Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL

Introduction

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

- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- a monetary order for damage to the rental unit in the amount of $651.62 pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72;

Both parties 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, and the tenants confirmed, that the landlord served the tenants with the notice of dispute resolution form and supporting evidence package. The tenants testified, and the landlord confirmed, that the tenants served the landlord with their evidence package. I find that all parties have been served with the required documents in accordance with the Act.

Issue(s) to be Decided

Is the landlord entitled to:

- retain a portion of the tenant's security deposit in partial satisfaction of the monetary order requested;
- a monetary order for damage to the rental unit in the amount of $651.62; and
- recover the filing fee for this application from the tenant?

Background and Evidence

While I have considered the documentary evidence presented at the hearing and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into a written tenancy agreement starting June 1, 2016. Monthly rent was specified on the agreement as $2,400.00 and was payable on the first of each month. The tenants paid the landlord a security deposit of $1,200.00. The landlord still retains this deposit.

On May 28, 2016, the tenants and an agent of the landlord conducted a move-in inspection, and the landlord provided a copy of the condition inspection report to the tenants.

End of Tenancy

On November 30, 2018, the tenants gave their notice to end tenancy to the landlord, via email. In this email, they asked to schedule a move-out inspection with the landlord's agent at the end of the month. The landlord replied: "yes there will be a move out inspection. What day works best for you?" The tenants' response, if any, was not entered into evidence.

The tenants vacated the rental unit on December 31, 2018. On that same day, the agent of the landlord (the same agent who conducted the move-in inspection) attended the rental unit. The tenants submitted into evidence text messages in which the agent and the tenants scheduled this visit, although the purpose of the agent's visit was not stated in the text messages.

On December 31, 2018, the tenants and the landlord's agent conducted an inspection of the rental unit (the "**First Inspection**"). A condition inspection report was completed, and was entered into evidence, but was not signed by the landlord's agent (the "**First Report**"). The landlord testified that she instructed the agent to conduct an inspection, and that she would conduct the inspection with the tenants upon her arrival to the city (the landlord lives in Saskatchewan). The landlord testified that, despite being informed of this, the tenants insisted that an inspection be done, and that the landlord's agent accompanied them on a "rush" inspection.

The landlord did not testify as to what the purpose of her agent's attending the property was on December 31, 2018, if not an inspection.

The tenants agree that, when she arrived at the rental unit, the landlord's agent told them that the landlord wanted to conduct the inspection herself when she arrived in town. They testified that this was the first suggestion they heard that the move-out inspection would not be conducted on December 31, 2018. They testified that they told the agent that the inspection had to occur at move out, and that they wanted it to be done that day. They testified that the agent obliged and accompanied them on the First Inspection, but that she refused to sign the First Report. They testified that the First Inspection took about an hour, and was not rushed.

The First Report does not report any damage to the rental unit.

The landlord testified that she contacted the tenants and tried to set up a time with them when she could conduct a move out inspection. She testified that the tenants refused to attend, and took the position that the First Report was a valid move-out report. No written evidence of such attempts to schedule a second inspection has been entered into evidence by either party.

Tenant LU testified that she was in Toronto during the time the landlord was in the city to conduct a second inspection. She maintained her position that a second inspection was unnecessary, as an inspection had already been completed.

The landlord testified that she attended the rental unit on January 10, 2019 and walked through it (the "**Second Inspection**"). She made annotations on the First Report, noting damage, which included to:

1) a cracked window;
2) broken washing machine handle; and
3) a broken irrigation pipe.

She emailed this annotated report to the tenants (the "**Second Report**"). A legible copy of the Second Report was not entered into evidence, but the tenants, after consulting their copy, confirmed that the aforementioned damage was recorded on the Second Report.

The tenants testified, and the landlord confirmed, that subsequent to their vacating the rental unit, the landlord sold the rental unit. They testified that after they vacated the rental unit, but before landlord attended it to conduct her own inspection, prospective buyers were brought to the rental unit. The landlord confirmed this as well, with the caveat that these prospective buyers were never unsupervised while in the rental unit.

Damage to Unit

The landlord claims damage as follows:

Broken Window	$229.42
Washing Machine door	$172.20
Labour to install washing machine door	$100.00
Broken pipe	$150.00
Total	**$651.62**

At the outset of the hearing, the landlord testified that she was abandoning her claim for compensation for the broken pipe.

The landlord submitted photographs of the damaged window and washing machine. The window is cracked, and the washing machine door handle is missing. The tenants did not dispute that these items were damaged.

The landlord testified that the windows were original to the house, which was built in 1997, and that the washing machine was purchased in 2005.

The landlord submitted an invoice for the replacement of window in the amount of $229.42. She also submitted a screenshot of website selling a replacement washing machine door for $172.20. She testified that she called a plumbing company for a quote to install the replacement door, and they told her it would be $100.00.

Tenants' Position

The tenants argue that the Second Report is invalid, as the First Report met the statutory requirements. As the First Report recorded no damage to the rental unit, they argue that I should find that they are not responsible for any damage to the unit. They also argue that they did not cause any of the damage, and that it was caused by the prospective buyers or other unknown individuals after the tenants vacated the rental unit.

Landlord's Position

The landlord argues that the First Report is invalid because it was not signed by her agent, it was conducted under protest of the agent, and it was made in a rushed fashion. She argues that the nature of the damage is not consistent with the kind of damage prospective buyers of the property might cause.

The landlord argues that the tenants caused the damages as set out in the Second Report, and that she is entitled to compensation as a result.

Analysis

Rule of Procedure 6.6 states:

> **6.6 The standard of proof and onus of proof**
>
> The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.
>
> The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application.

As such, the landlord bears the burden to prove the facts she is alleging, on a balance of probabilities.

Section 35 of the Act pertains to the requirements for making end of tenancy condition inspection reports. It states:

Condition inspection: end of tenancy

35(1) The landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit

(a) on or after the day the tenant ceases to occupy the rental unit, or

(b) on another mutually agreed day.

(2) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.

(3) The landlord must complete a condition inspection report in accordance with the regulations.

(4) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.

(5)The landlord may make the inspection and complete and sign the report without the tenant if

(a)the landlord has complied with subsection (2) and the tenant does not participate on either occasion, or

(b)the tenant has abandoned the rental unit.

Accordingly, per section 35(1)(a), I find that the tenants are incorrect in their assertion that the move-out inspection must be done on the last day of the tenancy; it is permissible to conduct one after the tenancy has ended.

There is insufficient evidence before me to determine what the purpose of the landlord's agent visit to the rental unit was on December 31, 2018. The text messages between the agent and the tenants do not state its purpose. The emails exchanged by the tenants and the landlord confirmed a move-out inspection would occur, but did not show what date it would be scheduled for (or indeed if a date was ever settled upon).

<u>If the First Report is Invalid</u>

If the Report is Invalid, then the section 35(2) of the Act would apply, and the landlord would be required to give the tenants two opportunities to attend a move-out inspection. On the evidence before me, I find that the landlord did not offer two opportunities to conduct the Second Inspection to the tenants.

As such, the landlord's right to claim against the security deposit is extinguished. Section 36(2) states:

Consequences for tenant and landlord if report requirements not met

(2)Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

> (a)does not comply with section 35 (2) *[2 opportunities for inspection]*,
> (b)having complied with section 35 (2), does not participate on either occasion, or
> (c)having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

If a landlord's right to claim against the security deposit for damage is extinguished RTB Policy Guideline 17 would apply, which, in part, states:

> **C. RETURN OR RETENTION OF SECURITY DEPOSIT THROUGH DISPUTE RESOLUTION**
> […]
> 3. Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit:
> […]
> • if the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act;

As such, *if* I find that the First Report is invalid, I would be compelled to order that the landlord return double the security deposit to the tenant. However, I *do not* find that the First Report is invalid.

The First Report is Valid

I accept the tenant's argument that the First Report is valid. The parties agree that the landlord's agent accompanied the tenants on the First Inspection. If the landlord's agent was instructed not to conduct an inspection by the landlord, she should not have accompanied the tenants on the First Inspection. I find that by so doing, she caused the First Report to be a valid move-out inspection report. As the landlord's agent did not attend this hearing, I only have the tenants' account of how long the First Inspection took. I accept the tenants' testimony that the First Inspection took one hour to conduct.

As such, I find that the First Report accurately reflects the condition of the rental unit at the end of the tenancy. Accordingly, I find that the tenants did not cause the damage as alleged by the landlord. As such, I need not consider whether the amount of compensation claimed by the landlord is reasonable.

Conclusion

I dismiss the landlord's application, without leave to reapply.

As the landlord has been unsuccessful in her application, I find that she is not entitled to recover her filing fee from the tenants.

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: May 03, 2019

Residential Tenancy Branch