Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Tenant: MNSD, FFT Landlord: MNDL-S, FFL

Introduction

On October 1, 2018, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") to request a Monetary Order for the return of the security deposit and to be compensated for the cost of the filing fee.

On January 4, 2019, the Landlord submitted an Application for Dispute Resolution under the Act. The Landlord requested a Monetary Order for damages, to apply the security deposit to the claim, and to be compensated for the cost of the filing fee. The Landlord's Application was crossed with the Tenant's Application and the matter was set for a participatory hearing via conference call.

The Landlord and Tenant attended the hearing and provided affirmed testimony. They were provided the opportunity to present their relevant oral, written and documentary evidence and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

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

Tenant:
Should the Tenant receive a Monetary Order for the return of the security deposit, in accordance with Section 38 and 67 of the Act?

Should the Tenant be compensated for the cost of the filing fee, in accordance with Section 72 of the Act?

Landlord:
Should the Landlord receive a Monetary Order for damages, in accordance with Section 67 of the Act?

Should the Landlord be authorized to apply the security deposit to the claim, in accordance with Section 72 of the Act?

Should the Landlord be compensated for the cost of the filing fee, in accordance with Section 72 of the Act?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Tenant and the Landlord agreed on the following terms of the tenancy:

The one-year, fixed-term tenancy began on August 1, 2017 and was scheduled to end on July 31, 2018. The rent of $2,500.00 was due on the first of each month. The Landlord collected and still holds a security deposit in the amount of $2,500.00. The tenancy ended on February 28, 2018.

The Landlord testified that the Tenant communicated with him that the rental unit was in good condition upon move-in. The Landlord did not do a move-in inspection with the Tenant and there was no written report. The Landlord initially stated that the Tenant failed to attend for a move-out inspection as scheduled on March 1, 2018. The Tenant stated that his roommate, acting as agent for the Tenant, met with the Landlord on March 2, 2018 to participate in a move-out inspection. No written move-out inspection report was completed by the Landlord.

The Landlord stated he had been texting the Tenant about dates and times for a move-out inspection. On March 3, 2018, the Tenant provided the Landlord with a forwarding address and the Landlord responded by text to the Tenant on March 4, 2018, about the move-out inspection and requested the Tenant’s lawyer information.

Landlord's evidence – Monetary claim:

The Landlord testified that arrangements had been made to sell the rental unit in mid-March 2018. The Landlord stated that on February 28, 2018, he was notified by his building manager that the Tenant's dishwasher was flooding the rental unit. The building manager was able to enter the rental unit, as the front door was unlocked, and turn off the dishwasher to mitigate further damage. The Tenants were not home when the building manager entered the rental unit for the emergency.

The Landlord stated that the flooring and baseboards in the entry, hall, living room and both bedrooms were damaged as a result of the flooding. As an emergent response, a restoration company was contacted to clean-up the water and place fans to lower the moisture content in the unit. The Landlord is claiming the cost of the initial emergency response at $813.75 and provided a document with an estimate in this amount.

The Landlord provided an estimate from the restoration company that included the costs to remove the damaged flooring and replace it with new. The Landlord stated that the total cost was $8,024.08; however, that his insurance company paid for the bill, other than a $1,000.00 deductible. The Landlord did not provide any documentation from the insurance company. The Landlord is claiming a $1,000.00 loss.

The Landlord supplied a receipt for the cost of a new dishwasher. The Landlord stated that the Tenant was responsible for damaging the dishwasher and instead of spending $300.00 to fix the existing dishwasher that was two years old, the Landlord bought a new one. The Landlord is claiming the cost of a new dishwasher in the amount of $542.20.

The Landlord stated that the baseboards were also damaged as a result of the flooding. The Landlord provided photos of the damaged baseboards and of some scuff marks on the wall. The Landlord claimed that the Tenant was responsible for the scuff marks and that the Landlord had to have the replacement baseboards painted and the walls repainted. The Landlord provided an invoice from the same restoration company for painting, in the amount of $1,050.00 and is claiming this as a loss.

The Landlord stated that at the beginning of the tenancy, he provided the Tenant two key fobs for the rental unit. At the end of the tenancy, the Landlord said that he only received one key fob back and that it cost him $100.00 to replace the fob. The Landlord submitted a receipt from the building manager to support his testimony.

The Landlord claimed that the flood and subsequent damage is the Tenant's fault as the Tenant failed to stay in the rental unit while the dishwasher was running, in accordance with a term in the Tenancy Agreement that stated:

> "Do not use the dishwasher and washer or both when the tenant is not present in the condo unit or if the tenant is sleeping."

The Landlord referred to an unsigned letter from a contractor who stated that while he was troubleshooting the dishwasher, he found that the dishwasher was overloaded with dishes and a piece of glass was stuck inside the rinse pump which caused the water leak.

The Landlord is claiming a total monetary loss of $3605.95 as a result of the Tenant's failure to abide by the Tenancy Agreement and the Act.

Tenant's evidence – Return of security deposit:

The Tenant testified that when his roommate completed the move-out inspection with the Landlord and his realtor on March 2, 2018, that the Landlord indicated that the unit looked okay.

The Tenant acknowledged that he did use the dishwasher on February 28, 2018 and then left the rental unit to get some more moving boxes. The Tenant stated the dishwasher had had some troubles throughout the tenancy and provided a written opinion from an appliance technician who stated that dishwashers come equipped with filters to prevent pumps from being damaged by debris such as glass. The Tenant stated that he is not responsible for the malfunction of the dishwasher.

The Tenant provided a copy of an email between himself and the Landlord, dated October 19, 2017, where the Landlord acknowledged that the dishwasher had a draining issue and that he intended on replacing the dishwasher. The Tenant stated that the Landlord did not replace the dishwasher; therefore, the Tenant paid for the dishwasher to be repaired and submitted an e-transfer copy to support that he paid for the appliance repair on November 2, 2017.

The Tenant stated that the Landlord, during the signing of the Tenancy Agreement, mentioned that the dishwasher had a history of flooding and that was why the Landlord

included the term about being present while the dishwasher was in operation. The Tenant stated that the term in the Tenancy Agreement was unreasonable and that it would be difficult to wait to go to work or wait to go to sleep just because an appliance is running.

The Tenant stated that the Landlord collected twice the amount of security deposit that he was allowed pursuant to the Act, that the Landlord has failed to return the security deposit pursuant to the Act and furthermore, has held onto the security deposit for eleven months. The Tenant testified that he received a text from the Landlord on December 12, 2018, that stated the Landlord was willing to return the security deposit to the Tenant, plus the filing fee if the Tenant were to withdraw his Application for Dispute Resolution. The Tenant declined the Landlord's offer and then the Landlord applied to the Residential Tenancy Branch for a monetary claim against the Tenant.

Analysis

Firstly, I will consider whether the Landlord is authorized to apply the security deposit to a claim of damages to the rental unit. Sections 23, 24, 35 and 36 of the Act speak to the requirements for condition inspection reports and the extinguishment of rights to claim against the security deposit. Although I heard conflicting testimony regarding the specifics of the move-out condition inspection, I find that the Landlord failed to show diligence in participating in the move-in inspection and completing written reports. I find that the Landlord is not authorized to make a claim against the security deposit in regard to damages to the rental unit and property.

Section 19 of the Act states that a Landlord must not require or accept a security deposit that is greater than the equivalent of 1/2 of one month's rent payable under the Tenancy Agreement. If a Landlord accepts a security deposit that is greater than the amount permitted, the Tenant may deduct the overpayment from rent or otherwise recover the overpayment. I find that the Landlord breached Section 19 of the Act by collecting a $2,500.00 security deposit when the monthly rent was $2,500.00.

Section 38 of the Act states that the Landlord has fifteen days, from the later of the day the tenancy ends or the date the Landlord received the Tenant's forwarding address in writing to return the security deposit to the Tenant, reach written agreement with the Tenant to keep some or all of the security deposit, or make an Application for Dispute Resolution claiming against the deposit. If the Landlord does not return or file for Dispute Resolution to retain the deposit within fifteen days and does not have the

Tenant's agreement to keep the deposit, or other authority under the Act, the Landlord must pay the Tenant double the amount of the deposit.

I accept the Tenant's undisputed testimony and evidence that he requested the $2,500.00 security deposit and notified the Landlord of his forwarding address on March 3, 2018, via text. I find that both parties accepted text as an acceptable mode of communication as the Landlord acknowledged the Tenant's text and attempted to make arrangements with the Tenant for a move-out inspection via text. The Landlord was notified a second time of the Tenant's interest in the return of the security deposit and of his forwarding address when the Tenant served the Notice of Dispute Resolution Proceedings to the Landlord in October 2018.

I have no evidence before me that the Landlord returned any amount of the security deposit, reached written agreement with the Tenant to keep some of the security deposit or made an Application for Dispute Resolution claiming against the deposit in accordance with Section 38 of the Act. For these reasons, I find the Landlord must reimburse the Tenant double the amount of the outstanding security deposit for a total of $5,000.00, pursuant to Section 38 of the Act.

Section 67 of the Act establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order the responsible party to pay compensation to the other party. In order to claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof. The Applicant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the Tenancy Agreement or a contravention of the Act on the part of the other party. Once that has been established, the Applicant must then provide evidence that can verify the actual monetary amount of the loss or damage.

The Landlord has based most of his monetary claim in relation to the damage that was caused by the flooding of the dishwasher. The Landlord testified that the Tenant should be held responsible for the cost of the damages as the Tenant was not present in the unit while the dishwasher was in use, in accordance with a term in the Tenancy Agreement. I accept the Landlord's undisputed evidence that the dishwasher flooded and caused a significant amount of damage to the flooring; however, I question whether the Landlord's term for the Tenant not to sleep or leave the rental unit while a washing machine or dishwasher is running is reasonable.

I find the Tenant's undisputed evidence that the Landlord acknowledged that the dishwasher had a history of flooding and that the Landlord had fully intended to replace the dishwasher during the tenancy supported the unreasonableness of the term in the Tenancy Agreement. Rather than make it the Tenant's burden to stand-by while operating the dishwasher, I find that the Landlord should have repaired or replaced the appliance that was vulnerable to flooding, in accordance with Section 32 of the Act.

Rule 2.5 of the Residential Tenancy Branch Rules of Procedure states that a detailed calculation of any monetary claim must accompany the Application. The Landlord did not provide a detailed overview of his monetary claim. Upon review of the Landlord's evidence, I noted that the estimate for the rental unit damages seemed to include a cost for the removal, replacement and painting of the baseboards; the costs of which were mostly covered by insurance. The Landlord provided confusing testimony when he submitted a separate invoice for the painting of the baseboards and to cover some scuffs on the walls. The Landlord did not explain why the emergency services and painting were not covered by the insurance company, nor did the Landlord provide any documentation from the insurance company to verify the actual monetary amount of the loss or damage.

As a result of above testimony and evidence, I find that the Landlord has failed to provide sufficient evidence that the damage was as a result of the Tenant's violation of the Tenancy Agreement or the Act. Furthermore, I find the Landlord has failed to provide the necessary evidence that can verify the actual monetary amount of the loss or damage, pursuant to Section 67 of the Act. As such, I dismiss the Landlord's monetary claim for compensation regarding the $1,000.00 deductible, the $813.75 emergency restoration fee, the $542.20 claim for a new dishwasher and the $1,050.00 claim for the cost of painting.

I accept the undisputed testimony from the Landlord that the Tenant failed to return one of the key fobs for the rental unit and find that the Landlord has established a monetary claim in the amount of $100.00.

I find that the Landlord's Application was largely unsuccessful, and I decline to award the Landlord compensation for the filing fee, pursuant to Section 72 of the Act.

I find that the Tenant's Application was successful, and the Tenant should be compensated for the cost of the filing fee, in the amount of $100.00, pursuant to Section 72 of the Act.

I issue a Monetary Order in the Tenant's favour under the following terms and in accordance with Section 67 of the Act:

Item	**Amount**
Return of double the security deposit	$5,000.00
Compensation for the filing fee	100.00
Less the cost of the key fob	-100.00
Total Monetary Order	**$5000.00**

Conclusion

I grant the Tenant a Monetary Order in the amount of $5000.00, in accordance with Section 67 of the Act. In the event that the Landlord does not comply with this Order, it may be served on the Landlord, filed with the Province of British Columbia Small Claims 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 31, 2019

Residential Tenancy Branch