Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes For the tenant: MNSDP-DR, FFT
For the landlord: MNDL, FFL

Introduction

This was a cross application hearing that dealt with the tenant's *ex-parte* adjourned application pursuant to the *Residential Tenancy Act (*the *Act)* for:

- an order for the landlord to return the security deposit pursuant to section 38; and
- an authorization to recover the filing fee for this application, pursuant to section 72.

This hearing also dealt with the landlord's application pursuant to the *Act* for:

- a monetary order for compensation for damage and loss under the Act, the Regulation or tenancy agreement pursuant to section 67 of the Act;
- an authorization to recover the filing fee for this application, pursuant to section 72.

Both parties attended. Witnesses NB for the tenant and JP for the landlord also attended. Both parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

As both parties were in attendance, I confirmed that there were no issues with service of the application and the evidence (the materials). In accordance with sections 88 and 89 of the Act, I find that both parties were duly served with the materials.

Issues to be Decided

Is the tenant entitled to:

1. an order for the landlord to return double the security deposit?
2. an authorization to recover the filing fee for this application?

Is the landlord entitled to:

1. a monetary award for compensation for damages caused by the tenant?
2. an authorization to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending parties, not all details of the submissions and arguments are reproduced here. The relevant and important aspects of the claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is their obligation to present the evidence to substantiate their applications.

Both parties agreed the tenancy started on August 02, 2019 and ended on March 31, 2020. Monthly rent was $1,250.00, due on the first day of the month. At the outset of the tenancy the landlord collected a deposit of $625.00 and still holds it in trust. The tenant affirmed the deposit paid was a pet deposit, the landlord affirmed it was the security deposit.

A tenancy agreement was submitted into evidence. It states: “tenant will pay move-out fee up to $50.00”.

Both parties also agreed the forwarding address was provided in writing to the landlord on April 12, 2020. The tenant authorized the landlord to deduct $50.00 from the deposit for the move-out fee on April 23, 2020: “I will allow for the deduction of $50.00 for the move out fee”. The landlord applied for dispute resolution on May 22, 2020.

A move-in condition inspection report was submitted into evidence. It contains photographs dated August 02, 2020, but does not mention the rental unit’s conditions when the tenancy started. The tenant affirmed she asked the landlord to schedule a move-out inspection. The landlord affirmed a move-out inspection was not scheduled because the tenant was furious with her.

The tenant affirmed the rental unit was not clean when the tenancy started. There were spider webs throughout the rental unit and the tenant needed to clean it for many hours before she could move in. The tenant informed the landlord and she was provided cleaning supplies.

The tenant's witness NB affirmed she was with the tenant when the tenancy started and she helped the tenant to clean the rental unit, as there were spider webs and dust throughout the rental unit.

The tenant submitted a text message sent to the landlord's agent JP on August 02, 2019 inquiring about cleaning the rental unit:

> I was there yesterday and walked through with my mom and we noticed that there is mould on the window ledges and blinds and in the shower, along the bottom of the door. And dirt in the corners. Also noticed that a good cleaning hasn't been done. Has there been water damage? Or a leak in the bedroom?
> Is there a chance you could arrange a cleaner to come clean the mildew/mold/wipe down/vacuum etc before I unpack my things.
> Thank you.

The landlord's agent replied stating: "I'll see if I can get a cleaner in quick". The tenant texted again the landlord's agent about mold:

> I also wanted to let you know there was tons of mold in the windowsills I cleaned with mold killer and gloves. Also the mold in the bathroom shower is underneath the silicon dap, how would you like me to proceed with that? I can remove it and put new down, I don't mind.

On August 10, 2019 the tenant texted the landlord's agent:

> Hey [anonymized] After cleaning everything I noticed there is a lot of gaps between the baseboards and floor, you can tell in the bedroom the most and the front of the house there is all that space I showed you and there were tons of spider webs and spiders in all the corners. I would like to go around with some dap to close all he opening because of the amount of spiders I've found. Is that ok with you?

The landlord affirmed the rental unit was clean when the tenancy started and dirty when the tenancy ended.

The landlord affirmed the tenant did not clean the passageway that provides access to the rental unit. This area was filled with leaves. The tenant did not dispute this and explained there were no leaves when the tenancy started because it was during summer and there were leaves when the tenancy ended because it was during spring. The tenant affirmed that in accordance to the tenancy agreement it was not her responsibility to clean this area. The tenancy agreement submitted into evidence states:

LAWN CARE – Tenant is aware that the lawn care is his/her responsibility and must be kept up to the standards of the neighborhood and/or the landlord. Not Applicable.

The landlord affirmed the passageway is not lawn care and the passageway provides access exclusively to the rental unit. The landlord provided a cleaning receipt for $50.00 that states: “To clean up dirty passageway to suite” and photographs showing the place before and after it was cleaned. The tenant affirmed the receipt provided does not have details about the service.

The landlord affirmed the bathroom towel bar and one stove element were broken when the tenancy ended and it cost her $25,00 to replace these two items. The tenant and witness NB affirmed the towel bar and one stove element were broken when the tenancy started, the landlord’s agent informed them he would fix these items but never did so. Photographs showing a broken bathroom towel bar were submitted.

The landlord affirmed the tenant broke the fridge’s shelf and it had to be replaced (a receipt for $119.39 was submitted into evidence). The tenant affirmed she has no recollection of breaking the fridge shelf. Witness NB affirmed both her and the tenant spent hours cleaning the rental unit and there was no broken shelf in the fridge when the tenancy ended. Photographs of a clean fridge were submitted into evidence.

The landlord affirmed the dryer was very noisy when the tenancy ended and the tenant did not remove the lint. The tenant affirmed the dryer was noisy because it is an old one and it was functioning properly.

The landlord affirmed she paid $84.79 for an appliance technician to repair the fridge’s shelf, the stove element and inspect the dryer. A receipt was submitted into evidence.

The landlord affirmed the stove, dishwasher and dryer were dirty when the tenancy ended. The tenant affirmed they were clean and suffered only regular wear and tear during the tenancy.

The landlord submitted a receipt for $389.91 for sanitization and cleaning of the rental unit. The tenant affirmed the rental unit was clean when the tenancy ended and submitted several photographs showing the rental unit clean when the tenancy ended. The tenant submitted an email sent to the landlord’s agent on March 25, 2020: “I did not take your measurements, but the place is clean and you can go in now anytime to make promo pictures and do your measurements. I have moved out.” The landlord’s agent replied on the same date: “Thanks”.

The tenant is claiming for the return of double the deposit. The landlord is claiming for: fridge shelf repair (119.39), labour for appliance repairs (84.79), bathroom towel bar and stove element (25.00), sanitization and cleaning (389.00), move-out fee (50.00) and passageway cleaning (50.00).

Analysis

Sections 7 and 67 of the Act state:

> Liability for not complying with this Act or a tenancy agreement
> 7 (1)If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
> (2)A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.
>
> Director's orders: compensation for damage or loss
> 67 Without limiting the general authority in section 62 (3) [director's authority respecting dispute resolution proceedings], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Residential Tenancy Branch 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.

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.

Return of the Deposit

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing.

Both parties agreed the forwarding address was provided on April 12, 2020 and the landlord only brought an application for dispute resolution on May 22, 2020.

Pursuant to section 38(6)(b) of the *Act* the landlord must pay the tenant equivalent to double the value of the security deposit for failure to return the tenant's deposit within 15 days of receiving her forwarding address:

> **38 Return of security deposit and pet damage deposit**
> (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.
> […]
> (4)A landlord may retain an amount from a security deposit or a pet damage deposit if,
> (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.

Residential Tenancy Branch Policy Guideline 17 states:

> 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 not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant's forwarding address is received

> in writing;
> The following examples illustrate the different ways in which a security deposit may be doubled when an amount has previously been deducted from the deposit:
> Example B: A tenant paid $400 as a security deposit. During the tenancy, the parties agreed that the landlord use $100 from the security deposit towards the payment of rent one month. The landlord did not return any amount. The tenant applied for a monetary order and a hearing was held.
> The arbitrator doubles the amount that remained after the reduction of the security deposit during the tenancy. In this example, the amount of the monetary order is $600.00 ($400 - $100= $300; $300 x 2 = $600).

Under these circumstances and in accordance with sections 38(6)(b), I find that the tenant is entitled to a monetary award of $1,150.00 (original deposit of $625.00 subtracted of $50.00 = $575.00 x 2 = $1,150.00). Over the period of this tenancy, no interest is payable on the landlord's retention of the security deposit.

In the case before me it is not necessary to define if the deposit paid was a pet damage or a security damage deposit.

Move-out fee

The tenant authorized in writing the landlord to deduct the amount of $50.00 from the deposit for the move-out fee on April 23, 2020. As such, the landlord did not need to apply for the payment of the move-out fee.

Section 62(4)(b) of the Act states an application should be dismissed if the application or part of an application for dispute resolution does not disclose a dispute that may be determined under the Act. I exercise my authority under section 62(4)(b) of the Act to dismiss the application for a monetary award for the move-out fee.

Sanitization and Cleaning

Section 37(2) of the Act states:

> Leaving the rental unit at the end of a tenancy
> 37(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

Residential Tenancy Branch Policy Guideline 1 states:

> The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard. The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises), or for cleaning to bring the premises to a higher standard than that set put in the Residential Tenancy Act.

The tenant and the tenant's witness affirmed the rental unit was clean when the tenancy ended. The photographs submitted into evidence by the tenant show the rental unit was reasonably clean when the tenancy ended. The landlord did not submit photographs of the interior of the rental unit when the tenancy ended. The email dated March 25 states the rental unit it is clean.

Furthermore, based on the text message send by the landlord's agent on August 02, 2019, I also find the rental unit was not clean when the tenancy started.

I find the tenant returned the rental unit to the landlord in a reasonably clean condition.

As such, I dismiss the landlord's application for a monetary award for cleaning costs.

Bathroom towel bar and Appliances (fridge shelf, stove element and dryer)

The parties offered conflicting verbal testimony regarding the condition of the bathroom towel bar and appliances when the tenancy started.

In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

The tenant and her witness both affirmed the bathroom towel bar and one stove element were broken when the tenancy started and that the dryer and the fridge shelf were not damaged when the tenancy ended on March 31, 2020. The landlord's witness did not provide any testimony. The photographs provided by the landlord showing a broken fridge shelf dates April 24, 2020.

I have carefully reviewed the evidence provided by both parties and I find that the landlord has not provided sufficient evidence that the tenant damaged the bathroom towel bar or the appliances.

As such, I dismiss the landlord's application for a monetary award for the bathroom towel bar and appliances repairs.

Passageway cleaning

Both parties agreed the passageway that provides access only to the rental unit was not clean when the tenancy ended.

Residential Tenancy Branch Policy Guideline 1 states:

> Generally the tenant living in a townhouse or multi-family dwelling who has exclusive use of the yard is responsible for routine yard maintenance, which includes cutting grass, clearing snow.

As the passageway provides access only to the rental unit, I find the tenant is responsible for cleaning this area.

Residential Tenancy Branch Policy Guideline 05 provides information about the duty to minimize the loss:

> B. REASONABLE EFFORTS TO MINIMIZE LOSSES
> A person who suffers damage or loss because their landlord or tenant did not comply with the Act, regulations or tenancy agreement must make reasonable efforts to minimize the damage or loss. Usually this duty starts when the person knows that damage or loss is occurring. The purpose is to ensure the wrongdoer is not held liable for damage or loss that could have reasonably been avoided.
> In general, a reasonable effort to minimize loss means taking practical and common-sense steps to prevent or minimize avoidable damage or loss. For example, if a tenant discovers their possessions are being damaged due to a leaking roof, some reasonable steps may be to:
> • remove and dry the possessions as soon as possible;
> • promptly report the damage and leak to the landlord and request repairs to avoid further damage;
> • file an application for dispute resolution if the landlord fails to carry out the repairs and further damage or loss occurs or is likely to occur.
> Compensation will not be awarded for damage or loss that could have been reasonably avoided.
> Partial mitigation
> Partial mitigation may occur when a person takes some, but not all reasonable steps to minimize the damage or loss. If in the above example the tenant reported the leak, the landlord failed to make the repairs and the tenant did not apply for dispute resolution soon after and more damage occurred, this could constitute partial mitigation. In such a case, an arbitrator may award a claim for some, but not all damage or loss that occurred.

I find that the expense the landlord incurred of $50.00 to clean the passageway is not reasonable. The landlord did not provide evidence to explain why it cost her $50.00 to clean the passageway. Thus, I award the landlord $25.00 in compensation for this loss.

Filing fee and Set-off

As both parties were at least partially successful with their applications, each party will bear their own filing fee.

The tenant is awarded $1,150.00. The landlord is awarded $25.00.

Residential Tenancy Branch Policy Guideline 17 sets guidance for a set-off when there are two monetary awards:

> 1. Where a landlord applies for a monetary order and a tenant applies for a monetary order and both matters are heard together, and where the parties are the same in both applications, the arbitrator will set-off the awards and make a single order for the balance owing to one of the parties. The arbitrator will issue one written decision indicating the amount(s) awarded separately to each party on each claim, and then will indicate the amount of set-off which will appear in the order.
> 2. The Residential Tenancy Act provides that where an arbitrator orders a party to pay any monetary amount or to bear all or any part of the cost of the application fee, the monetary amount or cost awarded to a landlord may be deducted from the security deposit held by the landlord and the monetary amount or cost awarded to a tenant may be deducted from any rent due to the landlord.

In summary:

Award for the tenant – double security deposit	$1,150.00
Award for the landlord – passageway cleaning	$25.00
Final award for the tenant	**$1,125.00**

Conclusion

Pursuant to section 38(6)(b) of the Act, I grant the tenant a monetary order in the amount of $**1,125**.**00**

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 *Residential Tenancy Act*.

Dated: June 18, 2020

Residential Tenancy Branch