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:

- a Monetary Order for compensation for damage or loss under the *Act* pursuant to section 67 of the *Act*;
- authorization to retain a portion of the tenants' security deposit in satisfaction of this claim pursuant to sections 38 and 67 of the *Act*; and
- recovery of the filing fee for this application from the tenants pursuant to section 72 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. Tenant H.L. attended and spoke on behalf of both the tenants.

As both parties were present, service of documents was confirmed. The tenant confirmed receipt of the landlord's Notice of Dispute Resolution Proceeding Package and evidence sent by Canada Post registered mail. Based on the undisputed testimonies of the parties, I find that the tenants were served with the landlord's application for dispute resolution and evidence for this hearing in accordance with sections 88 and 89 of the *Act*.

The tenant testified that he personally served the landlord with his evidence on December 31, 2019, which was not within the seven-day time limit for service of evidence prior to the hearing date as required by the Residential Tenancy Branch Rules of Procedure. Further, the landlord denied that the tenant served him with the evidence. The tenant failed to provide any proof of service of evidence. Therefore, I find that I

cannot consider the tenant's documentary evidence submitted for this hearing as the evidence was not submitted in accordance with the Rules of Procedure and the tenant was unable to provide proof of service, also as required by the Rules of Procedure when the other party disputes receipt of the documents.

The tenant was allowed to provide his verbal testimony regarding the submitted documentary evidence.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for compensation for damage or loss? If so, is the landlord entitled to retain all or a portion of the security deposit in satisfaction of compensation owed?
Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony presented in accordance with the Rules of Procedure and the *Act*, not all details of the submissions and arguments are reproduced here. Only the aspects of this matter relevant to my findings and the decision are set out below.

No written tenancy agreement was submitted into evidence, therefore the parties confirmed the following terms of the tenancy agreement:

- The tenancy began December 27, 2018.
- The tenants had exclusive possession of the rental unit which consisted of a single detached home situated on a residential property.
- Monthly rent of $2,250.00, and an additional $50.00 for the cost of an alarm, was payable on the first day of the month.
- The tenancy ended on September 30, 2019 when the tenants returned vacant possession of the rental unit to the landlords.
- The tenants paid a security deposit of $1,125.00 at the beginning of the tenancy which the landlords continue to hold.

The landlords submitted a Monetary Order Worksheet setting out claimed compensation for damages to the rental unit driveway beyond reasonable wear and tear due to oil spills, replacement costs for two carbon monoxide (CO) detectors, and cleaning deficiencies. In support of their claims, the landlords submitted a quote for the cost of replacing the asphalt driveway, a photograph showing the rental property including the

driveway taken November 1, 2018 approximately two months prior to the start of the tenancy, receipts for two CO detectors and photographic evidence of cleaning deficiencies. Although the landlords referred to a key not returned, the landlords cannot add additional claims to their Application in the hearing and are limited to what they claimed on their Monetary Order Worksheet.

The landlords confirmed that the cost for the replacement of the asphalt driveway was only an estimate and that they had not proceeded to have the work done yet. The landlords confirmed that after the tenants moved out, they were able to re-rent the rental unit starting October 1, 2019 for $2,200.00 monthly rent.

The tenant testified that there may have been some oil stains on the driveway at the beginning of the tenancy and that it was possible that their use of the driveway may have contributed to further oil stains. The landlords testified that during the tenancy they had told the tenants to put down something to protect the driveway from a car belonging to one of the tenants which appeared to be leaking oil.

The tenant confirmed that they had accidentally packed the CO detector belonging to the rental unit when they moved out.

The landlords claimed that at the end of the tenancy the dryer vent was not cleaned, the food waste bin was left dirty, and the window sills were not cleaned. The landlords referred to their submitted photographic evidence.

The tenant acknowledged that the dryer vent cleaning may have been overlooked and the food waste bin had been cleaned a few weeks prior to moving out. The tenant testified that they had hired a cleaner to clean the rental unit at the end of the tenancy but had no proof of this claim. The tenants stated that the rental unit was able to be re-rented to new tenants the next day and therefore they did not think the cleaning deficiencies were significant.

Analysis

Section 67 of the *Act* provides that, where an arbitrator has found that damages or loss results from a party not complying with the *Act*, regulations, or tenancy agreement, an arbitrator may determine the amount of that damage or loss and order compensation to the claimant. The claimant bears the burden of proof. The claimant must show the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* by the other party. If this is established, the

claimant must provide evidence of the monetary amount of the damage or loss. The amount of the loss or damage claimed is subject to the claimant's duty to mitigate or minimize the loss pursuant to section 7(2) of the *Act*.

Where the claiming party has not met each of the above-noted four elements, the burden of proof has not been met and the claim fails.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their version of events.

As the onus for proving a claim for damages is on the party seeking compensation, in this matter, the landlord must prove their claim on a balance of probabilities.

Section 37(2)(a) of the *Act* provides that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Section 21 of the Residential Tenancy Regulation sets out the evidentiary significance of the condition inspection report, as follows:

> Evidentiary weight of a condition inspection report
> 21 In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

The landlords failed to submit a copy of the written condition inspection report documenting the condition of the rental unit, including the driveway, at the beginning of the tenancy, however, the landlords submitted photographic evidence showing the driveway in what appeared to be in a good state of repair approximately two months prior to the beginning of the tenancy and a significant amount of oil stains at the end of the tenancy. The tenants failed to submit any evidence pertaining to the condition of the driveway at the beginning or end of the tenancy.

Therefore, based on the testimony and evidence presented, on a balance of probabilities, I find that in the absence of the condition inspection report before me for review, pertaining to the driveway, the landlords' submitted a preponderance of

evidence through photographs to show that there was damage to the driveway beyond reasonable wear and tear caused by the tenants at the end of the tenancy.

In determining damages pertaining to the repair or replacement of building elements, I refer to Residential Tenancy Policy Guideline 40. Useful Life of Building Elements, which provides the following guidance:

> *Damage(s)*
> *When applied to damage(s) caused by a tenant, the tenant's guests or the tenant's pets, the arbitrator may consider the useful life of a building element and the age of the item. Landlords should provide evidence showing the age of the item at the time of replacement and the cost of the replacement building item. That evidence may be in the form of work orders, invoices or other documentary evidence.*
>
> *If the arbitrator finds that a landlord makes repairs to a rental unit due to damage caused by the tenant, the arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant's responsibility for the cost or replacement.*

The landlords testified that the estimated age of the rental unit was between 30 to 40 years. The landlords submitted estimate for the replacement of the asphalt did not provide any evidence regarding the age of the asphalt driveway, therefore, I find that it is reasonable to consider that the driveway is original to the rental unit and would be the same approximate age of 30 years. Given that the useful life of asphalt is 15 years, in accordance with Policy Guideline #40, I find that the landlord's claim on this item, based on an estimate of 30 years of age of the rental unit, is depreciated to the point that there is no value attributable to the landlords to establish a monetary loss for the repair or replacement of this item. As such, the landlords' claim for this item is dismissed.

Regarding the CO detectors, I find that the tenant was forthright in his acknowledgement that they had accidentally packed the rental unit's CO detector with them at the end of the tenancy. Therefore, based on the testimony and evidence presented, on a balance of probabilities, I find that the tenants are responsible for the cost of the CO detector they took with them, which had been purchased just before the start of the tenancy as evidenced by the landlords' receipt, and they are also responsible for the cost of the landlords having to purchase another replacement CO detector. I find that the landlords submitted sufficient documentary evidence to establish the costs of $35.59 and $24.84 attributable to the CO detectors. Therefore, I find that the landlords are entitled to a monetary award for these costs totalling $60.43.

Regarding the landlords' claim for cleaning deficiencies, based on the testimony and evidence presented, on a balance of probabilities, I find that the photographic evidence of the dryer vent lined with lint and the food waste bin coated with dirt, to be a preponderance of evidence that the tenants left these items with cleaning deficiencies resulting in a failure to meet the standard of "reasonably clean". I find the landlords' photographic evidence of the dirty window sills to be indecipherable and therefore I do not find that the landlords submitted sufficient evidence to claim any costs for cleaning related to the window sills. Therefore, I find that the tenants are responsible for cleaning costs as a result of the cleaning deficiencies related to the dryer vent and food bin.

The landlords have claimed $250.00 for the cost of cleaning the claimed deficiencies, which they testified they cleaned themselves. As such, no receipts were provided and I find that the costs claimed by the landlords to be excessive for the amount of cleaning required to correct the cleaning deficiencies. Therefore, I refer to Residential Tenancy Policy Guideline #16 Compensation for Damage or Loss which provides that an arbitrator may award "nominal damages" as compensation in situations where an infraction of a legal right has been proven but establishing the value of the damage or loss is not "straightforward", as follows:

> *"Nominal damages" are a minimal award. 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 a reasonable hourly rate for cleaning performed by a landlord to mitigate their costs is $20.00. I find that no more than two hours would be required for the landlord to complete the required cleaning deficiencies. As such, I find that a reasonable nominal damages award for landlords for the cleaning deficiencies claim is $40.00 (2 hours x $20.00 per hour).

In summary, I find that the landlords are entitled to a monetary award of $100.43 for compensation from the tenants for the cost of the CO detector replacements and the cleaning costs. As the landlords were successful in obtaining a monetary award for their claims, I find that the landlords are entitled to recover the filing fee of $100.00.

Therefore, I find that the landlords are entitled to a total monetary award of $200.43

Set-off Against Security Deposit

The parties confirmed that a written condition inspection report was provided to the tenants at the beginning of the tenancy. At the end of the tenancy, the parties were unable to complete a condition inspection of the rental unit as both parties called police and were advised to avoid further contact and to bring their dispute regarding the security deposit to the Residential Tenancy Branch to be addressed.

Therefore, I find that the right to claim the security deposit was not extinguished by either party and as such, the security deposit was available at the end of the tenancy to be addressed in accordance with section 38 of the *Act*.

Section 38 of the *Act* sets out the requirements for addressing the security deposit at the end of the tenancy as follows:

> 38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of
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> (a) the date the tenancy ends, and
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> (b) the date the landlord receives the tenant's forwarding address in writing,
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> the landlord must do one of the following:
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> (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;
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> (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.
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> **...**
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> (4) A landlord may retain an amount from a security deposit or a pet damage deposit if,
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> (a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or
>
> (b) after the end of the tenancy, the director orders that the landlord may retain the amount.
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> …
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> (6) If a landlord does not comply with subsection (1), the landlord
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> (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.

In this matter, the parties confirmed that the tenancy ended on September 30, 2019, and the tenants confirmed mailing the letter with their forwarding address to the landlords on October 1, 2019. Section 90 of the *Act* sets out the deeming provisions for documents mailed to be deemed received on the fifth day after mailing. Therefore, as the landlords could not remember the exact date that they received the tenants' forwarding address letter, I find that the landlords are deemed to have received it on October 6, 2019, the fifth day after it was mailed by the tenants. Therefore, the landlords had 15 days from October 6, 2019, to address the security deposit in accordance with the *Act*.

The landlords applied for arbitration on October 10, 2019, which is within 15 days of the receipt of the tenants' written forwarding address, to retain all or a portion of the security deposit, as required under section 38 of the *Act*.

It was confirmed by both parties that the tenants did not provide the landlord with any authorization, in writing, for the landlords to retain any portion of the security deposit.

In accordance with section 72 of the *Act*, I set-off the $1,125.00 security deposit held by the landlords against the $200.43 in monetary compensation awarded to the landlords. Therefore, the landlords are ordered to return $924.57 to the tenants for the amount of the security deposit exceeding the compensation awarded to the landlords, as the landlords have no entitlement to this amount of the deposit.

As an enforcement of this order, I issue a Monetary Order in the tenants' favour of $924.57.

Conclusion

I order the landlords to return the security deposit amount of $924.57 to the tenants forthwith. As an enforcement of this order, I issue a Monetary Order to the tenants in the amount of $924.57.

The tenants are provided with this Order in the above terms. Should the landlords fail to comply with this Order, the tenants are required to serve this Order on the landlords and

this Order may be filed in the Small Claims Division of the Provincial Court, where it will be 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 06, 2020

Residential Tenancy Branch