the amount of $2,000.00. The Landlord must be served with this Order as soon as possible. Should the Landlord fail to comply with

this Order, this Order may be filed in the Small Claims Division of the Provincial Court of British Columbia 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: August 29, 2022

Residential Tenancy Branch