Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution (Landlord's Application) filed under the *Residential Tenancy Act* (the "Act") on July 13, 2023, seeking:

- compensation for damage to the rental unit;
- recovery of the filing fee; and
- authorization to retain the security and pet damage deposits against the amounts owed.

This hearing also dealt with the Tenants' Application filed under the Act on October 3, 2023, seeking:

- the return of double the amount of their security and pet damage deposits; and
- recovery of the filing fee.

Tenant A.B. attended the hearing for the Tenants.

Landlord L.K. attended the hearing for the Landlord.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

The parties acknowledged service of each others Proceeding Packages by registered mail and raised no concerns regarding service. I therefore deemed the parties served with the Proceeding Packages five days after the registered mail was sent, in accordance with section 90(a) of the Act. The Tenants were therefore deemed served on July 26, 2023, and the Landlord was deemed served on October 11, 2023. The hearing of both Applications therefore proceeded as scheduled.

Service of Evidence

The parties acknowledged receipt of each other's documentary evidence and neither party raised concerns regarding service. I therefore find the parties duly served with the documentary evidence before me from each other for the purposes of the Act.

Issue(s) to be Decided

Is the Landlord entitled to compensation for damage to the rental unit?

Is the Landlord entitled to retain the security and pet damage deposits or any portion thereof? If not, are the Tenants entitled to their return or double their amounts?

Are the parties entitled to recovery of their respective filing fees?

Background and Evidence

The parties agreed that:

- A tenancy under the Act existed between them;
- The Tenants paid a $3,750.00 security deposit and a $3,750.00 pet damage deposit, both of which are still held in trust by the Landlord;
- The tenancy ended on June 30, 2023; and
- The Landlord received the Tenants' forwarding address in writing for the purposes of the Act on July 19, 2023.

Although the parties agreed that a move-in condition inspection and report were completed at the start of the tenancy, the Tenant denied that a copy of the report was provided to them or their spouse by the Landlord as required. The Landlord stated that a copy was provided to the Tenants the same day or the following day and that the Tenant O.B. also took a photograph of it at the time of the inspection.

The parties agreed that a move-out condition inspection was scheduled for July 1, 2023, at 1:00 PM, and that the Tenants did not attend. The Landlord stated that after waiting for 45 minutes, they called the Tenant O.B., with whom the appointment had been scheduled, to see if they would be attending. The Landlord stated that O.B. advised them that they would not be attending and to let themselves in as the keys were in the mailbox. A.B., the Tenant who attended the hearing did not dispute this.

The Landlord stated that when they entered the rental unit there was a significant amount of pet odour, and animal hair everywhere. They stated that the sofa, two mattresses, an office chair, and linens rented to the Tenants were stained and damaged, and that the curtains were all covered with pet fur. The Landlord stated that although the stove and fridge were clean, they had to pay for further cleaning of the home, as well as junk removal for the mattresses and junk left behind in the yard. The Landlord stated that they also had to pay for the sofa and blinds to be cleaned, the two soiled mattresses and linens to be replaced, replacement of two small carpets, and the replacement of a weed whacker as the Tenants had misplaced the battery.

The Landlord sought the following amounts for these claims:

- $555.45 for sofa cleaning;
- $183.75 for floor cleaning;

- $183.75 for house cleaning;
- $756.36 for blind cleaning;
- $231.93 for sheets;
- $325.92 for a weed whacker;
- $152.14 for two small carpets;
- $472.50 for junk removal;
- $34.93 for garbage bags; and
- $2,045.09 for a mattress.

The Landlord acknowledged that they did not complete a move-out condition inspection report but stated that they took photographs and videos, which have been submitted for my consideration.

The Tenant stated that the rental unit was professionally cleaned at the end of the tenancy. They submitted the cleaning invoice, as well as an email and photographs from the cleaners. The Tenant stated that as the rental unit was left reasonably clean at the end of the tenancy, they should not be responsible for any of the cleaning costs sought.

While the Tenant agreed to pay the $152.14 sought for the replacement of two small carpets, they denied responsibility for all other claims. They stated that no junk was left behind and that the damage to the mattresses and linens is reasonable wear and tear as the Landlord cannot have expected them to stay in as-new condition. They also denied that a weed whacker was rented to them under the tenancy agreement and denied touching, taking, or misplacing its battery. The Tenant stated that after the end of the tenancy they offered to bring their original cleaners back in if needed, but this was denied by the Landlord.

Although the Landlord agreed that they had denied access for this purpose, they stated that this was because the rental unit needed to be cleaned and turned over quickly to the new occupants and they did not have time to wait and make further arrangements with the Tenants when the rental unit should already have been left properly clean.

Both parties sought recovery of their respective filing fees.

Analysis

Is the Landlord entitled to compensation for damage to the rental unit?

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 party must:

- compensate the other party for any damage or loss that results; and
- do whatever is reasonable to minimize the damage or loss.

Section 37(2) of the Act states that when a tenant vacates a rental unit, they must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Residential Tenancy Policy Guideline (Guideline) #1 states that tenants are expected to leave internal window coverings clean when they vacate, and should check with the landlord before cleaning in case there are any special cleaning instructions. Guideline #1 also states that tenants are not responsible for reasonable wear and tear, which is defined as natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion.

Section 35 of the Act states that landlords and tenants must inspect the rental unit together at the end of the tenancy. It also sets out the requirements for how and when the inspection is to be scheduled and completed, and the criteria for completion of the move-out condition inspection and report by a landlord in the absence of a tenant.

I am satisfied that despite being required to complete a move-out condition inspection and report at the end of the tenancy, and having the grounds to do so in the absence of the Tenants under section 35(5) of the Act, the Landlord nevertheless failed to complete the required report. Although they submitted videos and photographs for my consideration, they are not date stamped and as a result, I have no way to know with any degree of certainty when they were taken. The Landlord also submitted an email from a certified licensed home inspector on July 3, 2023, stating that they visited the house and noted severe pet odours. However, the email does not state when the home was inspected and does not provide the address. As a result, I am not satisfied either that the home inspected was in fact the rental unit, or that the inspection occurred after the Tenants had the rental unit professionally cleaned.

In contrast, the Tenants submitted an invoice, emails, and photographs from a professional cleaning company. The invoice and emails satisfy me that the rental unit was professionally cleaned on June 28, 2023, and June 29, 2023, for a total of 12.5 hours, at a cost of $1,031.63. The email from the cleaning company states that the rental unit was left beautiful, sparkling, and in perfect condition with no damage and no pet smells. 18 photographs of the rental unit after cleaning were also provided by the cleaning company for my consideration, all of which show the rental unit to be in immaculate condition.

Based on the above, I prefer the Tenants evidence with regards to the state of cleanliness and repair of the rental unit and find that the rental unit itself was left reasonably clean. I therefore dismiss the Landlords claims for all general cleaning costs, without leave to reapply.

However, I am not satisfied that the furniture and window coverings were cleaned. The invoice and email submitted by the Tenants from their cleaning company do not state that these items were cleaned, and the cleaning of these items would not form part of a routine move-in/move-out clean, and often require specialists or specialized equipment.

Further to this, no close-up photographs of these items were submitted from the Tenants' cleaners, the Landlord submitted photographs and videos of these items covered in fur, and invoices dated shortly after the end of the tenancy for their cleaning.

As a result, I find it more likely than not that neither the couch nor the window coverings were cleaned as required, that they were covered with pet fur, and that they required cleaning. I therefore grant the Landlord the $1,311.81 sought for couch and blind cleaning. I also grant the Landlord the $152.14 agreed upon at the hearing for replacement of two small carpets.

Although the Landlord sought $472.50 for junk removal, $34.93 for garbage bags, $325.92 for replacement of a weed whacker, and $231.93 for replacement of sheets/linens, I am not satisfied that the Tenants are responsible for these costs. I am not satisfied that the weed whacker was rented to the Tenants under their tenancy agreement, and there is no evidence from the Landlords that satisfies me that the Tenants took or misplaced the weed whacker battery. As set out above, I am also satisfied that the rental unit was left reasonably clean by the Tenants at the end of the tenancy. The junk removal invoice does not state what address the items listed were removed from so I am not satisfied that they were removed from the rental unit. Finally, I deem the damage to the sheets to constitute reasonable wear and tear. Wear and staining can be expected to things such as bed linens over time during a tenancy and landlords should expect deterioration in their condition. I therefore dismiss the Landlord's claims for recovery of these amounts without leave to reapply.

Despite the above, I am satisfied that at least one mattress was stained beyond what constitutes reasonable wear and tear. Although the Landlord sought $2,045.09 for replacement, the matching receipt for that amount includes the purchase of things other than the mattress which I do not find the Tenants responsible for, such as a bed frame, bed slats, and a mattress cover. As a result, I grant the Landlord only $1,407.84 for mattress replacement, which represents the $1,198.00 paid for a new mattress, a $59.00 delivery fee, and $150.84 in taxes.

In total, I award the Landlord recovery of $2,871.79 from the Tenants.

Is the Landlord entitled to retain the security and pet damage deposits or any portion thereof? If not, are the Tenants entitled to their return or double their amounts?

Section 38(1) of the Act states that unless subsections 3 or 4 apply, a landlord must, within 15 days of the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, either:

- repay any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations; or
- make an application for dispute resolution claiming against the deposits.

The parties agreed that the tenancy ended on June 30, 2023, and that the Landlord received the Tenants' forwarding address in writing for the purposes of the Act on July 19, 2023. As the Landlord filed the Application seeking retention of the deposits on July 13, 2023, I find that the Application was filed on time. However, I am also satisfied that the Landlord breached section 23(5) of the Act and section 18(1)(a) of the regulation at the start of the tenancy by failing to provide the Tenants with a copy of the move-in condition inspection report as required. Although the Landlord stated that this was done, no proof of service was submitted and the Tenant A.B. denied that this occurred. As a result, I am not satisfied that it did.

Section 24(2)(c) of the Act states that the right of a landlord to claim against a security deposit or a pet damage deposit for damage to the property is extinguished if the landlord does not give the tenant a copy of the move-in condition inspection report in accordance with the regulations. As a result, I find that the Landlord was not allowed to claim against either the security deposit or the pet damage deposit for damage to the property. As pet damage deposits may only be claimed against for pet damage as set out in section 1 and Guideline #31, I find that the Landlord was therefore not entitled to withhold it pending the outcome of this Application. Unlike pet damage deposits, security deposits may be claimed against for matters other than damage, such as cleaning costs. I find that the Landlord therefore retained the right to withhold the security deposit pending the outcome of the Application.

As the Landlord was not entitled to retain the pet damage deposit pending the outcome of this Application due to extinguishment of that right under section 24(2)(c) of the Act, I find that they were therefore required to return it, along with any interest owed, within the time limit set out under section 38(1) of the Act. As the tenancy ended on June 30, 2023, and the Tenants did not provide their forwarding address to the Landlord until July 19, 2023, I find that the Landlord therefore had until August 3, 2023, to return it. As the Landlord did not, I find that the Tenants are owed double its amount, $7,500.00, plus $84.01 in interest owed on the original pet damage deposit amount, for a total of the $7,584.01, pursuant to section 38(6) of the Act.

The Landlord currently holds a security deposit of $3,834.01 in trust for the Tenants, which includes the base security deposit amount of $3,750.00, plus $84.01 in interest owed. As set out above, the Landlord is owed $2,871.79 from the Tenants. Pursuant to section 72(2)(b) of the Act, I grant the Landlord authorization to withhold this amount from the security deposit. The remaining balance of $962.22 must be returned to the Tenants.

Are the parties entitled to recovery of their respective filing fees?

As both parties had mixed success with regards to their Applications, I decline to grant either party recovery of their filing fee.

Conclusion

Pursuant to section 72(2)(b) of the Act, the Landlord is permitted to withhold $2,871.79 from the $3,834.01 security deposit and interest currently held in trust. The remaining balance of $962.22 must be returned to the Tenants.

Pursuant to section 38(6) of the Act, the Tenants are entitled to $7,584.01 for double the amount of their pet damage deposit, plus interest owed on the original pet damage deposit amount.

Pursuant to section 67 of the Act, I therefore grant the Tenants a Monetary Order in the amount of **$8,546.23**. The Tenants are provided with this Order in the above terms and the Landlord must be served with this Order as soon as possible. Should the Landlord fail to comply with this Order, it 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 Act.

Dated: February 7, 2024

Residential Tenancy Branch