Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNDL-S, MNRL-S

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on October 16, 2018 (the "Application"). The Landlord applied for compensation for damage to the rental unit, to recover unpaid rent, to keep the security and pet deposits and for reimbursement for the filing fee.

This matter came before me for a hearing February 12, 2109 and March 29, 2019. Interim Decisions were issued February 14, 2019 and March 29, 2019. This decision should be read with the Interim Decisions.

The Landlord and Tenant appeared at the hearing. I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

Service was addressed in the February 14, 2019 Interim Decision. In this decision, I told the Tenant to submit an exact copy of the package of evidence served on the Landlord so that I know what evidence the Landlord has received. Neither party was permitted to submit any further evidence.

After the February 12, 2109 hearing, the Tenant submitted the following:

- An 11-page PDF labelled "TheCase"
- A 10-page PDF labelled "CourtEvidenceBackUp"
- An 8-page letter to the Landlord

The Tenant could not confirm that this was an exact copy of the package of evidence served on the Landlord. Given this, I told the Tenant she had to point to what evidence she was relying on during the hearing and if she did not I would not consider it. I also told the Tenant if the Landlord did not have that evidence I would not consider it.

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

documentary evidence pointed to during the hearing. 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 to the rental unit?

2. Is the Landlord entitled to recover unpaid rent?

3. Is the Landlord entitled to keep the security and pet damage deposits?

4. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

The Landlord sought the following compensation:

1	Damage to floor	$9,350.25
2	Damage to doors	$1,000.00
3	Lawn mower	$250.00
4	Broken window	$400.00
5	Unpaid rent	$3,100.00
6	Filing fee	$100.00
	TOTAL	**$14,200.25**

A written tenancy agreement was submitted as evidence. The tenancy started November 01, 2014 and was for a fixed term ending October 31, 2016. Rent was $2,400.00 per month due on the first day of each month. The Tenants paid a $1,200.00 security deposit and $1,200.00 pet damage deposit.

Both parties agreed the written tenancy agreement is accurate and advised that they subsequently entered into a second written tenancy agreement.

The Landlord testified as follows in relation to the second written tenancy agreement. It was for a fixed term of two years. Rent was $3,000.00 and raised to $3,100.00 in November of 2017. Rent was due on the first day of each month. The Tenant agreed with this but said rent was raised to $3,111.00 not $3,100.00.

The Landlord testified that the Tenants never provided her with a forwarding address in writing and said she relied on a previous mailing address in relation to serving the Application.

The Tenant did not know if she provided the Landlord with her forwarding address in writing.

The parties agreed no move-in inspection was done.

The Landlord testified that a move-out inspection was done August 31, 2018, during the tenancy. The Tenant testified that no formal move-out inspection was done. The Tenant testified that she was not involved in completing the Condition Inspection Report (CIR) submitted.

At the first hearing, the Landlord testified that she provided the Tenant with an opportunity to do a move-out inspection by text. She agreed she never offered an opportunity on the RTB form. She testified that she completed the CIR submitted in October.

At the second hearing, the Landlord testified that she provided the Tenant an opportunity to do a move-out inspection on the RTB form on February 13, 2019, after the first hearing.

The CIR was submitted. It is not signed by the Tenants.

The parties testified as follows in relation to the compensation sought.

Unpaid rent

The Landlord testified as follows. She served the Tenants with a Two Month Notice with an effective date of October 31, 2018. She actually gave the Tenants three months notice that she would be taking possession of the rental unit November 01, 2018. No rent was due for October. Tenant D.D. contacted her and told her the Tenants were vacating earlier than the effective date of the Two Month Notice. She never received written notice from the Tenants ending the tenancy early. The Tenants did not pay rent for September.

The Tenant agreed the Landlord issued a Two Month Notice three months prior to the effective date of the notice. The Tenant testified that Tenant D.D. and the Landlord agreed verbally to the Tenants vacating October 01, 2018. She said the Tenants did not pay September rent because September rent was free.

At the second hearing, the Tenant referred to a text message she had submitted; however, the Landlord had not received this. The Tenant testified that she emailed it to the Landlord after the first hearing. As stated in the Interim Decision, the parties were not permitted to submit further evidence. Therefore, I have not considered it.

Damage to floor

The Landlord relied on photos submitted to show damage to the floor at the end of the tenancy. She also relied on an invoice submitted showing the cost for repairing the damage.

The Landlord relied on correspondence about refreshing the floors to show the floors were in good condition upon move in. She also relied on photos of the floor from prior to the tenancy.

The Landlord testified that she minimized her loss by only repairing the main floor of the rental unit and not upstairs despite it not being perfect.

The Tenant testified as follows. The Landlord visited the rental unit six months after the start of the tenancy. The Landlord was concerned about the floor as was the Tenant. The floors had been refreshed before move in. However, the floor was easily damaged by normal use such as pulling a chair out or liquid dripping on it. She contacted the flooring company who provided care instructions. The Tenants had done what they were told to do by the Landlord in relation to the floor. Issues with the floor continued throughout the tenancy.

The Tenant submitted that the floor was not damaged beyond reasonable wear and tear. She said the Landlord was previously told not to use the finish that was used on the floor. The Tenant testified that two males came to look at the floor and determined it needed to be redone. The Tenant testified that she received a text from the Landlord while the two males were present stating in part that the damage appeared to be the result of the previous floor person not refinishing it properly. The Tenant said she paid $300.00 to have the floors refreshed. The Tenant testified that the damage to the floor is not the Tenants' fault as it is normal wear and tear and the finish is the issue.

The Tenant pointed to an email dated February 06, 2019. The Landlord confirmed she has this. The email states in part that the flooring used has very specific maintenance instructions and the Landlord was cautioned that it would require "way beyond the normal prefinished hardwood maintenance protocol". It further states that the author recalls "specific cleaning products and regular re sealing being required to maintain any type of protection from wear and tear".

In reply, I understood the Landlord to say that redoing the floor turned out to be a bigger job than originally thought. I understood her to say that she was unaware of the scratches and stains on the floor at the time of the text. The Landlord testified that the scratches had nothing to do with the finish on the floor. She said the photos show the damage was not just to the finish of the floor.

Damage to doors

The Landlord testified as follows. There were extensive scratches on the front door, bedroom door, bathroom door and door to the garage at the end of the tenancy. The bathroom door was scratched on the inside. The scratches are from dogs. Photos have been submitted. It cost $550.00 to replace each door. It will cost $900.00 to replace the front door. The doors cannot be refinished.

The Landlord testified that the parties went through the house at the start of the tenancy and noted what needed fixing. She said she was living in the rental unit prior to the Tenants and that she did not have large animals that could have made the scratches on the doors.

The Landlord did not submit any evidence of the cost to replace the doors. She said she has not replaced the doors yet.

The Tenant testified that there was no move-in inspection done and they did not go over the issues in the rental unit with a magnifying glass. She said she does not know if the doors were scratched at the start of the tenancy. She said it is possible her dogs caused the damage but that she is not acknowledging that they did. She testified that she cannot say whether her dogs scratched the doors or not. She stated that the Landlord had two dogs in the rental unit previously.

Lawn mower

The Landlord testified that she left two lawn mowers at the rental unit at the start of the tenancy. She said these were gone at the end of the tenancy. She testified that she had to buy a new one and referred to the receipt submitted.

The Tenant testified that she does not recall any lawn mowers being left at the rental unit at the start of the tenancy. She denied that the Tenants took any lawn mowers when they vacated.

Broken window

The Landlord testified as follows. There were three broken windows in the rental unit at the end of the tenancy. These were in the bedroom, living room and beside the crawl space. The quote and receipt show she paid $895.00 to replace the windows. Photos have been submitted.

The Tenant testified as follows. They told the Landlord about any damage they caused or were aware of. The bedroom window had a hairline crack which could have been caused by anything. The parties did not do a formal walk through at the start of the tenancy, so the Tenants were not looking at the condition of the windows.

Evidence

The Landlord called the witness at the last hearing who testified as follows. The witness went with the Landlord to the rental unit August 31, 2018. The Tenant commented that the Tenants had already fixed one broken window so wondered why they would have to fix another when the Landlord pointed out the broken window in the bedroom. The witness recalls the Landlord asking the Tenants for written notice and stating that without this she would have to collect next months rent. The Tenant refused to sign anything and did not want to give her address. The written notice was in relation to the Tenants leaving early or something similar.

The Tenant was given the opportunity to ask the witness questions.
The Tenant submitted that the Tenants did not know they had to give written notice because they were given a notice to end the tenancy; however, she would have signed something if the Landlord provided it to her.

The Landlord referred to her email summarizing the issues raised. I have read the email and do not find it adds to the above or the submissions made during the hearing.

The Landlord submitted photos of the rental unit prior to the tenancy.

Analysis

Section 7(1) of the *Residential Tenancy Act* (the "*Act*") states that a party that does not comply with the *Act* must compensate the other party for damage or loss that results. Section 7(2) of the *Act* states that the other party must mitigate 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.

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

Section 37(2) 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…

The parties testified that no move-in inspection was done. I do not find this to be a situation where the Tenants were offered two opportunities to do a move-in inspection but refused given the testimony of the parties. Therefore, I find the Tenants did not extinguish their rights in relation to the security or pet damage deposits under section 24 of the *Act*.

Based on the testimony of the parties, I do not accept that a proper move-out inspection was done at the end of the tenancy. At the first hearing, the Landlord acknowledged that she never offered the Tenants an opportunity to do a move-out inspection on the RTB form. At the second hearing, the Landlord advised she did this February 13, 2019. This is not sufficient as the tenancy had been over for almost five months. I find the Tenants did not extinguish their rights in relation to the security or pet damage deposits under section 36 of the *Act*.

I do find that the Landlord extinguished her right to claim against the deposits for damage to the rental unit pursuant to section 24 of the *Act* given no move-in inspection was done.

However, section 38 of the *Act* states:

> 38 (1) 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.
>
> [emphasis added]

I accept that the Landlord never received the Tenants' forwarding address in writing as the Tenant could not confirm that the Tenants provided the Landlord with this. Therefore, section 38 of the *Act* was never triggered. I find the Landlord has complied with section 38(1) of the *Act* by claiming against the deposits prior to receiving the Tenants' forwarding address in writing.

Unpaid rent

Section 26 of the *Act* states that tenants "must pay rent when it is due under the tenancy agreement…unless" they have a right to withhold rent under the *Act*.

There is no issue that the Tenants were served with a Two Month Notice under section 49 of the *Act* with an effective date of October 31, 2018. There is also no issue that this was served on the Tenants three months prior to the effective date.

Sections 50 and 51 of the *Act* state:

> 50 (1) If a landlord gives a tenant notice to end a periodic tenancy under section 49 [landlord's use of property]…the tenant may end the tenancy early by
>
> > (a) giving the landlord at least 10 days' written notice to end the tenancy on a date that is earlier than the effective date of the landlord's notice…
>
> 51 (1) A tenant who receives a notice to end a tenancy under section 49 [landlord's use of property] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.
>
> [emphasis added]

Policy Guideline 30 states:

> A landlord cannot give notice for landlord's use of property that will end a fixed term tenancy before the end of the fixed term. If a landlord wishes to end the tenancy for landlord's use of property, which may include use by the purchaser of the property, the landlord must serve a proper Two Month Notice to End Tenancy for Landlord's Use of Property (form RTB-32) on the tenant…The effective date of that Notice will be two months from the end of the month in which the Notice was served but in any case not before the end of the fixed term. The tenant may not, during the fixed term, give the landlord a minimum 10 day notice to end the tenancy on a date that is earlier than the effective date of the landlord's notice.
>
> [emphasis added]

There is no issue that the Tenants had entered into a fixed term tenancy ending October 31, 2018.

The Tenants were not entitled to end the tenancy before the end of the fixed term. Further, any notice ending the tenancy early would have had to be in writing.

I am not satisfied there was a verbal agreement between Tenant D.D. and the Landlord about ending the tenancy early as there is insufficient evidence to support this. Further, any such agreement should have been in writing pursuant to section 44 of the *Act*.

I find the tenancy ended October 31, 2018, the effective date of the Two Month Notice. Therefore, the Tenants were entitled to free rent for October and were required to pay September rent pursuant to section 26(1) of the *Act* and the tenancy agreement.

The Landlord is entitled to recover unpaid rent of $3,100.00 for September.

Damage to floor

There is no issue that the floors had been refreshed prior to the tenancy as the parties agreed on this.

I accept based on the photos submitted that the floor was damaged on move-out. I did not understand the Tenant to dispute that there was the damage shown in the photos.

The Tenant took the position that the damage was reasonable wear and tear given the finish on the floor. The Tenant pointed to a text from the Landlord and an email in this regard.

In my view, the Tenant has raised a valid issue with the floor given the text from the Landlord which states that someone looked at the floor and "confirmed though that the damage to the floor definitely appears to be the result of the previous floor person not refinishing it properly so the cost is not your concern…" Further, the email submitted by the Tenant supports the Tenant's position that the issue is with the flooring used.

Despite the Tenant raising this valid issue, the Landlord has not submitted any evidence to support her position that the issue was not due to the flooring used or finish. The only evidence submitted to support this are the photos. I acknowledge that the photos show what would usually be considered beyond reasonable wear and tear. However, I cannot find that the photos show the damage is from anything more than normal use of the rental unit in the absence of evidence to show there was no issue with the flooring used or finish. The Landlord indicates that some of the photos show knife marks; however, I cannot conclude this from the photos as I find the marks shown could have been caused by anything.

This is the Landlord's claim and her onus to prove pursuant to rule 6.6 of the Rules of Procedure. I am not satisfied the Landlord has proven that the Tenants damaged the floor beyond reasonable wear and tear given the lack of evidence to show that the flooring and finish were not the issue. I am not satisfied the Tenants breached the *Act*.

Damage to doors

The Landlord has failed to prove the condition of the doors at the outset of the tenancy as no move-in inspection was done. Whether the parties walked through the house and noted what needed to be fixed or not, there is insufficient evidence before me showing the condition of the doors at the start of the tenancy. The Tenant did not acknowledge that the Tenants or their dogs caused the damage shown in the photos. In the absence of further evidence of the condition of the doors at move-in, I am not satisfied the Tenants caused the damage or breached the *Act* in this regard.

I note that the photos of the rental unit prior to the tenancy are not sufficient to show the Tenants caused the damage claimed. Further, I place no weight on the CIR submitted in relation to the state of the rental unit at the start of the tenancy given it was not completed with the Tenants at move-in.

I am not satisfied the Landlord is entitled to compensation for the doors.

Lawn mower

The parties gave conflicting testimony about whether there were lawn mowers left at the rental unit at the start of the tenancy. The Landlord did not point to any evidence showing there were lawn mowers left at the rental unit or that the Tenants took lawn mowers when they vacated the rental unit. Again, it is the Landlord who has the onus to prove the claim. The Landlord has failed to prove the Tenants breached the *Act* in this regard.

Broken window

The Landlord has failed to prove the condition of the windows at the start of the tenancy as no move-in inspection was done. The photos of the rental unit prior to the tenancy are not clear enough to show the condition of the windows. I place no weight on the CIR submitted in relation to the state of the rental unit at the start of the tenancy given it was not completed with the Tenants at move-in. I do not find that the comment of the Tenant as relayed by the witness shows that the Tenants caused the damage to the windows. The Tenant did not acknowledge causing this damage. Again, it is the Landlord who has the onus to prove the claim. The Landlord has failed to prove the Tenants caused this damage or breached the *Act*.

Given the Landlord was partially successful, I award her reimbursement for the $100.00 filing fee pursuant to section 72(1) of the *Act*.

In summary, I find the Landlord is entitled to the following compensation:

1	Damage to floor	-
2	Damage to doors	-
3	Lawn mower	-
4	Broken window	-

5	Unpaid rent	$3,100.00
6	Filing fee	$100.00
	TOTAL	**$3,200.00**

In total, the Landlord is entitled to compensation in the amount of $3,200.00. The Landlord can keep the $1,200.00 security deposit and $1,200.00 pet damage deposit pursuant to section 72(2) of the *Act*. The Landlord is issued a Monetary Order for the remaining $800.00.

Conclusion

The Landlord is entitled to compensation in the amount of $3,200.00. The Landlord is permitted to keep the security and pet damage deposits. The Landlord is issued a further Monetary Order for $800.00. This Order must be served on the Tenants. If the Tenants fail to comply with this Order, it 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 *Act*.

Dated: June 14, 2019

Residential Tenancy Branch