Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding B&G 7057 SALISBURY APARTMENTS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFL, MNDL-S

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on May 29, 2018 (the "Application"). The Landlord sought compensation for damage to the rental unit and reimbursement for the filing fee. The Landlord sought to keep the security deposit.

The Property Manager and Building Manager (the "Representatives") appeared for the Landlord. The Tenant appeared with the Legal Advocate. The Tenant called the Witness during the hearing.

I explained the hearing process to the parties and nobody had questions when asked. All parties, other than the Legal Advocate, provided affirmed testimony.

The Landlord had submitted evidence prior to the hearing. The Tenant had not submitted evidence. I addressed service of the hearing package and Landlord's evidence.

The Legal Advocate confirmed the Tenant received the hearing package. The Legal Advocate advised that the Tenant received all evidence other than an audio recording submitted. The Representatives said the audio recording was mailed to the Tenant; however, they did not have evidence to support this. I heard the parties on whether the audio recording should be admitted or excluded. I excluded the audio recording as I was not satisfied the Landlord served it on the Tenant in accordance with rule 3.14 of the Rules of Procedure (the "Rules") given the conflicting evidence and lack of evidence to support the position of the Representatives.

I proceeded with the hearing. All parties were given an opportunity to present relevant oral evidence, make relevant submissions and ask relevant questions. I have considered all admissible evidence and all oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

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

2. Is the Landlord entitled to keep the security deposit?

3. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. It is between the Landlord and Tenant regarding the rental unit. The tenancy started August 1, 2011 and was for a fixed term ending July 31, 2012. Rent was $800.00 per month due on the first day of each month. A security deposit of $400.00 was paid. The agreement was signed on behalf of the Landlord and by the Tenant. The agreement includes an addendum.

The parties agreed the Tenant vacated the rental unit February 15, 2018.

The Landlord sought the following compensation:

Item	Description	Amount
1	Glass repair	$828.80
2	Vinyl floor repair, painting, cleaning (labour)	$900.00
3	Vinyl floor materials	$153.85
4	Paint materials	$71.39
5	Laminate floor repair	$750.00
	TOTAL	**$2,704.04**

The Landlord had originally sought $114.75 for curtain replacement but did not seek this at the hearing.

The Representatives testified as follows in relation to receiving the forwarding address of the Tenant. The Tenant provided an address via text message to the Building Manager on April 24, 2018. The Property Manager sent a package to that address but the package was returned. A second address was provided by the Tenant via text message June 7, 2018.

The Tenant testified that she sent her forwarding address via text message. She could not remember the date but did not dispute the dates provided by the Representatives.

The Representatives confirmed the Landlord filed the Application May 29, 2018.

The parties agreed on the following in relation to a move-in inspection. An inspection was done August 4, 2011 by the Tenant and someone for the Landlord. The unit was empty at the time. A Condition Inspection Report was signed by both parties. A copy of the Condition Inspection

Report was provided to the Tenant. The Tenant testified that she was provided a copy of the Condition Inspection Report personally two or three days after moving into the unit.

The parties agreed on the following in relation to a move-out inspection. An inspection was done February 15, 2018 by the Tenant and the Building Manager. The unit was empty at the time. A Condition Inspection Report was signed by both parties.

The Building Manager thought a copy of the Condition Inspection Report was provided to the Tenant on move-out but was not sure. The Tenant testified that she did not receive a copy of the Condition Inspection Report on move-out. The parties agreed a copy of the Condition Inspection Report was provided to the Tenant June 3, 2018 by registered mail as evidence on this hearing. A copy of the Condition Inspection Report was submitted as evidence.

The parties testified as follows in relation to the compensation sought.

Item 1

The Property Manager testified as follows. The Tenant called the Building Manager October 16, 2017 about her patio door being smashed early in the morning. The Tenant claimed someone broke into the rental unit. The Tenant said someone smashed the door, entered the unit, went to the kitchen, took items and set fire to a pillow that then spread to the curtains. The Tenant said the person then left. The Tenant said her, her son and a friend were in the unit but nobody heard this occur. The Tenant said her friend was sleeping on the couch, woke up and saw the fire. The Tenant said her friend alerted her to the issue and then put out the fire. The Tenant called the Building Manager and reported this. The Building Manager went to inspect. The door needed to be repaired. The Building Manager called the glass company and they came and repaired the door.

The Landlord had submitted a receipt from the glass company showing the cost of repairing the door was $828.80.

The Tenant testified as follows. On October 15, 2017, she had a guest in the unit. They were sleeping. Someone broke into the unit and smashed the door. The person took items from the unit. When her and her guest woke up, there was a fire. They could not find the person that broke in.

In response to questions by the Legal Advocate, the Tenant testified as follows. Her and her guest called police. The Witness was the guest in the living room. The Witness alerted her to the issue.

In reply, the Property Manager pointed to two letters from other tenants in the building. She said these contradict the Tenant's evidence that her and the Witness were sleeping when the patio door was smashed. The Property Manager disputed the Tenant's account of the incident.

The Legal Advocate submitted that the letters from other tenants are not inconsistent with the Tenant's account of the incident.

The Tenant called the Witness who testified as follows. He was on the Tenant's couch. The Tenant was in the bedroom with a friend and their children. He woke up to an alarm and the kitchen was on fire. He woke the Tenant up to call the police. The police attended and they gave a statement to the police. Someone broke the glass door, came into the unit and set it on fire.

In response to questions by the Property Manager, the Witness testified as follows. He was sleeping about seven feet from the patio door and in the same room as the patio door. He did not hear the person smash the patio door. He woke up because of the fire alarm. When he woke up the pillow was on fire. He did not wake up because he is used to alarms and because of how he sleeps. The Tenant was in the bedroom with the door closed. The unit was quiet prior to this incident.

The Property Manager submitted that it is not reasonable that the Tenant and Witness did not wake up when the patio door was smashed. She said the Tenant is responsible for the damage.

The Legal Advocate submitted that the Tenant is not at fault for the incident as it had nothing to do with her. She submitted that I should accept the account of the Tenant and Witness over the letters submitted by other tenants. She said the Landlord provided no evidence that someone did not break into the unit.

Item 2, 3 and 4

The Property Manager testified as follows. The vinyl floor in the kitchen was brand new when the Tenant moved in. Upon move-out, there were round holes in the floor. They have other units with vinyl flooring that is 20 years old. The damage to the vinyl is not reasonable wear and tear. It cost $400.00 to change the flooring. The floor was seven and a half years old. The Property Manager pointed to photos of the damaged vinyl floor.

The Property Manager testified that the Landlord is claiming for painting the living room due to smoke damage. The Property Manager testified that special paint had to be used to paint the living room given the smoke damage.

The Property Manager testified that the Landlord is claiming $100.00 for cleaning due to the state the Tenant left the unit in.

The Property Manager pointed to the Condition Inspection Report in relation to all three claims.

The Legal Advocate submitted that the damage to the vinyl floor was reasonable wear and tear as there was a leak. The Tenant testified that there was a leak from the kitchen sink. She did not report the leak to the Landlord as her friend was there to fix the problem. The Tenant testified that when she was cleaning up the water from the leak, the vinyl flooring just came off. The Legal Advocate also referred to the useful life of the vinyl flooring.

The Legal Advocate submitted that the useful life of paint is four years so the smoke damage was done to something with no value. She submitted that the Landlord would have had to paint anyway. The Legal Advocate also pointed out that the Landlord did not submit evidence showing special paint was needed due to smoke damage.

In reply, the Property Manager submitted that vinyl flooring is built for kitchen and bathroom use and meant to be exposed to water. She said it is thick flooring that is meant to stand up to a lot of wear and tear. She said vinyl floor does not just peel up and that it had been cut. The Building Manager testified that the hole in the vinyl is in the dining area not by the kitchen sink.

The Landlord had submitted a receipt for changing the vinyl floor, painting and cleaning showing this cost $1,200.00. The Landlord is only claiming for a portion of the painting so is claiming $900.00.

The Landlord had submitted a receipt for vinyl flooring materials showing they cost $153.85 with tax.

The Landlord had submitted a receipt for the paint materials.

Item 5

The Landlord had submitted a receipt for replacing laminate floor in the amount of $750.00. The Property Manager referred to photos in this regard. The Property Manager testified that the damage to the laminate was caused by the fire. She said the receipt covers parts and labour for replacing the living room floor.

The Legal Advocate submitted that the fire was not caused by the Tenant so the damage is not her fault.

Analysis

Section 7 of the *Residential Tenancy Act* (the "*Act*") states:

> (1) If a…tenant does not comply with this Act…or their tenancy agreement, the non-complying…tenant must compensate the [landlord] for damage or loss that results.

> (2) A landlord…who claims compensation for damage or loss that results from the [tenant's] non-compliance…must do whatever is reasonable to minimize the damage or loss.

Section 32 of the *Act* states:

> (3) A tenant of a rental unit must repair damage to the rental unit…that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.
>
> (4) A tenant is not required to make repairs for reasonable wear and tear.

Section 37 of the *Act* addresses a tenant's obligations upon vacating a rental unit and states:

> (2) When a tenant vacates a rental unit, the tenant must
>
> > (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

> It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:
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> - 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.

Under sections 24 and 36 of the *Act*, landlords and tenants can extinguish their rights in relation to the security deposit if they do not comply with the *Act* and *Residential Tenancy Regulation* (the "*Regulations*"). Further, section 38 of the *Act* sets out specific requirements for dealing with a security deposit at the end of a tenancy.
Based on the testimony of the parties, I find the Tenant did not extinguish her rights in relation to the security deposit under sections 24 or 36 of the *Act*.

I do find that the Landlord extinguished their rights in relation to the security deposit under section 36 of the *Act*.

Section 18 of the *Regulations* requires landlords to provide tenants with a copy of the Condition Inspection Report on move-out within 15 days of the date of the inspection, or the date the landlord receives the tenant's forwarding address in writing, whichever is later. I cannot find that the Landlord provided a copy of the Condition Inspection Report to the Tenant on the day of the inspection as the Tenant said she did not receive one and the Building Manager could not say for sure that she provided the Tenant a copy.

The parties agreed the Condition Inspection Report was sent to the Tenant June 3, 2018; however, this was outside the 15-day time limit set out in section 18 of the *Regulations*. I find the Tenant provided her forwarding address to the Landlord April 24, 2018. I accept that this was not the correct address for the Tenant; however, in my view this is not relevant. When the Landlord received that address, the Landlord should have sent a copy of the Condition Inspection Report within 15 days. The Landlord would have complied with the *Regulations* regardless of whether the Tenant provided the correct address.

I cannot find that the Landlord was waiting for the correct address as the Landlord did not receive the correct address until June 7th, after the Condition Inspection Report was sent. I find the Landlord failed to comply with section 18 of the *Regulations* and therefore extinguished their right to claim against the security deposit pursuant to section 36(2)(c) of the *Act*.

Pursuant to section 38(1) of the *Act*, the Landlord was required to repay the security deposit or claim against it within 15 days of receiving the Tenant's forwarding address. Here, the Landlord had extinguished their right to claim against the security deposit and therefore had to repay it to the Tenant. Given the Landlord did not repay the security deposit, I find the Landlord breached section 38(1) of the *Act*. Pursuant to section 38(6) of the *Act*, the Landlord cannot claim against the security deposit and must pay the Tenant double the amount of the security deposit. Therefore, the Landlord must return $800.00 to the Tenant.

Even if the Landlord had not extinguished their right in relation to the security deposit, I still would have found the Landlord failed to comply with section 38(1) of the *Act*. I have found the Landlord received the Tenant's forwarding address April 24, 2018. The Landlord was required to apply to claim against the security deposit within 15 days of receiving the forwarding address. The Landlord did not file the Application until May 29, 2018, more than a month later. I note that the Landlord could not have been waiting to receive the correct forwarding address as the Landlord did not receive this until June 7, 2018, after the Application was filed.

In the circumstances, the Landlord has failed to comply with section 38(1) of the *Act* and must pay the Tenant $800.00.

The Landlord is still entitled to claim for compensation for damage to the unit and I consider that now.

Pursuant to rule 6.6 of the Rules, the Landlord, as Applicant, has the onus to prove the claim. The standard of proof is on a balance of probabilities meaning “it is more likely than not that the facts occurred as claimed”.

The Representatives submitted that the Tenant is responsible for the broken patio door and fire that caused damage to the unit. The Tenant and Witness testified that a third party broke the patio door and set fire to a pillow.

I have read the letters from the other tenants and do not find them clear enough to determine whether they contradict the Tenant’s version of events.

However, I do not accept the version of events of the Tenant and Witness. Their account of the incident does not accord with common sense or human experience. I do not accept that a third party could break a patio door, steal items from the rental unit, set fire to a pillow and leave the rental unit without someone in the unit waking up. I note that both tenants who submitted the letters woke up to a loud bang or crash from the rental unit. These are people who were not in the unit at the time. Yet the Tenant and Witness say they did not wake up to the patio door being smashed. This is with the Witness seven feet away and in the same room. The Witness suggested he had sleeping problems and was used to noise. I do not accept this testimony without some evidence to support it.

I also note the Tenant’s testimony in relation to the damage to the vinyl floor. She said the holes in the floor were caused by a water leak. She said parts of the floor just came off when she wiped the water away. Again, this testimony does not accord with common sense or human experience. I accept the submissions of the Property Manager about the nature and normal use of vinyl floor. I accept that the flooring was only seven and a half years old. I do not accept that chunks of the floor would come off due to water being on the floor and then being wiped up.

I do not find the Tenant’s testimony on either issue credible given neither version of events accords with common sense or human experience.

I am satisfied based on the evidence of the Landlord that the Tenant, or someone the Tenant allowed in the rental unit, broke the patio door and set fire to the pillow. There is no dispute that the Tenant and her guests were in the rental unit at the time. I do not accept that there was a third-party thief. I find it more likely than not that the Tenant or her guest broke the patio door and set fire to the pillow. I find the Tenant is responsible for the cost of the repairs that were required due to this incident pursuant to section 32 of the *Act*.

I am also satisfied the Tenant caused the damage to the vinyl floor. I do not accept that this was caused by wiping the floor. I do not accept that this was normal wear and tear. I find the Tenant breached section 37 of the *Act*.

Based on the Condition Inspection Report, which the Tenant signed on move-out, I accept that the Tenant left numerous areas of the rental unit dirty and thus breached section 37 of the *Act*.

There was no dispute that the patio door had to be repaired. There was no issue with the cost of the repair. I award the Landlord the $828.80 for repairing the patio door.

I accept that the vinyl floor had to be repaired. I did not understand the Tenant or Legal Advocate to dispute this. The Legal Advocate raised the issue of the useful life of vinyl flooring. Policy Guideline 40 addresses the useful life of items but does not address vinyl flooring. I find the useful life of vinyl flooring would be at least as long as carpet and likely longer. The Property Manager testified that they have units with vinyl floor that is 20 years old and I accept this testimony. However, the Landlord did get seven and a half years of use out of the floor and therefore I award a reduced amount of $300.00 for the labour and $116.00 for the materials. In relation to painting the living room, I accept that it had to be painted due to smoke damage. I cannot find that it required special paint because the Legal Advocate disputed this and the Landlord did not provide evidence to support this. I accept the submissions of the Legal Advocate that the useful life of interior paint is four years as stated in Policy Guideline 40. I have no evidence before me that the Landlord would have had to paint regardless of the damage; however, considering the useful life of the paint, I award a nominal amount of $150.00 for the labour and materials.

I accept that the laminate flooring had to be replaced. I did not understand the Tenant or Legal Advocate to dispute this. I accept that it cost $750.00 to do so based on the receipt. I do not have evidence about the age of the laminate flooring. I accept that the amount requested is reasonable and award the Landlord the $750.00.

I accept that the unit needed to be cleaned upon move-out. I find the $100.00 requested to be reasonable and award the Landlord this amount.

In summary, I find the Landlord is entitled to the following compensation:

Item	Description	Amount
1	Glass repair	$828.80
2	Vinyl floor repair, painting, cleaning (labour)	$500.00
3	Vinyl floor materials	$116.00
4	Paint materials	$50.00
5	Laminate floor repair	$750.00
	TOTAL	**$2,244.80**

Given the Landlord was successful in this application, I grant the Landlord reimbursement for the $100.00 filing fee pursuant to section 72(1) of the *Act*.

In total, the Landlord is entitled to $2,344.80. However, the Landlord must return double the security deposit to the Tenant which equals $800.00. Therefore, the Landlord is entitled to keep the security deposit and is granted a Monetary Order for $1,544.80.

Conclusion

The Application is granted in part.

The Landlord is entitled to $2,344.80. However, the Landlord must return double the security deposit to the Tenant which equals $800.00. Therefore, the Landlord is entitled to keep the security deposit and is granted a Monetary Order for $1,544.80. This Order must be served on the Tenant and, if the Tenant does not comply with the Order, it may be filed in the Provincial Court (Small Claims) 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 16, 2018

Residential Tenancy Branch