Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT MNSD // FFL MNDL-S

Introduction

Preliminary Matter – Joining Landlord's Application

At the outset of the hearing, the parties agreed that the landlord's application scheduled for March 2020 should be heard at this hearing. Accordingly, pursuant to Rule of Procedure 2.10, I ordered that the landlord's application be joined the present application, and both be heard together. The balance of this decision will concern both the tenant's and the landlord's application.

This hearing dealt with two application pursuant to the *Residential Tenancy Act* (the "**Act**"). The landlord's 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 $2,032 pursuant to section 67;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

And the tenant's for:

- authorization to obtain the return of her security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlord 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 tenant testified, and the landlord confirmed, that the tenants served the landlord with her notice of dispute resolution form and supporting evidence package. The landlord testified, and the tenant confirmed, that the landlord served the tenants with her

notice of dispute resolution form and supporting 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 all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested;
- a monetary order for $2,032; and
- recover the filing fee for this application from the tenant?

Is the tenant entitled to:

- the return of her security deposit; and
- recover the filing fee for this application from the landlord?

Background and Evidence

While I have considered the documentary evidence 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 October 15, 2014. Monthly rent was $2,625 at the start of the tenancy and was raised to approximately $2900 at the end of the tenancy (neither party could recall the exact amount). The rental unit consisted of the upper suite of a two-suite residential property. The tenant paid the landlord a security deposit of $1,400. The landlord still retains this deposit.

The tenant moved out of the rental unit on July 1, 2019. A move-out inspection was conducted on this date, and an inspection report was completed and signed by both parties. The tenant took a photo of the report at this time. The parties disagree as to whether the landlord knew that the tenant did this, but the parties agree that this was the only copy of the report that the tenant received. I make no findings as to whether the landlord was aware that the tenant took a photo of the report, as nothing turns on the issue.

The parties agree that a move-in report was done at the start of the tenancy, but neither party submitted a copy of it into evidence. The tenant testified that she was never given a copy. The landlord testified that she would have given a copy to the tenant, but that she has no independent recollection of doing so. The landlord also testified that she has lost her copy of the move in report.

The tenant testified that she provided the landlord with her forwarding address in writing on July 18, 2019. She entered a copy of a letter confirming this into evidence. The landlord acknowledged receiving the letter and testified that she did not return the security deposit to the tenant or apply to the Residential Tenancy Branch ("**RTB**") to keep the deposit within 15 days of receipt of the tenant's forwarding address. She testified that she did not apply to the RTB because she understood that the tenant was going through a divorce and did not want to add to her stress.

The landlord testified that the tenant left the rental unit in a state of disarray. She claims damages for the repair of the rental unit and the yard as follows:

Yard Work	$650.00
Rubbish Removal	$250.00
Replacement Light Fixture	$76.57
Replacement Vanity	$449.00
Replacement Kitchen Cabinet doors	$325.00
Broken Bathroom Tile	$281.48
Total	**$2,032.05**

The landlord testified that the rental unit was newly renovated just prior to the tenant moving into it in 2014, and that the light fixture, vanity, kitchen cabinet, and bathroom tiles were all brand new at this time. The tenant testified that the kitchen cabinet doors were damaged at the start of the tenancy, as was the bathroom tile.

1. Yard Work/Rubbish Removal

The tenancy agreement stated:

> The landlord has engaged the lower floor tenants to maintain the landscape areas on the property, with the exception of the decks and patios associated with upper floor of the home.

However, the parties agree that, in the summer of 2016, this arrangement changed. On July 25, 2016, the tenant emailed the landlord stating:

> […] according to our lease, you are meant to be taking care of landscaping and yard maintenance. I have been mowing the lawn, and don't mind continuing, but everything else is becoming overgrown. We've been doing some veggie and herb gardening, but pruning ornamentals and weeding the beds is too much.

> Please bring in a professional to deal with the upkeep of the beds and/or at the minimum do a seasonal pruning.

The landlord responded the following day. She wrote:

> […] in regards to the landscaping/gardening I have a proposition for you. As stated in the tenancy act we are legally able to increase the rent with notice. Seeing as though we have not yet increased this amount in almost 2 year, how about you and [tenant's husband] take on the weeding and general maintenance for now and we will hold off on an increase for the next year.

The tenant responded on August 14, 2016:

> I've spoken with [my husband] and we're okay to take on the weeding, mowing etc. and have been doing upkeep on weekends. It also makes for appropriate chores for the kids to get out there and get their hands dirty! That seems like a fair trade in lieu of a rent increase, thanks.

The tenant testified that she understood the work she was agreeing to do be restricted to mowing the lawn, weeding between paving stones, pruning some bushes, and raking leaves. She testified that she completed these tasks until the end of the tenancy.

The landlord understood that the tenant would be taking on more expansive responsibilities. She testified that the she understood that the tenant's husband was a landscaper and assumed ("mistakenly" as she characterized at the hearing) he would maintain at a suitably professional level.

The landlord testified that at the end of the tenancy "the yard was destroyed" and was overgrown with weeds. She testified that the bushes were only pruned to the extent that access to walkway was made available. She testified that some raking of leaves must have been done, but that no raking was done under the holly bushes for a number of years.

She testified that she had to hire a landscaper to attend the residential property in May 2019 (prior to the end of tenancy) to do extensive yard work and remove 600 pounds of weeds and shrubbery away in order to get the property presentable for re-renting. She testified that this cost $650 and submitted a receipt in support of this amount. She testified that the landscaper had to attend the residential property a second time on July

1, 2019 to remove additional debris at a cost of $250. She submitted a receipt in support of this amount.

The landlord testified that she also had to reseed the lawn, as much of the grass had died or was overtaken by weeds. She did not submit any evidence in connection with this loss.

The tenant testified that any work done by the landscaper was beyond the scope of what she agreed she would do. As such, she argued, she should not be liable for any portion of the landlord's damages.

2. Replacement Light Fixture

The parties agree that the light fixture was undamaged at the outset of the tenancy. The landlord submitted a photo of the fixture into evidence. The fixture appears to have a large crack in its outer metal rim.

The tenant testified that the fixture was damaged in an earthquake in December 2015, as were other parts of the rental unit ceiling. She testified that she notified that landlord of this when it happened. The tenant did not enter any correspondence into evidence which corroborated this, although she did submit a print out of a news report regarding the earthquake.

The landlord denied that she was told the light fixture was damaged by an earthquake. She also denied that there were cracks in the ceiling from earthquake damage (she stated that there were some cracks from "settling").

The landlord submitted a screenshot of a light fixture from Home Depot costing $76.57. However, the screenshot depicts a light fixture that is quite different from the one that was allegedly damaged by the tenant (the damaged fixture was circular, whereas the fixture from home depot was rectangular).

3. Bathroom Vanity

The landlord testified that the bathroom vanity drawer was damaged by significant water pooling. She testified that IKEA advised her that they do not sell replacement parts for the drawer only, and that she must replace the entire unit. She provided a screenshot of the vanity which lists the price at $449.

The landlord did not provide any photographs of the damage to the vanity.

The tenant agreed that the vanity was damaged during the tenancy but testified that the vanity was made out of particle board (which the landlord agreed with), and that particle board has a lifespan of two to three years. She provided a screenshot of a google search stating this information, which cites “blog.positiveindians.in” as the source of such information.

Regardless, the tenant testified that she would be willing to pay for half the cost of replacement of the vanity.

4. Kitchen Cabinets

The landlord testified that tenant caused water damage to seven cabinet doors in the kitchen. She testified that she is only claiming replacement costs for five of them, as two of them were directly below the sink, and she viewed the damage to those doors as “normal” due to their proximity to water.

The landlord entered no photographs of the doors into evidence. The landlord entered into evidence screenshots of IKEA listing for replacement doors which showed four of the doors costing $60 each and one of the costing $85.

As stated above, the tenant testified that the doors were damaged at the start of the tenancy.

5. Bathroom Tile

The landlord testified that one of tiles in the bathroom was cracked and discolored. She testified that the tile was brand new at the start of the tenancy. She submitted a photo of the tile, which appears to have a large “inverted L” shaped section of brown discolouration (the tiles are grey/white) along its top left corner. She submitted a quote generated by a “tile repair calculator” which set out the average cost of a repair to be between $173.72 and $389.23. The landlord did not testify how she arrived at the amount claimed of $281.45, but simple math shows this amount to be the mid-point between these two numbers.

As stated above, the tenant testified that the tile appeared in its present condition at the start of the tenancy.

Analysis

Tenant's application

Sections 38(1) and (6) state:

> **Return of security deposit and pet damage deposit**
>
> **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.
>
> […
>
> (6)If a landlord does not comply with subsection (1), the landlord
>
> (a)may not make a claim against the security deposit or any pet damage deposit, and
>
> (b)must pay the tenant **double** the amount of the security deposit, pet damage deposit, or both, as applicable.
>
> [emphasis added]

Based on my review of the evidence, I find that the tenancy ended on July 1, 2019 and that the tenant provided the landlord with her forwarding address on July 18, 2019. I find that the landlord neither returned the security deposit to the tenant nor applied to the RTB to keep it.

I find that a sensitivity to the tenant's marital status is not a sufficient reason to justify the landlord's failure to comply with section 38.

As such, I find that, pursuant to section 38(6), the landlord must pay the tenant double the amount of the security deposit ($2,800).

Landlord's Application

Residential Tenancy Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. 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.

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 must prove that it is more likely than not that the tenant breached the tenancy agreement or Act, that she suffered a quantifiable loss as a result, and that she acted reasonably to minimize the loss.

I will address each of the landlord's claims for damage in turn.

1. Yard Work/Rubbish Removal

The parties agree that the landlord's claim for damages in connection with the yard work arises of the amendment to the tenancy agreement entered into in the summer of 2016 (the "**Amending Agreement**").

Based on my understanding of the correspondence entered into evidence I understand that terms of the Amending Agreement to be:

1) The tenant agrees to perform yard work of some kind (either "weeding and general maintenance" or "weeding, mowing etc.") on the residential property; and

2) The landlord agreed to forgo increasing the monthly rent, as permitted by the Act.

The parties made extensive submissions on the first term of the Amending Agreement but did not make any on the second.

I find that it is not necessary for me to determine the scope of yard work to have been performed by the tenant. I find that the landlord breached the Amending Agreement by increasing annual rent subsequent to entering into it. I find that the monthly rent at the start of the tenancy was $2,625. Based on the landlord's correspondence to the tenant dated July 26, 2016, I find that this amount was not increased at all at the time the Amending Agreement was entered into. Based on the testimony of the parties, the monthly rent was approximately $2,900 at the end of the tenancy. This indicates that the monthly rent was raised in the three years following the making of the Amending Agreement.

This is a breach of the Amending Agreement which deprives the tenant of any benefit she was receiving under the agreement. As such, I find that the landlord is not entitled to rely on the Amending Agreement as a basis to claim for damages against the tenant.

As such, the original term of the tenancy agreement applies, which requires the tenant to maintain the "landscape of the decks and patios associated with the upper floor of the home." Based on the evidence provided by the parties, I am unable to determine if the tenant complied with this term. As such, I find that the landlord failed to discharge her onus to demonstrate the that tenant breached the tenancy agreement. I decline to award any amount in relation to landscaping costs to the landlord.

2. Replacement Light Fixture

Sections 32(2) and (3) of the Act state:

> **Landlord and tenant obligations to repair and maintain**
>
> (3)A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.
>
> (4)A tenant is not required to make repairs for reasonable wear and tear.

Based on the testimony of the tenant, I find that the light fixture was damaged during the tenancy. I find that is sufficient to give rise to a rebuttable presumption that the damage to the light fixture was caused by the tenant. I am not persuaded by the tenant's explanation that the light fixture was damaged by an earthquake. The tenant provided

no documentary evidence supporting this assertion beyond a news article stating the earthquake occurred.

The tenant testified that she emailed the landlord about the damage. The landlord denied receiving this email. I find that this email was within the power of the tenant to provide in support of her assertion. By not doing so, I draw an adverse inference, and find that it is more likely than not that no such email exists.

As such, I find that the light fixture was damaged due to an action of the tenant.

However, I find that the landlord has failed to demonstrate the amount of loss she suffered. I find that the screenshot of the replacement light fixture is not the same kind as the one shown to be damaged in the photographic evidence. As such, I do not accept its price as an accurate value of the replacement cost of the damaged light fixture.

I find it appropriate to award nominal damages in compensation. Nominal damages are defined in Policy Guideline 16:

> 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 award nominal damages to the landlord of $25.

3. Bathroom Vanity

Based on the testimony of the tenant, I find that the bathroom vanity was damaged during the tenancy. For the reasons stated above, I find that the tenant must demonstrate that such damage does not constitute a breach of the Act. I do not accept the tenant's evidence drawn from a google search, citing to a blog of whose authority I know nothing, that particle board has a life expectancy of two to three years. While this may be true, I am unsure what type of particle board this is in reference to (for example, the material used in the vanity may be treated or have protective coating).

It is possible that the damage to the vanity may be ordinary wear and tear. Without photos of it, I cannot say. Neither party gave evidence as to whether the damage would be normal wear and tear. However, given the tenant's willingness to pay for half the cost of the vanity's replacement, I find that such a payment would be appropriate in the

circumstances, and acknowledges that at least some of the damage to the vanity was not ordinary wear and tear.

I accept the landlord's uncontroverted evidence that the replacement cost of the vanity is $449. I order that the tenant pay the landlord half this amount ($224.50).

4. Kitchen Cabinet // 5. Bathroom Tile

The tenant testified that these items were in the same condition at the end of the tenancy as they were at the start. The landlord denied this. However, without a move-in condition inspection report I cannot determine their true condition with any certainty.

Thus far in the decision, when making any findings as to the condition of items at the start of the tenancy, I have relied on admissions from the tenant that these items were damaged in the course of the tenancy. I have no such admissions from the tenant with regards to the cabinet doors or the bathroom tile. As such, I find that the landlord failed to discharge her onus to prove that the kitchen cabinet doors and bathroom tile were damaged by the tenant.

I decline to award any amount in connection with these claims.

As the tenant was successful in her application, I order that the landlord reimburse her the filing fee.

As the landlord was mostly unsuccessful in her application, I decline to order that the tenant reimburse her the filing fee.

Conclusion

Pursuant to section 67 and 72 of the Act, I order that the landlord pay the tenant $2,650.50 representing the following:

Double Security Deposit	$2,800.00
Filing Fee	$100.00
Replacement Light Fixture (Nominal)	-$25.00
Replacement Vanity (50%)	-$224.50
Total	**$2,650.50**

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: November 06, 2019

Residential Tenancy Branch