Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL

Introduction

This teleconference hearing was scheduled in response to an application by the Landlords under the *Residential Tenancy Act* (the "*Act*") for monetary compensation for damages, to retain the security deposit towards compensation owed and for the recovery of the filing fee paid for this application.

One of the Landlords and both Tenants were present for the duration of the teleconference hearing. The Tenants confirmed receipt of the Notice of Dispute Resolution Proceeding package and copies of the Landlords' evidence. The Landlord confirmed receipt of the Tenants' evidence but stated that it was only received two days before the hearing through registered mail.

The Tenants stated that their evidence was mailed approximately two weeks prior to the hearing, which they stated was in time to be received by the Landlords within the 7 days required by the *Residential Tenancy Branch Rules of Procedure.*

The Landlord was presented with the option of adjourning the hearing to a later date, but he confirmed that he had a chance to review the Tenants' evidence and would like to proceed with the hearing.

All parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

I have reviewed all oral and written evidence before me that met the requirements of the *Rules of Procedure*. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issues to be Decided

Are the Landlords entitled to monetary compensation for damages?

Should the Landlords be allowed to retain the security deposit towards compensation owed?

Should the Landlords be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

The parties were in agreement with the details of the tenancy. The tenancy began on November 1, 2012 and ended on February 1, 2018. Monthly rent at the end of the tenancy was $920.00, including cable. A security deposit of $425.00 was paid at the outset of the tenancy. The Landlord is still in possession of the full security deposit amount and the Tenants did not agree to any deductions from their security deposit.

The Landlord provided testimony that he tried a few times to schedule the move-out inspection, but the first date that worked for the Tenants was February 24, 2018. The Landlord stated that one of the Tenants attended the move-out inspection, but did not sign the Condition Inspection Report as he wanted to discuss with the other Tenant first.

The Tenants stated that one of them attended the move-out inspection, but did not want to sign the Condition Inspection Report as no inspection was done at move-in. As there was no reference point for any damages or dirt noted, the Tenant was not comfortable signing.

The Landlord stated that a walk-through of the rental unit was conducted at the start of the tenancy, but no report was completed or signed. The Condition Inspection Report submitted into evidence noted that condition of the rental unit at move-in was clean with no damage. The Landlord testified that the move-in report was completed based on the photos taken at the time the tenancy began.

The Tenants agreed that no move-in Condition Inspection Report was completed and also noted that no photos were taken when they moved in. They questioned when the photos submitted into evidence by the Landlord were taken, as it shows the stove in the kitchen with a label on it, indicating that it was new at the time of the photo.

The Landlord stated that the rental unit was 2.5 years old at the time the tenancy began in 2012 and therefore all appliances and other material in the rental unit were new 2.5 years before the Tenants moved in.

The Tenants testified as to their multiple requests to complete a move-out inspection with the Landlord, but stated that he did not schedule one until February 24, 2018, which was weeks after they moved out. The Landlord stated that he provided multiple times and dates for an inspection, but February 24, 2018 was the first mutual time that was available.

The Landlord has claimed a total of $44.35 for lightbulbs. He testified that the majority of the lightbulbs were burnt out in the entryway, kitchen, living room and two bedrooms, as well as some on the exterior of the unit. The Landlord submitted into evidence three receipts for the purchase of the lightbulbs.

The Tenants testified that some of the lightbulbs were burnt out, but they were not able to reach them to change them. As such, they stated that they left three packages of lightbulbs for the Landlord. They also noted that they were not able to find the right size lightbulbs for the bathroom, so did not replace or purchase new bulbs for the bathroom lights.

The Landlord confirmed that only one package of lightbulbs was left, which he used and then had to purchase additional lightbulbs as well.

The Landlord has also claimed $5.42 for oven cleaner. He stated that the oven appeared to have never been cleaned, so he had to purchase extra strength cleaner. The receipt for the oven cleaner was submitted into evidence. The Landlord noted that the oven was in clean condition at the start of the tenancy. A photo of the oven was submitted into evidence and the Landlord provided testimony that it was taken on February 24, 2018.

The Tenants stated that they cleaned the oven before they moved out and noted that they spent many hours cleaning the oven and stove. They questioned that the photos submitted were not date stamped and also that the move-out inspection was not completed until a few weeks after they had already moved out.

The Landlord has claimed $997.50 for the repair of drywall throughout the home, as well as painting. He stated that the paint was 2.5 years old at the time the tenancy started and that he does not believe any painting was done during the tenancy.

The Landlord testified as to numerous holes and gouges in the walls in the bedrooms, entryway, and some of the living room walls. A quote for the repairs and painting was submitted into evidence, dated February 19, 2018. The Landlord testified that the quote amount was the amount paid after the work was completed. Photos of the walls were also submitted into evidence.

The Tenants testified that there were some nail holes in the wall due to hanging photos, but stated that these did not cause damage beyond reasonable wear and tear. They also stated that they did not have many photos or other items hung throughout the rental unit. The Tenants confirmed that no painting was done in the rental unit during their tenancy.

The Landlord responded that the damage was beyond nail holes and included a 6-inch mark on the wall in the living room, scuffs throughout the walls, and drywall and paint coming off the walls where multiple hooks were removed from one of the bedrooms.

The Landlord has claimed $224.70 for professional cleaning in the rental unit. An invoice was submitted into evidence, dated March 6, 2018. The invoice noted 1.5 hours for 3 cleaners, but was crossed out and changed to 2 hours. The Landlord stated that the cleaners had initially estimated 1.5 hours of work, but 2 hours was required instead.

The Landlord testified as to dirt throughout the rental unit, including the area behind the fridge, the window sills, the hood fan, and grease splatters on the wall behind the stove. Photos of the rental unit were submitted into evidence to show areas that required cleaning.

The Tenants stated that they spent one and a half days cleaning the rental unit before moving out, including cleaning the window sills, the counters, and the stove. They denied any grease on the hood fan or in the area behind the stove. The Tenants agreed that they did not clean behind the fridge or stove, but stated that they were not on wheels and therefore it was a difficult area to clean.

The Landlord stated that the fridge was on wheels.

The Landlord has also claimed $1,074.15 for replacement of the carpet due to cat urine stains. Photos of the carpets were submitted into evidence, as well as two videos taken with a black light to show stains in various areas of the carpets. The Landlord clarified that the two bedrooms were the only rooms with carpet in the rental unit.

The Landlord noted that the Tenants had a cat, although pets were not allowed, and a pet damage deposit was not taken. He stated that they had many photos of the cat, but did not submit these into evidence.

A quote for replacement of the carpets, dated March 16, 2018 was submitted into evidence. The Landlord testified that two separate carpet cleaning companies had told him that replacement of the carpet was the only way to get rid of the cat urine stains and odour.

The companies also confirmed that the stains were consistent with cat urine. The carpets were removed in both bedrooms and the concrete underneath was bleached. The Landlord stated that although a quote was submitted into evidence, this was the same amount as the work that was completed.

The Tenants testified that they did not have a cat, other than 2-3 days in 2017 when they had to look after a family member's kitten. They stated that one of the Tenants is allergic to cats and they would not have had a cat in the rental unit, other than the short period of time when they were helping out a family member due to illness.

The Tenants also questioned the videos that the Landlord submitted into evidence taken with a blacklight, as it is not clear where the videos were taken. The Tenants testified as to a flooding issue that occurred during the tenancy in which one of the bedrooms and part of the second bedroom was flooded with water from the bathroom. They noted that the water in the bedrooms was air dried, but not cleaned up properly which may have caused mould growth.

The Tenants also testified that prior to moving out, they rented a carpet steam cleaner to clean the carpets thoroughly. They submitted a receipt for the steam cleaner rental, dated January 31, 2018.

The Landlords' final claim is for $88.30 for the replacement of door knobs in three areas of the rental unit. During the hearing, the Tenants agreed to have this amount deducted from their security deposit.

The Landlord confirmed receipt of the Tenants' forwarding address in writing on March 5, 2018, when he received it by mail. The Tenants stated that the address was provided to the Landlord prior to this by text message, as well as an attempt made to deliver the address to him in person. The Tenants stated that they went to the Landlord's home to deliver the forwarding address, but that the Landlord would not open the door and told them to make an appointment.

As the forwarding address was not accepted, the Tenant's mailed it and stated that it would have been received prior to March 5, 2018.

Analysis

Based on the testimony and evidence of both parties, and on a balance of probabilities, I find as follows:

I refer to Section 38 of the *Act* which states the following:

> Except as provided in subsection (3) or (4) (a), within 15 days after the later of
>
> > (a) the date the tenancy ends, and
> > (b) the date the landlord receives the tenant's forwarding address in writing,
>
> the landlord must do one of the following:
>
> > (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
> > (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

As the tenancy ended on February 1, 2018 and the forwarding address was received by the Landlord on March 5, 2018, I find that the Landlord had 15 days from March 5, 2018 to comply with Section 38(1) of the *Act.* Although the parties were not in agreement as to how and when the forwarding address was provided and/or received, without evidence to establish otherwise, I find that the forwarding address was received by the Landlord in writing on March 5, 2018. I also note that text message is not an approved method of service under the *Act.*

However, I also find that the Landlord was not in compliance with Section 23 of the *Act,* by not completing a walk-through inspection and a Condition Inspection Report at move-in.

By not complying with Section 23, Section 24(2) of the *Act* applies, and the Landlords have extinguished their right to claim against the security deposit. A Landlord has a responsibility to ensure that Condition Inspection Reports are completed at move-in and move-out in accordance with the *Act.*

A security deposit is held in trust by a landlord for a tenant and a landlord must not keep the deposit unless they have a right to do so under the *Act.* As the Landlords extinguished their right to claim against the deposit, pursuant to Section 24(2) of the *Act,* I find that the security deposit should have been returned within 15 days of receiving the Tenants' forwarding address.

As the Landlords did not meet the obligations for the security deposit under Section 38(1) of the *Act,* I determine that Section 38(6) applies, and the Tenants are entitled to the return of double their security deposit, in the amount of $850.00.

The Tenants agreed to a deduction of $88.30 for the replacement of door knobs in the rental unit. As such, this amount will be deducted from the security deposit owing to the Tenants.

As for the remainder of the Landlords claims for damages, I refer to Section 21 of the *Residential Tenancy Regulation* (the "*Regulation")* that states the following:

> **21** In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

As there was no Condition Inspection Report completed to establish the condition of the rental unit at the start of the tenancy, and the Tenants did not agree that they caused any damage in the rental unit, I look to the evidence of the Landlord to determine whether the Tenants are responsible.

Lightbulbs: I accept the testimony of the Tenants that some lights had burnt out during the tenancy and that they did not replace them prior to vacating the unit. Although the Tenants stated that they left 3 boxed of lightbulbs at the unit, I also note that they stated they could not find some of the lightbulbs that were needed. As such, I find that the Landlord was required to purchase lightbulbs and find the amount claimed to be reasonable. Therefore, I find that the Landlord is entitled to an amount of $44.35.

Oven cleaner: As the parties presented conflicting testimony regarding whether the Tenants were responsible for cleaning the oven, I find that I cannot establish that the Tenants were responsible due to insufficient evidence.

I am not aware of the condition of the oven at the beginning of the tenancy and the Tenants stated that the oven and stove was cleaned thoroughly prior to moving out. The Tenants also questioned when the photo of the oven was taken and the Condition Inspection Report at move-out does not note that the oven was dirty. As such, I decline to award the Landlord any compensation for oven cleaner.

Drywall and painting: The parties were not in agreement as to any damage on the walls of the rental unit. While the Landlord said there was significant damage to the drywall and paint on the walls, the Tenants stated that there was no damage beyond reasonable wear and tear.

As for repair of the drywall, I accept the photos submitted into evidence showing damage to the drywall. However, I do not have agreement between the parties as to the condition of the walls at the start of the tenancy due to the lack of a Condition Inspection Report.

As for the painting of the walls, I refer to *Residential Tenancy Policy Guideline 40: Useful Life of Building Elements* which states that interior paint has a useful life expectancy of 4 years. As the rental unit was not painted during the 6 year tenancy, and was 2.5 years old at the time the tenancy began, I find that the Landlord is not entitled to any compensation for paint in the rental unit.

Cleaning: I make reference to *Residential Tenancy Policy Guideline 1: Landlord & Tenant: Responsibility for Residential Premises* which states the following:

> *If the refrigerator and stove are on rollers, the tenant is responsible for pulling them out and cleaning behind and underneath at the end of the tenancy. If the refrigerator and stove aren't on rollers, the tenant is only responsible for pulling them out and cleaning behind and underneath if the landlord tells them how to move the appliances without injuring themselves or damaging the floor. If the appliance is not on rollers and is difficult to move, the landlord is responsible for moving and cleaning behind and underneath it.*

In a photo of the kitchen submitted into evidence by the Landlord, it does appear that the fridge is on rollers. As the Tenants stated during the hearing that they did not clean behind the fridge, I find that the Landlord is entitled to compensation for the time spent cleaning behind the fridge. I also note that the stove in the photo does not appear to be on rollers, and I have no evidence before me that the Landlord advised the Tenants on how to move the stove.

The remainder of the cleaning, the Tenants were not in agreement with and stated that they cleaned the rental unit thoroughly prior to moving out. Given this, and in the absence of a Condition Inspection Report at move in, I decline to award any additional compensation for cleaning to the Landlord. The invoice for cleaning submitted by the Landlord calculates to approximately $35.00 an hour for cleaning, for 1 person. I determine that the Landlord is entitled to one hour of cleaning for the area behind the fridge, in the amount of $35.00.

Carpet replacement: The parties were not in agreement regarding damage caused to the carpets. Although the Landlord stated that he had proof that the Tenants had a cat despite not being allowed in their tenancy agreement, this proof was not submitted. While the Condition Inspection Report at move-out notes that the carpet in bedroom 1 was stained, dirty and smelled of cat urine, bedroom 2 does not state any concerns with the carpet. However, I also note that a move-out inspection is to be compared with a move-in report to establish what damage occurred during the tenancy.

As I cannot establish the condition of the carpets at the beginning of the tenancy, I find that I cannot award any compensation for replacement of the carpets. I also note that when a party is claiming a loss, in accordance with Section 7 of the *Act,* they have a responsibility to do what is reasonable to minimize that loss.

I do not find evidence before me of steps taken by the Landlord prior to replacing the carpet. Although the Landlord stated that two professional companies advised him that replacement of the carpets was the only option, I do not have this evidence, nor any additional evidence to confirm that cleaning the carpets was not an option, which would have minimized the loss of full carpet replacement. As such, I decline to award the Landlord compensation for replacement of the carpets.

As the Landlord was partially successful in his application, I award the recovery of half of the filing fee in the amount of $50.00, pursuant to Section 72 of the *Act.*

As stated in *Residential Tenancy Policy Guideline 17: Security Deposit and Set Off,* the return of a security deposit may be awarded on a Landlord's application against the deposit, if an amount remains owing from the deposit. Therefore, the Tenants are awarded a Monetary Order for the return of double their security deposit, after deductions as noted below.

Return of security deposit	$425.00
Amount to double security deposit	$425.00
Less door knob replacement	*($88.30)*
Less lightbulbs	*($44.35)*
Less one-hour cleaning	*($35.00)*
Less half filing fee	*($50.00)*
Total owing to Tenants	**$632.35**

Conclusion

Pursuant to Sections 67 and 72 of the *Act*, I grant the Tenants a **Monetary Order** in the amount of **$632.35** for the return of double the security deposit, after deductions for lightbulbs, door knobs, one hour of cleaning and half of the filing fee. 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, 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: October 19, 2018

Residential Tenancy Branch