



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding EAGLESON PROPERTIES LTD. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes **MNDCT, MNSD, FFT**

Introduction

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

1. An Order for compensation for a monetary loss or other money owed pursuant to Section 67 of the Act;
2. An Order for the return of the security deposit that the Landlord is holding without cause pursuant to Section 38 of Act; and,
3. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord's Agents, KE and CG, and the Tenants, and Legal Advocate 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.

Both parties acknowledged receipt of:

- the Tenants' Notice of Dispute Resolution Proceeding package served personally on March 25, 2022;
- the Tenants' evidence package personally served on September 27, 2022; and,

- the Landlord's evidence package was served by registered mail on September 28, 2022, Canada Post Tracking Numbers are included on the cover sheet of this decision, deemed served on October 3, 2022.

Pursuant to Sections 88, 89 and 90 of the Act, I find that both parties were duly served with all the documents related to the hearing in accordance with the Act.

Issues to be Decided

1. Are the Tenants entitled to an Order for compensation for a monetary loss or other money?
2. Are the Tenants entitled to an Order for the return of the security deposit that the Landlord is holding without cause?
3. Are the Tenants 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 September 27, 2019. The fixed term ended on September 30, 2020, then the tenancy continued on a month-to-month basis. Monthly rent is \$2,100.00 payable on the first day of each month. A security deposit of \$1,050.00 was collected at the start of the tenancy. The Landlord testified that the security deposit was returned to the Tenants, and the Tenants testified that the Landlord retained \$160.65 of the security deposit without their consent.

The Tenants stated that a move-in condition inspection was done on September 27, 2019. The Tenants said the tenancy ended on June 30, 2021. The Tenants completed a move-out condition inspection on July 1, 2021 with the Landlord. On the bottom of the condition inspection report is written, "*Responsible for blinds (dirty) all rooms – July 1, 2021*". The Tenants did not consent to the Landlord retaining any of their security deposit.

The Tenants claimed the Landlord did not make an application for dispute resolution to keep any or all of their security deposit. The Tenants provided their forwarding address to the Landlord in a July 5, 2021 email. The Landlord confirmed receipt of the Tenants' forwarding address.

On the evening of May 17, 2021, water started to come into the rental unit under the back door. The Tenants said the unit was unlivable and relocated to alternative housing. The Landlord refunded them \$948.39 for prorated rent for the remainder of the month of May. On June 1, 2021, the Tenants said the rental unit was still unlivable, but the Landlord told them they had to pay rent for June. The Tenants did pay June's rent, but stated they never moved back into the rental unit. The Tenants testified that they stayed in a hotel and with friends for the month of June 2021.

The Tenants testified there were signs posted on the rental unit doors saying that it was unsafe to be inside. When the Tenants asked the Landlord for confirmation that it was safe to be inside, the Landlord told them it was and that they would provide proof later.

The Tenants are seeking double of the security deposit amount retained by the Landlord, and June's rent refunded.

The Landlord testified that the Tenants received two cheques, the first for \$363.41 dated July 15, 2021; and the second for \$889.35 dated July 20, 2021, totalling \$1,252.76. The difference from the security deposit and the total of these two cheques was \$202.76. The \$202.76 represents the amount the Landlord refunded the Tenants for June 1 and 2, 2021 rent in the amount of \$140.00, a BC Hydro reimbursement for the period of May 18 to June 2 of \$16.57, and for the remaining 28 days of June, a 2.4% rent rebate for the lack of carpeting totalling \$46.19. After hearing the Landlord's testimony about the two cheques, the Tenants agreed that it appears they received their whole security deposit back.

The Landlord stated there was one hazard sign placed on the backdoor of the rental unit. The Worker's Compensation Board sign indicated a code 4 low slip hazard and a low electrical hazard; code 4 meaning that contractors can proceed in the rental unit while using safe work procedures. The Landlord argued that the hazards were due to water in the rental unit, but that those hazards were eliminated after the water was extracted on May 25, 2021. One last physical hazard marked as medium referred to the use of razors to remove the damaged carpet. This hazard was eliminated once the damaged carpet and underpad were removed.

In an email dated May 25, 2021, the Tenants replied to the Landlord's timeline of repairs saying that, "*We will probably use the unit once cleaning is completed while we wait for flooring.*"

The Landlord described the work done by the contractor as extraction of 150 square feet of water, removal of all affected carpet and underpad, application of one gallon of an antibiotic to prevent mould growth, and installation of three dehumidifiers and eight fans. The Landlord confirmed that all drywall repairs and painting were completed by June 2, 2021. The final cleaning occurred on June 3, 2021. The only repair item remaining was installation of underpad, carpet, and baseboards, but the Landlord could not confirm when this would be completed. Carpet was finally installed on July 5, 2021.

The Landlord testified that the Tenants met the Property Manager, and they did a walk through of the rental unit. The Landlord stated the Tenants agreed it was habitable. On June 3, 2021, the Landlord saw the Tenants at the rental unit when they were at the residential property getting quotes on fencing. The Landlord also noted the lights were on in the rental unit on June 23, 2021, and they had reason to believe the Tenants were in the rental unit. The Landlord stated that the Tenants, if they were staying elsewhere, they never offered hotel receipts or other indications that they were not in the rental unit.

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 38(1) of the Act requires a landlord to return the security deposit in full or file a claim with the RTB against it within 15 days of the later of the end of the tenancy or the date the landlord receives the tenant's forwarding address in writing.

The Landlords paid the Tenants two cheques totalling \$1,252.76 which included the return of the Tenants' full security deposit within the 15 days after receiving the Tenants' forwarding address. The Tenants agreed it appears they received their full security deposit back. I find the Landlord complied with Section 38(1) of the Act and returned the Tenants' full security deposit within the 15 days after receiving the Tenants' forwarding address. I dismiss this part of the Tenants' application.

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 Tenants have not pointed me to a Section of the Act, Regulation or tenancy agreement of which the Landlord has breached. There was a flood in the rental unit on May 17, 2021, and I find that the Landlord diligently addressed the repairs to the rental unit and fulfilled their obligations under Section 32 of the Act. The Landlord also compensated the Tenants for having to be out of the rental unit in the remainder of the month of May to June 2, 2021 after the flood, and provided reimbursement for hydro and for the lack of carpeting for the remaining 28 days for the month of June 2021.

RTB Policy Guideline #1- Landlord & Tenant – Responsibility for Residential Premises clarifies the obligations and responsibilities of landlords and tenants regarding maintenance, cleaning, and repairs of the residential property. The guideline states:

The Landlord is responsible for ensuring that rental units and property, or manufactured home sites and parks, meet "health, safety and housing standards" established by law, and are reasonably suitable for occupation given the nature and location of the property. The tenant must maintain "reasonable health, cleanliness and sanitary standards" throughout the rental unit or site, and property or park. The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard. The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises), or for cleaning to bring the premises to a higher standard than that set out in the Residential Tenancy Act or Manufactured Home Park Tenancy Act (the Legislation).

I appreciate the inconvenience of the repairs that were needed in this rental unit after the flood incident, but I do not find that the Tenants' rights were breached. The Tenants did not ask the Landlord for assistance with housing in the month of June. The Tenants did not provide evidence that they incurred costs outside of the rental unit for housing. The Landlord testified that there was evidence that the Tenants were staying in the rental unit. I find the Tenants did reside in the rental unit for, at least, some portion of the month of June and the Tenants belongings still remained in the rental unit. I find the Tenants have not proven this part of their claim. Accordingly, I find that the Tenants are not entitled to an award of monetary compensation for June's rent, and I dismiss this part of their application without leave to re-apply.

As the Tenants were not successful in their claim, I do not grant them recovery of the application filing fee.

Conclusion

The Tenants' application for dispute resolution is dismissed.

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: November 01, 2022

Residential Tenancy Branch