Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant: MNSD, OT, FFT
For the landlord: MNDL-S, FFL

Introduction

The tenant filed an Application for Dispute Resolution (the "tenant's Application") on February 18, 2020 seeking an order to return the security deposit, and a resolution of an issue regarding the initial amount of the security deposit. Additionally, they requested a return of the cost of the filing fee for their application.

The tenant provided the landlord notice of this hearing via registered mail sent on February 27, 2020. The landlord confirmed receipt of the hearing information and evidence provided by the tenant.

The landlord filed an Application for Dispute Resolution (the "landlord's Application") on March 5, 2020 seeking an order granting compensation for damage caused by the tenant, holding the security as part of that compensation. Additionally, they required the return of the filing fee.

The landlord provided three photos that show the registered mail used to send the notice of their application and associated evidence. This was sent March 14 via registered mail, received by the tenant on March 17, 2020. The tenant confirmed receipt of the same.

The matter proceeded by way of a hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the "*Act*") on April 14, 2020. Both parties attended the conference call hearing. I explained the process and offered both parties the opportunity to ask questions. Both parties presented oral testimony and evidence during the hearing.

Issue(s) to be Decided

Is the landlord entitled to a Monetary Order for Damage or Compensation pursuant to section 37 and 67 of the *Act*?

Is the landlord entitled to retain the security deposit held, pursuant to section 38 of the *Act*?

Is the landlord entitled to recover the filing fee for this Application pursuant to section 72 of the *Act*?

Is the tenant entitled to an Order granting a refund of the security deposit pursuant to section 38(1)(c) of the *Act*?

Is the tenant entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

Background and Evidence

I have reviewed all written submissions and evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this section.

The tenant provided a copy of the tenancy agreement. Both parties signed the agreement on May 8, 2016, for the tenancy beginning on May 15, 2016. The rent amount of $1,800.00 was due on the 1st of each month. The tenant paid the security deposit of $1,800.00 on May 8, 2016

The landlord applies for a monetary order for $1,652.11. This is compensation for damages that occurred throughout the tenancy. The landlord desires a deduction from the security deposit for work undertaken at the end of the tenancy. These amounts, listed in the February 29, 2020 letter to the tenant, are as follows:

Replace bathroom sink & Clean garburator	$530.25
Replace missing door stopper	$25.00
Replace microwave bowl	$50.00
Replace window handle	$60.00
Repair dent in living room floor	$85.00
Deep cleaning	$450.00
Replace window blinds	$451.86
TOTAL	$1652.11

The landlord states that by the end of the tenancy, the security deposit amount had accrued interest and was $1,863.63. Subtracting the total from above, the landlord returned $211.52 to the tenant by cheque dated February 29, 2020.

The landlord presented photos of the details as proof of damage: garburator, bathroom sink, window blinds, and the refrigerator ice maker. There are two invoices: one shows details on ordering and replacing window blinds ($1,063.18, with $748.18 as the price of the blinds pre-labour); the other itemized portions of the claim listed above ($1,592.25). There is a receipt for the cost of window blinds themselves without installation ($903.72).

The landlord also provided copies of the 'Notice of Final Opportunity to Schedule a Condition Inspection' and the Condition Inspection Report, unsigned by the tenant.

This shows a meeting set for January 28, which the tenant did not attend; a second meeting was scheduled for January 30 – this bears the notation "final – refuse to sign and admit all damages." The landlord presented there was a meeting on January 30, with a contractor present. The tenant attended and did not sign because they did not agree about the items that need to be replaced.

The tenant presents the final meeting in a different light. They did not know the purpose of that meeting with a contractor present and attended to turn over the key on the day before the end of tenancy. He "did not see anything major" and then "saw a list of inspection and that shocked [them]".

There is evidence of a flooding incident which took place in the earlier part of December 2019. The landlord provided an account of a visiting agent who made a visit to the rental unit when investigating incidents of "blockages in the sewage pipes, flooding and water damages that have been reoccurring for the last few months". The agent relied on first-hand statements from another resident.

In this dispute the tenant presents that the landlord incorrectly collected the amount of one full month rent as the security deposit at the beginning of the tenancy. This is $1,800, and not one-half the amount as the legislation stipulates. The landlord had "not returned the security deposit within two weeks of ending the tenancy", as of January 30, 2020. By email, the tenant gave the forwarding address to the landlord on January 16, 2020. The landlord also "used [their] deposit to replace two sinks without [their] consent." The tenant asks for $3,600 as double the amount of the security deposit they paid at the start of the tenancy.

Analysis

Section 19 of the *Act* sets limits on the amounts of deposits:

(1) A landlord must not require or accept either a security deposit or a pet damage deposit that is greater than the equivalent of ½ of one month's rent payable under the tenancy agreement.
(2) If a landlord accepts a security deposit or pet damage deposit that is greater than the amount permitted under subsection (1), the tenant may deduct the overpayment from rent or otherwise recover the overpayment.

For the amount of the deposit that the landlord is legally responsible for paying to the tenant, I consider the initial amount of security deposit paid here: $1,800.00. Both parties agreed this was the amount that was paid on May 8, 2016, as shown in the tenancy agreement. This is the equivalent of one full month rent – in excess of the one-half month rent permitted for this purpose under section 19(1) of the *Act*.

While the landlord had no authority to accept a security deposit in the amount of a full month's rent, I find that both parties have treated the entire amount as the security deposit for the duration of the tenancy and the landlord continues to hold this amount as of the date of the hearing.

As such, I find the landlord held a security deposit in the amount of $1,800.00.

The *Act* section 38(1) states that within 15 days after the later of the date the tenancy ends, or the date the landlord receives the tenant's forwarding address in writing, the landlord must repay any security or pet damage deposit to the tenant or make an application for dispute resolution for a claim against any security deposit.

Further, section 38(6) of the *Act* provides that if a landlord does not comply with subsection (1), a landlord must pay the tenant double the amount of the security and pet damage deposit.

I find the landlord has extinguished their right to make a claim against the security deposit. The tenant gave their forwarding address to the landlord on January 16, 2020. The tenancy ended on January 31, 2020, and the landlord applied for compensation against the security deposit on March 3, 2020.

The landlord did not pay back the security deposit to the tenant in that time, nor did they apply for dispute resolution for a claim. The evidence shows the landlord wanted to retain the security deposit and informed the tenant of this on December 29, 2019, and then on January 10, 2020. As such, the landlord has breached the *Act* by retaining the security deposit and shall not use the deposit to recover any monetary amounts. The tenant is entitled to return of double the amount of the security deposit in accord with section 38(6).

I find the landlord did not comply with section 38(1); therefore, they must pay to the tenant double the amount of the security deposit. This is twice of the amount paid by the tenant, totalling $3,600.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

To determine an outstanding amount of compensation owing, I shall first determine accountability for any damage that stemmed from the tenancy, then I may make a determination of the amount of compensation that is due. I establish this value by a review of the evidence presented.

The Condition Inspection Report is of negligible value to show apportionment of damage. I find a meeting between the landlord and tenant did occur and some discussion occurred on the need for cleaning and the need for repairs. I accept the tenant's evidence that they did not accept what the list of damages represented and did not sign the report for that reason. The requirement for a condition inspection meeting has been met.

Any direct damage results from flooding – as they affect an apportionment of the costs of damages – are not clear from the evidence. The letter from the landlord to the tenant on February 29 which outlines the monetary amount notes "P.S. If there is a problem with the strata water damage, I or the strata will contact you for your insurance." I find the evidence of flooding has no bearing on the compensation for damages I must decide in this landlord claim for compensation.

The landlord has focused on the bathroom sink as needing to be replaced. There is evidence this was also on the recommendation of the strata: a photo notation says "Replace with new sink as Demanded by Strata Council President." I find this is tied to the flooding/overflow incident and as noted above not considered part of this claim.

The account of the other resident who immediately tended to the flooring shows disarray and a need for the unit to be cleaned; however, this is not tied to the condition of the unit upon move out. In comparison, I find the evidence from the tenant in the form of photographs of the unit on moving out is more compelling with respect to the final state of the unit.

The party seeking compensation should present compelling evidence of the value of damage or loss in question. The landlord included receipts from a contractor that show work undertaken post-vacancy. Specific on the landlord's claim, and my assessment of the finer points, is as follows:

- Replacing bathroom sink and taking the garburator apart to clean
  Amount = $530.25

  I find the two items are separable with respect to cost and no receipt to provide reference. The bathroom sink was replaced due to mould and dirt – it is questionable whether this was on the recommendation of the strata and relating to the flooding issue. Also, an inability to clean is not realized when I consider another claim for deep cleaning. I apply this consideration of proper cleaning with the aquarium rocks in the drain – taking apart to clean does not necessitate sink replacement.

  The cost of sink is merged into cleaning the garburator. The evidence does not establish how lack of cleaning was interrupting the operation. Also, there is no communication to the tenant on the need for proper or regular cleaning.

  For these reasons, I dismiss this portion of the claim.

- Replace the missing door stopper
  Amount = $25.00
  There are no photos provided to show the need for this and no reference to this in the Condition Inspection Report. I cannot assess whether the item was completely broken and needing replacement for that reason. Also, the contractor receipt provided lists "stoppers" – I make this distinction as it would have bearing upon the cost of this work and item. I dismiss this portion of the claim.

- Replace missing microwave glass bowl
  Amount = $50.00
  The tenant stated this was their fault and deserving of reimbursement. I grant this portion of the claim.

- Replace the broken window handle
  Amount = $60.00
  There is no photo depicting the need for this replacement. I dismiss this portion of the claim. There is similarly no record of the condition of the unit at the time of the tenant's move in, despite the statement that this was a new unit.

- Replace dent on living room floor
  Amount = $85.00
  There is no photo depicting the need for this work. The materials, dimensions of damage, and need for repair are not established; therefore, I dismiss this portion of the claim. As above, there is no record of the condition of the unit at the time of the tenant's move in for comparison.

- Deep cleaning
  Amount = $450.00

The tenant did provide photos showing the unit upon move out and a receipt that shows the amount of $240.00 they paid for eight hours of cleaning. The need for deep cleaning is not clearly established by the landlord, and I weigh this with a view to the provision in the *Act* section 37(2)(a) which provides the unit must be "reasonably clean, and undamaged except for reasonable wear and tear." I dismiss this portion of the claim.

- Replace window blinds with original type aluminum blinds
  Amount = $451.86
  I find the landlord has reasonably reduced the cost of this claim by half. That damage is present is shown in the pictures the landlord submitted; this carries weight on this portion of the claim, despite the landlord's discrepancy in the amounts shown ($903.72 $1,063.18). The landlord provided receipts and an accurate representation of costs from contractors and blind manufacturers. They also provided photos depicting the need for repairs. I award this claim amount to the landlord, and I find this is a reasonable act on the part of the landlord to minimize the damage or loss.

In conclusion, the landlord has extinguished the right to claim against the security deposit – they did not properly comply with the time limits set within the *Act*. However, section 72(2) gives an arbitrator the authority to make a deduction from the security deposit held by the landlord.

The security deposit amount incorrectly held by the landlord is $1,800.00. The landlord did not make a claim against this amount within the legislated time; therefore, by application of section 38(6), they must pay double this amount.

From this amount, I deduct $501.86 as the sum total of the claims I allow, set out above. The landlord may keep this amount.

I also deduct $211.52. This is the amount the landlord previously paid to the tenant after keeping the portion of what they felt owing.

Subtracting these two deductions from the double security deposit amount, there is a balance of $2,886.62. I am awarding the tenant this amount.

As the tenant is successful in this application, I find that the tenant is entitled to recover the $100.00 filing fee paid for this application. The landlord's claim for the filing fee of $100.00 is denied.

Conclusion

Pursuant to sections 67 and 72 of the *Act*, I grant the tenant a Monetary Order in the amount of $ 2,986.62 as outlined above. The tenant is provided with this Order in the above terms and

the landlord must be served with **this Order** as soon as possible. Should the landlord fail to comply with this Order, this Order 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: May 19, 2020

Residential Tenancy Branch