Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL

Introduction

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

- a Monetary Order for damage, pursuant to section 67;
- authorization to retain the tenants' security deposit, pursuant to section 38; and
- authorization to recover the filing fee from the tenants, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

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

Per section 95(3) of the Act, the parties may be fined up to $5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than $5 000."

Both parties confirmed their email addresses for service of this Decision.

Preliminary Issue- Service

The landlords testified that they served the tenants with their application for dispute resolution via email in two packages sent on April 21, 2022 and April 22, 2022. The tenants confirmed receipt of the landlord's application for dispute resolution. I find that the landlords' application for dispute resolution was sufficiently served, for the purposes

of the *Act,* on the tenants, pursuant to section 71 of the *Act* because receipt was acknowledged.

Landlord D.H. testified that the landlord's evidence was sent to the tenants via email but was unable to provide a date of service and testified in the hearing that he was unable to find the evidence service email in his outgoing mail. The tenants testified that the landlords did not serve them with any evidence. Landlord C.H. testified that they did not know that they had to serve the tenants with their evidence and believed that once their evidence was uploaded to the Residential Tenancy Branch, the tenants would have access to it. No proof of service documents were entered into evidence.

I find, on a balance of probabilities, that the landlords did not serve the tenants with their evidence because no proof of service documents were provided to prove service, landlord C.H. testified that the landlords were not aware they had to serve the tenants and the tenants testified that they were not served with the landlord's evidence.

Section 3.14 of the *Residential Tenancy Branch Rules of Procedure* (the "Rules") states that evidence not submitted at the time of Application for Dispute Resolution that are intended to be relied on at the hearing must be received by the respondent not less than 14 days before the hearing. I find that since the tenants did not receive the landlord's evidence package, all evidence submitted by the landlord, are not admitted into evidence.

I note that page 2 of the Notice of Dispute Resolution Proceeding, which was emailed to the landlords on April 20, 2022, states:

> The applicant is required to give the Residential Tenancy Branch proof that this notice and copies of all supporting documents were served to the respondent

I find that the landlords were informed of their obligation to serve the tenants with supporting documents which include evidence to support their claim.

The tenants testified that they served the landlord with their evidence on October 30, 2022 via email. The landlords confirmed receipt of the tenants' evidence. I find that the tenants' evidence was sufficiently served, for the purposes of the *Act,* on the landlords, pursuant to section 71 of the *Act* because receipt was acknowledged.

Preliminary Issue- Amendments

Both parties agree that the landlord did not list the correct address of the subject rental property in this application for dispute resolution. Both parties agreed on the correct address of the subject rental property. Pursuant to section 64 of the *Act,* I amend the landlords' application to correctly state the address of the subject rental property.

Tenant S.D. testified that the landlords miss-spelled her first name in this application for dispute resolution. The spelling of the tenant's first name provided in the hearing matches the spelling in the tenancy agreement uploaded into evidence by the tenants. The landlord did not dispute the spelling of tenant S.D.'s first name provided by tenant S.D. in the hearing. Pursuant to section 64 of the *Act,* I amend tenant S.D.'s first name to the correct spelling.

Issues to be Decided

1. Are the landlords entitled to a Monetary Order for damage, pursuant to section 67 of the *Act*?
2. Are the landlords entitled to retain the tenants' security deposit, pursuant to section 38 of the *Act*?
3. Are the landlords entitled to recover the filing fee from the tenants, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence of the tenants and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' and landlords' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on March 1, 2021 and ended on April 1, 2022. Monthly rent in the amount of $2,600.00 was payable on the first day of each month. A security deposit of $1,300.00 was paid by the tenants to the landlords. The landlords have not returned the security deposit to the tenants. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

Both parties agree that the tenants provided the landlords with their forwarding address via text message the day the tenants moved out. Both parties agree that the tenants also provided the landlords with their forwarding address via email.

Both parties agree that at the start of the tenancy the landlords did not ask the tenants to complete a move in condition inspection report with them. Both parties agreed that at the start of the tenancy they walked through the subject rental property together, but no report was created.

The landlords testified that they attempted to complete a move out condition inspection with the tenants but the tenants were really busy on move out. Landlord D.H. testified that he and tenant C.M. started to complete a walk through but tenant C.M. told him that he didn't have time to complete it. This was disputed by tenant C.M.

The landlords testified that the tenants did not properly clean the subject rental property and so they had to hire a maid to clean, whom they paid $550.00 for 10.5 hours of work at a rate of $50.00 per hour. The tenants' application for dispute resolution claims $450.00 for cleaning.

Landlord C.H. testified that the tenants did cursory cleaning, such as cleaning the kitchen, bathrooms and carpets, but that many other areas were not properly cleaned. Landlord C.H. testified that the tenants left crumbs in cupboards, dirty windowsills, dirty shelves, finger marks on walls and light switches.

Landlord C.H. testified that their maid worked all day to clean the subject rental property and she also cleaned. Landlord D.H. testified that he cleaned the subject rental property for at least 8 hours in addition to the cleaning done by landlord C.H. and the maid.

Landlord C.H. testified that the tenants left a few items behind including a knife and a box of teas, and that she called the tenants and tenant C.M. returned for the forgotten items. The tenants agreed with the above testimony.

Tenant C.M. testified that they totally disagree with the landlords' submissions regarding the cleanliness of the subject rental property. Tenant C.M. testified that the subject rental property was "clean as clean can be". The tenants testified that they cleaned the subject rental property, hired a maid to assist in that cleaning and had the carpets professionally cleaned.

The tenants entered into evidence a receipt for carpet cleaning and an email from their cleaner dated April 15, 2022 which states:

> On March 28th I arrived at 9am to 1230 at [the subject rental property]. I cleaned the bathrooms toilets counters bath tubs showers mirrors and sinks…I wiped doe the stairwell. I cleaned all baseboards vacuumed the main level floors and washed the floors cleaned kitchen counter and sink….when I walked in I didn't really know where to start because the place was already so clean it only needed a few touches up. Paid for 4 hours $100 thanks you so much for the job.

Landlord C.H. testified that the person hired to clean the subject rental property was a friend of the tenants' and not a professional cleaner.

The tenants testified that while the subject rental property was left in a clean state, they agreed that the landlord pointed out the following missed items during the move out walk through:

- Dust on microwave shelf,
- Racks in oven not cleaned (though oven itself was cleaned), and
- One set of blinds had soap residue from cleaning.

The tenants' written submissions state that the above items were minor in nature and did not warrant retaining their security deposit.

Analysis

Condition Inspection Reports

Sections 23, 24, 35 and 36 of the *Act* establish the rules whereby joint move-in and joint move-out condition inspections are to be conducted and reports of inspections are to be issued and provided to the tenants.

Section 24(2) of the *Act* states:

> The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord
>
> (a)does not comply with section 23 (3) *[2 opportunities for inspection]*,

(b)having complied with section 23 (3), does not participate on either occasion, or

(c)does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Based on the testimony of both parties I find that the landlords did not complete a move in condition inspection report in accordance with section 24(2) of the *Act.* Responsibility for completing the move in inspection report rests with the landlords.

Since I find that the landlords did not follow the requirements of the *Act* regarding the joint move-in inspection report, I find that the landlords' eligibility to claim against the security deposit for damage arising out of the tenancy is extinguished.

Security Deposit Doubling Provision

Section 38 of the Act requires the landlords to either return the tenants' security deposit or file for dispute resolution for authorization to retain the deposit, 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 security deposit.

Section C(3) of Policy Guideline 17 states that unless the tenants have specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit if the landlords have claimed against the deposit for damage to the rental unit and the landlords' right to make such a claim has been extinguished under the Act.

In this case, while the landlord made an application to retain the tenants' security deposit within 15 days of receiving the tenants' forwarding address, the landlords were not entitled to claim against the tenants' security deposit due to the extinguishment provisions in section 24 of the *Act.* Therefore, the tenants are entitled to receive double their security deposit in the amount of $2,600.00.

Landlord's Monetary Claim

Section 67 of the *Act* states:

> Without limiting the general authority in section 62 (3) *[director's authority respecting dispute resolution proceedings]*, if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Policy Guideline 16 (PG #16) states that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To be successful in a monetary claim, the applicant must establish all four of the following points:

1. a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
2. loss or damage has resulted from this non-compliance;
3. the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
4. the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Failure to prove one of the above points means the claim fails.

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that 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.

When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails.

The tenants' application for dispute resolution claims $450.00 for the cost of cleaning. In the hearing landlord C.H. testified that they paid their maid $550.00 for cleaning. No receipts were accepted for consideration. I find that as no receipts were accepted for consideration and the amounts claimed in the application for dispute resolution do not match the amount claimed in the hearing, the landlords have not proved the value of their alleged loss, and so their claims fail, as set out in PG #16 above. I also note that

landlord C.H. testified that the landlords paid the maid $550.00 for 10.5 hours of work at $50.00 per hour; however, $50.00 * 10.5 (hrs) = $525.00, which is yet another inconsistency in the amount claims by the landlords. Again, I find that the landlords have not proved the value of the alleged loss.

As I have determined that the landlords have not met point three of the four-point test set out in PG #16, an analysis of the other three points of the test is not necessary because failure of one of the four points means the claim fails. The landlords' application for dispute resolution is therefore dismissed without leave to reapply.

As the landlords were not successful in this application for dispute resolution, I find that they are not entitled to recover the $100.00 filing fee from the tenants, in accordance with section 72 of the *Act.*

Conclusion

I issue a Monetary Order to the tenants in the amount of $2,600.00.

The tenants are provided with this Order in the above terms and the landlords must be served with this Order as soon as possible. Should the landlords 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: December 13, 2022

Residential Tenancy Branch