



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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 August 19, 2018 (the “Application”). The Landlord applied for compensation for damage to the unit and sought to keep the security deposit. The Landlord also sought reimbursement for the filing fee.

The Agent for the Landlord appeared at the hearing. The Tenant appeared at the hearing. I explained the hearing process to the parties and answered their questions in this regard. The parties provided affirmed testimony.

Both parties had submitted evidence prior to the hearing. I addressed service of the hearing package and evidence.

The Tenant confirmed she received the hearing package. The Tenant advised that she only received the evidence of the Landlord contained in the document she uploaded labelled “Served documents - Documents served by landlord's representative”.

The Agent testified that a USB was served on the Tenant with the additional evidence. He said this was served with the hearing package. The Tenant said she did not receive a USB. The Landlord had not submitted evidence supporting the position of the Agent in relation to the USB.

I advised the parties I was not satisfied of service of the USB and heard the parties on whether the evidence should be admitted or excluded. I excluded the evidence of the Landlord, other than the documents contained in the file labelled “Served documents - Documents served by landlord's representative”, as I was not satisfied it was served in accordance with the Rules of Procedure and found it would be unfair to the Tenant to admit it when she says she did not receive it.

The Agent confirmed he received the Tenant's evidence.

The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered all admissible documentary 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 caused 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

The parties agreed on the following. There was a written tenancy agreement between the Landlord and Tenant in relation to the rental unit. The tenancy started June 1, 2015 and was a month-to-month tenancy. Rent was \$850.00 per month due on the first day of each month. The Tenant paid a security deposit of \$425.00 which the Landlord still holds. The Tenant vacated the rental unit July 31, 2018.

The Tenant testified that she paid a \$400.00 pet deposit in 2016 and pointed to a note on the documents submitted showing the inspection report was "updated because of pet". The Tenant testified that the Landlord still holds this amount. The Agent did not know if the Tenant paid a pet deposit.

The Tenant testified that she posted a letter with her forwarding address on the Landlord's door on August 6, 2018. The Agent testified that the Landlord received this around August 11, 2018.

The parties agreed the Landlord did not have an outstanding monetary order against the Tenant at the end of the tenancy. Both agreed the Tenant did not agree in writing at the end of the tenancy that the Landlord could keep some or all of the security deposit or pet deposit.

Both parties agreed a move-in inspection was done May 30, 2015. The Tenant testified that her and someone for the Landlord did the inspection. The Agent did not know who participated in the inspection. The parties agreed the rental unit was empty. Both

parties agreed a Condition Inspection Report was completed. The Tenant testified that both parties signed the report. The Agent did not know who signed the report. The Tenant testified that she was given a copy of the report in person within a week of the inspection. The Agent was unaware of this.

The Tenant testified that the move-out inspection was not completed. She said the parties started the inspection July 31, 2018 and made it through most of the Condition Inspection Report but that she did not sign the report. The Agent testified that the inspection was almost completed but that the Tenant left after a discussion between the parties about the bathroom. Both parties agreed the Landlord did not follow up with the Tenant about completing the inspection. Both parties agreed the rental unit was empty. Both parties agreed the Landlord completed the Condition Inspection Report and the Agent signed it. The Tenant testified that she received a copy of the report as evidence on this hearing on August 29, 2018 by registered mail. The Agent agreed with this and did not know what date the evidence was sent.

The Landlord sought \$1,344.00 in compensation for damage to the bathroom floor.

The Agent testified as follows. The Tenant damaged the bathroom floor. Tiles on the floor were broken at the end of the tenancy. There was water damage to the floor due to overflow from the tub. The water leaked under the tiles. The water damaged the floor to the point that it is rotting. When you walk on the floor it sinks down. The floor needs to be replaced. The Landlord had someone come look at the floor and obtained and submitted a quote for replacing the floor.

The Agent pointed to the Condition Inspection Report submitted by the Tenant showing the bathroom was in good condition upon move in. The Agent relied on the Tenant's photos to show the floor was damaged upon move out.

The Agent said he did not know how old the flooring was and submitted that this is irrelevant.

Given comments in the quote submitted, I asked the Agent why the sink, toilet and faucet need to be replaced. The Agent testified that these were not replaced. He said they were removed to fix the floor but were put back. The Agent testified that this work was done at the end of August or beginning of September.

I confirmed with the Agent that the Landlord was not saying this was damage caused by a pet and the Agent said he did not know what caused it.

The Tenant denied that any of the damage is her fault. The Tenant submitted that the Agent himself acknowledged that he does not know what damaged the floor. The Tenant pointed to evidence she submitted showing the house was sold September 21, 2018. The Tenant said there is no evidence the repairs were actually completed.

The Tenant pointed to the 2015 Condition Inspection Report. She noted that it shows one tile in the bathroom was broken. She noted that two were broken in the 2016 report. She also noted a comment in the 2015 report stating, "some dark spots on lino floor beside bathroom wall (possible water damage)". The Tenant submitted that there was pre-existing water damage when she moved into the rental unit.

The Tenant said her photos show there are still only two broken tiles in the bathroom as noted in the 2016 report.

The Landlord submitted a quote showing the cost of replacing the floor.

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.

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:

- 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.

Section 37 of the *Act* 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...

Under sections 24 and 36 of the *Act*, landlords and tenants can extinguish their rights in relation to the security and pet 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 and pet deposit at the end of a tenancy.

I accept the testimony of the Tenant that she paid a pet deposit and that the Landlord still holds this. The Agent did not dispute this, he did not know. The documentation submitted shows the Condition Inspection Report was updated in 2016 because of a pet.

I accept that the Tenant participated in the move-in inspection and therefore I find the Tenant did not extinguish her rights in relation to the security or pet deposit under section 24 of the *Act*.

Based on the testimony of the parties about the move-out inspection, I do not find that this is a situation where the Tenant was offered two opportunities to do a move-out inspection and failed to participate. Therefore, I find the Tenant did not extinguish her rights in relation to the security or pet deposit under section 36 of the *Act*.

Based on the testimony of the parties in relation to the move-in and move-out inspections, I do not find that the Landlord extinguished her rights in relation to the security or pet deposit under sections 24 or 36 of the *Act*.

There is no issue the tenancy ended July 31, 2018. I accept the testimony of the Agent that the Landlord received the Tenant’s forwarding address around August 11, 2018 and therefore find this to be the relevant date for section 38(1) of the *Act*.

Pursuant to section 38(1) of the *Act*, the Landlord was required to repay the security and pet deposit or claim against them within 15 days of August 11, 2018. Based on our records, I find the Landlord applied to keep the security deposit August 19, 2018, within the permitted timeframe and therefore complied with section 38(1) of the *Act*.

However, the damage claimed for is not pet related damage. Therefore, the Landlord was not entitled to keep the pet deposit. The Landlord was required to return the pet deposit within 15 days of August 11, 2018. I accept the testimony of the Tenant that the Landlord did not do so. The Agent did not dispute this, he did not know. I therefore find the Landlord failed to comply with section 38(1) of the *Act* in relation to the pet deposit. Pursuant to section 38(6) of the *Act*, the Landlord must pay the Tenant double the pet deposit. The Landlord therefore must pay the Tenant \$800.00.

The Landlord was entitled to claim against the security deposit for damage to the unit and I consider that now.

Pursuant to rule 6.6 of the Rules of Procedure, 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".

I am not satisfied that the damage was caused by the Tenant given the note in the 2015 Condition Inspection Report stating there was evidence of possible water damage in the area of the bathroom upon move-in. I note that the quote submitted by the Landlord states "You recently enquired about a quotation at...basement bathroom damaged by water leakage from the shower of tub (overflow)". I do not consider this statement in the quote to be a formal assessment by the author in relation to the cause of the damage and do not find it to be reliable evidence in relation to the cause of the damage. No other evidence was submitted in relation to the cause of the damage. The Tenant denied that she caused the damage.

In relation to the cracked tiles, I accept that one was cracked on move-in based on the 2015 Condition Inspection Report. The photos of the Tenant seem to show three were cracked upon move-out. I am not satisfied that the cracking of the tiles was not related to the water damage to the floor given the Agent's testimony about the floor sinking when you walked on it. I am not satisfied the Tenant is responsible for the water damage to the floor and therefore cannot find she is responsible for the cracked tiles.

I acknowledge that the move-in Condition Inspection Report shows the bathroom floor was in good condition. However, the photos of the bathroom on move-out do not show

visible water damage to the floor other than in relation to the tiles. From the testimony of the Agent, I understand the water damage to be to the flooring underneath the tiles which would not have been visible upon move-in.

Given I am not satisfied the Tenant is responsible for the damage to the floor, I decline to award the Landlord the compensation sought.

Given the Landlord was not successful in this application, I decline to award the Landlord reimbursement for the filing fee.

Conclusion

The Application is dismissed without leave to re-apply. The Landlord must return the security deposit and double the pet deposit to the Tenant. The Landlord must therefore return \$1,225.00 to the Tenant. The Tenant is issued a Monetary Order in this amount. If the Landlord does not return \$1,225.00 to the Tenant, this Order must be served on the Landlord. If the Landlord 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: January 09, 2019

Residential Tenancy Branch