Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNCL-S, FFL

Introduction

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

- a Monetary Order for damage or compensation, pursuant to section 67;
- a Monetary Order for damage, pursuant to section 67;
- authorization to retain the tenant's security and pet damage deposits, pursuant to section 38; and
- authorization to recover the filing fee from the tenant, pursuant to section 72.

The tenant, the landlord and counsel for the landlord attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The landlord testified that the tenant was served the notice of dispute resolution package by registered mail on August 30, 2018. The tenant confirmed receipt of the dispute resolution package but did not know on what date. I find that the tenant was deemed served with this package on September 4, 2018, five days after its mailing, in accordance with sections 89 and 90 of the *Act.*

At the hearing the tenant testified that the shortened version of his first name was listed on the dispute resolution application. Pursuant to section 64 of the *Act*, I amend the application to state the full version of the tenant's first name.

At the hearing the landlord testified that her full legal name was not listed on the dispute resolution application. Pursuant to section 64 of the *Act*, I amend the application to include the landlord's full legal name.

Issue(s) to be Decided

1. Is the landlord entitled to a Monetary Order for damage or compensation, pursuant to section 67 of the *Act*?
2. Is the landlord entitled to a Monetary Order for damage, pursuant to section 67 of the *Act*?
3. Is the landlord entitled to retain the tenant's security and pet damage deposits, pursuant to section 38 of the *Act*?
4. Is the landlord entitled to recover the filing fee from the tenant, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence 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 tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on September 1, 2017 and ended on July 31, 2018. Monthly rent in the amount of $1,000.00 was payable on the first day of each month. A security deposit of $500.00 and a pet damage deposit of $250.00 were paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

Both parties agreed to the following facts. This tenancy ended by way of a Two Month Notice to End Tenancy for Landlord's Use of Property with an effective date of August 31, 2018. The tenant informed the landlord that they would vacate the subject rental property by July 31, 2018.

Both parties agreed to the following facts. A move in condition inspection and inspection report were completed by both parties on August 25, 2017. A move out condition inspection and inspection report were completed on August 24, 2018. Both parties signed the move out condition inspection report; however, the move out report notes that the tenant does not agree with the contents of that report. The tenant provided the landlord with his forwarding address in writing on the move out condition inspection report. The move in and out condition inspection reports were entered into evidence. The landlord filed for dispute resolution on August 30, 2018.
The landlord testified that during the course of the tenancy a wall sconce was broken. The landlord testified that the wall sconce was approximately four years old. The landlord entered into evidence a receipt for a wall sconce in the amount of $17.98 plus tax which equals $19.13. The tenant testified that the sconce was accidentally broken and that he agreed he was responsible for the cost of the sconce.

The landlord testified that she had new windows and screens installed at the subject rental property 6-7 weeks before the tenant moved in and that at the end of the tenancy the master bedroom screen was ripped. The landlord testified that she purchased a screen repair kit to fix the screen. The landlord entered into evidence a receipt for a screen repair kit in the amount of $15.41 plus tax which equals $17.25. The move in condition inspection report states that the window was new, the move out condition inspection report states that the screen on the window is damaged. The landlord entered into evidence a photograph of the screen which had come away from its frame.

The tenant testified that the screen was not ripped but had just come out of its casing and that it could be put back in without the necessity of a screen repair kit.

Both parties agreed that the tenant did not remove all of his belongings from the property until August 5, 2018. The landlord entered into evidence photographs of piles of the tenant's belongings left at the subject rental property including two vehicles which had to be towed away. The landlord is seeking to recover a storage fee from the tenant in the amount of $33.00 per day for the five days the tenant left his belongings at the subject rental property after he was supposed to have vacated, for a total of $165.00. The tenant testified that the landlord knew that he left some of his belongings at the subject rental property after July 31, 2018 and that she was fine with it.

The landlord testified that when she attended at the subject rental property on August 4, 2018 the subject rental property had an over powering chemical smell that did not dissipate and that she had to rent an ozone machine to get rid of the smell. The landlord entered into evidence a receipt for renting an ozone

machine in the amount of $262.50. The landlord entered into evidence a letter from her property manager which notes that when he attended at the subject rental property on August 24, 2018 to complete the move out inspection, he noticed an overpowering odor. The landlord entered into evidence a statement from her daughter which states that the subject rental property had an overwhelming chemical smell when she attended at the subject rental property on August 4, 2018.

The tenant testified that while he had not completed cleaning the subject rental property, he had started to clean it and that he used a cleaning agent provided to him from government employees who were fighting forest fires in the area. The tenant testified that the product was given to everyone in the area to clean up soot from the forest fires. The tenant testified that he didn't think the smell was that bad.

The landlord testified that the property was left in a very dirty condition. The landlord entered into evidence photographs of the subject rental property showing that the walls, carpets, cabinets, appliances and floors had not been cleaned. The move in condition inspection report states that the subject rental property was clean when the tenant moved in. The move out condition inspection report states that the subject rental property was dirty when the tenants moved out.

The landlord testified that she received a quote for the cleaning of the subject rental property in the amount of $500.00. The quote was entered into evidence. The landlord testified that the cleaning has not entirely been completed as the subject rental property requires substantial repair work and she has had difficulty securing a contractor to complete the work.

The tenant testified that he would have completed the cleaning himself but that after the landlord returned to the subject rental property on August 4, 2018, she would not let him back on the subject rental property to complete the work.

The landlord testified that the tenant stained the bathtub in the main bathroom at the subject rental property blue. The landlord testified that her insurance company inspected the damage and informed her that she would have to pay a deductible in the amount of $1,000.00 for the repair to the bathtub. The landlord entered into evidence an e-mail from her insurance company stating same. The move in inspection report states that the bath tub has a chip. The move out report states that the bath tub is stained blue. The landlord entered photographs of the blue stained bath tub into evidence. The landlord testified that she does not know how old the bathtub is and that it was in the house when she purchased it 10 years ago. The landlord did not provide any evidence as to how much it would cost to repair the bathtub if she did not go through her insurance.

The tenant testified that the bath tub was in poor condition when he moved in and that it had no finish left on it at all. The tenant testified that the blue dye was from his daughter's friend's hair dye.
The landlord testified that the tenant left oil stains all over the deck at the subject rental property which is 8 years old. The move in inspection report does not mention the deck. The move out inspection report states that the deck is stained. The landlord entered into evidence a photograph of the deck which she says was taken shortly before the tenant moved in. The photograph does not show any stains. The landlord did not enter into evidence any photographs of the stained deck. The landlord testified that her insurance company inspected the damage and informed her that she would have to pay a deductible in the amount of $1,000.00 for the repair to the deck. The landlord entered into evidence an e-mail from her insurance company stating same. The landlord did not provide any evidence as to how much it would cost to repair the deck if she did not go through her insurance.

The tenant testified that he did not stain the deck and that it was in the same condition at move in as move out.

The landlord testified that a friend lent her a ladder which she left at the subject rental property and that the tenant took the ladder with him when he moved. The landlord did not know how old the ladder was. The landlord entered into evidence an online advertisement for a ladder in the amount of $214.00 plus tax equaling $239.68. The tenant testified that he accidentally packed the landlord's ladder when he moved.

In summary, the landlord is seeking the following compensation from the tenant for damages/loss allegedly suffered from the tenancy:

Item	**Amount**
Wall sconce	$19.13
Screen repair kit	$17.25
Storage fee	$165.00
Ozone machine	$262.50
Cleaning fee	$500.00
Insurance deductibles	$2,000.00
Ladder	$239.68
Total	**$3,203.56**

Analysis

Policy Guideline 16 states that 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 that when tenants vacate a rental unit, the tenants must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

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. When disputes arise as to the changes in condition between the start and end of a tenancy, joint move-in condition inspections and inspection reports are very helpful. These requirements are designed to clarify disputes regarding the condition of rental units at the beginning and end of a tenancy.

Where the landlord and the tenant disagree on the move in condition of the rental property and other evidence does not clarify the issue, I rely on the move in condition inspection report as both parties signed it.

Based on the testimony of both parties, I find that the tenant damaged the wall sconce necessitating a new wall sconce to be purchased, contrary to section 37 of the *Act*.

Residential Tenancy Policy Guideline (PG) #40 states that the useful life for light fixtures is 15 years (180 months). Therefore, at the time the tenant moved out, there was approximately 132 months of useful life that should have been left for the sconce. I find that since the sconce required replacing after only 48 months, the tenant is required to pay according to the following calculations:

$19.13 (cost of sconce) / 180 months (useful life of sconce) = $0.10 (monthly cost)

$0.10 (monthly cost) * 132 months (expected useful life of sconce after tenant moved out) = $13.20

Upon review of all the evidence, I find that the screen was in good condition when the tenant moved in and required repair when the tenant moved out, contrary to section 37 of the *Act*. I find that the tenant is responsible for the cost of the repair to the screen in the amount of $17.25, which was only a few weeks old when the tenant moved in.

Both parties agreed that the tenant provided notice to end the tenancy effective July 31, 2018. I find that this tenancy ended on July 31, 2018. As such, the tenant did not have authority to be on the subject rental property or to store his belonging on the subject rental property after July 31, 2018. I find that the tenant has not proved, on a balance of probabilities, that the landlord agreed to allow him to store his belongings at the subject rental property after July 31, 2018. I find that it is reasonable for the landlord to charge the tenant a storage fee of $33.00 per day (for a total of five days) for each day he left his belongings at the subject rental property. I find that the tenant owes the landlord $165.00 in storage fees.

Based on the testimony of the landlord and the statements entered into evidence by the landlord, I find that there was a powerful chemical smell at the subject rental property. I find that this smell was created by the cleaning agents used by the tenants and that it was pervasive enough to linger until at least August 24, 2018 when the move out condition inspection occurred. I find that the smell left by the tenant constitutes a breach of section 37 of the *Act* and that the tenant is responsible for the cost of hiring an ozone machine to remove the smell, in the amount of $262.50.

Based on the testimony of the landlord and the photographic evidence of the landlord, I find that the rental unit required significant cleaning. The landlord submitted into evidence, a cleaning estimate in the amount of $500.00. I find that the tenant is responsible for this fee. While the cleaning has not yet occurred, I accept the landlord's evidence that this expense will be incurred. The tenant testified that he would have completed the cleaning himself if the landlord had let him. I find that the tenant had the option to complete the cleaning himself; however, this was to be completed during his tenancy and he failed to complete the cleaning in that time frame. I find that tenant failed to leave the rental unit reasonably clean, contrary to section 37 of the *Act.*

Where the landlord or tenant breaches a term of the tenancy agreement or the Residential Tenancy Act (the Legislation), the party claiming damages has a legal obligation to do whatever is reasonable to minimize the damage or loss. This duty is commonly known in the law as the duty to mitigate. This means that the victim of the breach must take reasonable steps to keep the loss as low as reasonably possible. The applicant will not be entitled to recover compensation for loss that could reasonably have been avoided.

In this case, the landlord did not enter into evidence any estimates showing that the cost of repairing the bathtub and the deck were in excess of the $1,000.00 deductible the landlord is claiming for each item. I am not satisfied that the repair work for each of the items claimed, would have equaled or been in excess of $1,000.00. I find that the landlord has failed to prove that she has mitigated her damages. I therefore dismiss the landlord's claim for the insurance deductible for the bath tub and the deck.

In addition, since the landlord did not know the age of the bathtub, I am not able to determine if the bathtub had any useful life left, in accordance with PG #40. I therefore find that the landlord failed to prove the amount of or value of the damage or loss, and so her claim for the bathtub repair fails on this point as well.

I am also not satisfied that the landlord proved the condition of the deck when the tenant moved in as the move in condition inspection report does not mention the deck and the testimony of the parties is conflicting.

The landlord testified that she did not know the age of the ladder and so I am not able to determine what useful life the ladder had left. I therefore find that the landlord failed to prove the amount of or value of the damage or loss, and so her claim for the ladder fails. However, since the tenant testified that he did have the ladder in question, I find that the landlord is entitled to nominal damages.

PG #16 states that nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right. I find that there has been an infraction of a legal right, that being the at the tenant took a ladder that did not belong to him. I therefore find that the landlord is entitled to nominal damages in the amount of $100.00

Security Deposit

Section 38 of the *Act* states that 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.

I find that the landlord made an application for dispute resolution claiming against the security and pet damage deposits pursuant to section 38 of the *Act.*

Section 72(2) states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit or pet damage deposit due to the tenant. I find that the

landlord is entitled to retain the tenant's entire security and pet damage deposits in the amount of $750.00 in part satisfaction of her monetary claim against the tenant.

As the landlord was successful in her application, I find that she is entitled to recover the $100.00 filing fee from the tenant.

Conclusion

I issue a Monetary Order to the landlord under the following terms:

Item	**Amount**
Wall sconce	$13.20
Screen repair kit	$17.25
Storage fee	$165.00
Ozone rental	$262.50
Cleaning	$500.00
Nominal damages	$100.00
Filing Fee	$100.00
Less deposits	-$750.00
TOTAL	**$407.95**

The landlord is provided with this Order in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant 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: January 02, 2019

Residential Tenancy Branch