Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord filed under the *Residential Tenancy Act* (the "*Act*") for a monetary order for compensation for damage caused by the tenant, their pets or guests to the unit, site or property, for permission to keep the security deposit, and to recover the filing fee for this application. The matter was set for a conference call.

Two Agents for the Landlord (the "Landlord") and the Tenant attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and Tenant were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The Tenant testified that they had received the Landlord's documentary evidence that I have before me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Preliminary Matter – Tenants Evidence Package

At the outset of this hearing, the Landlord, testified that they had not received the Tenant's evidence package.

The Tenant testified that they had sent their evidence package to the Landlord on June 17, 2020, by email as permitted under the Residential Tenancy COVID-19 Order.

The Landlord testified that they had expected the Tenant's evidence package by registered mail, not email and that they had not received the Tenant's email.

The Tenant testified that they had sent the email to the Landlord's Agent G.P.

The Landlord's Agent G.P. testified that the Tenant should have sent the emailed evidence to the Landlord's Agent, M.W., as they were the one dealing with the tenancy.

I have reviewed the documentary evidence submitted by the Tenant, and I noted that the Landlord's Agent G.P., who had testified that the Tenant had used the incorrect email address for service of evidence, had emailed the Tenant regarding this claim, on February 13, 2020, and that in that email to the Tenant, the Landlord's Agent G.P. had been the one who notified the Tenant of the Landlord application for this hearing.

I have also reviewed the Landlord's documentary evidence, and it is clear that both parties to this dispute used email regularly to communicate with each other.

I find it was the Landlord's Agents use of multiple email address to speak to this Tenant regarding this claim, that caused confusion as to which email address the Tenant should have used for the service of documentary evidence related to these proceedings. As it was the Landlord's Agent G.P. that first notified the Tenant of this hearing in their email to the Tenant dated February 13, 2020, I find that it was reasonable of the Tenant to have concluded that the service of their evidence package for this hearing should be to the Landlord's Agent G.P.'s email address.

Accordingly, as permitted by Residential Tenancy (COVID-19) Order, MO M089 (Emergency Program Act) made March 30, 2020 (the "Emergency Order"), I find that the Landlord had been served with the Tenant's evidence package in accordance with the rules of procedure.

In order to ensure procedural fairness, the opportunity to adjourn this hearing was offered to the Landlord, to allow for additional time for the Landlord to review the Tenant evidence package. Both Agents for the Landlord refused the offered adjournment and the additional time to review evidence and requested that today's scheduled proceedings continue.

Preliminary Matter – Claimed Item Withdrawn

During this hearing, the Landlord testified that they had only received a strata bylaw infraction warning letter and that the Landlord had not been charged a fine due to that bylaw infraction warning letter.

The Landlord withdrew their request for compensation due to a strata bylaw infraction warning letter, in the amount of $200.00

I find that the withdrawal of this claimed item is appropriate, and I will continue in this hearing on the remainder of the Landlord's monetary claim, in the now reduced amount of $1096.00, and for the recovery of the filing fee paid for this hearing,

Issues to be Decided

- Is the Landlord entitled to a monetary order for compensation due to damage?
- Is the Landlord entitled to retain the security deposit of r this tenancy?
- Is the Landlord entitled to the recovery of the filing fee for this application?

Background and Evidence

While I have turned my mind to all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The tenancy agreement shows that this tenancy began on December 17, 2017, as a one-year and fifteen-day fixed term tenancy ending on December 31, 2018, and rolling into a month to month tenancy after the initial fixed term. The parties agreed that rent in the amount of $1,850.00 was to be paid by the first day of each month and that the Tenant had paid a $925.00 security deposit at the outset of this tenancy. The Landlord submitted a copy of the tenancy agreement into documentary evidence.

Both parties testified that the move-in inspection report had been completed in the presence of both parties at the beginning of the Tenancy. The parties also agreed that the move-out inspection was completed by the Landlord and that the Tenant was not present, at the end of this tenancy.

The Tenant testified that they had mostly moved out of the rental unit as of January 15, 2020, but that they had not officially handed over possession of the rental unit to the Landlord until January 31, 2020.

The Landlord agreed that the tenancy ended on January 31, 2020, in accordance with the *Act*. The Landlord also testified that they attempted to schedule a move-out inspection with the Tenant but that the Tenant had refused to attend the suggest time as they were to busy at work. The Landlord testified that they had no choice but to due the

move-out inspection without the Tenant. The Landlord submitted a copy of the move-in/move-out inspection report (the “inspection report”) into documentary evidence.

The Tenant testified that the Landlord had sent them an email request to attend the move-out inspection but that the requested time did not work for them. The Tenant testified that the Landlord never offered them the final written second attempt to schedule the move-out inspection as required under the *Act*.

When asked by this Arbitrator, the Landlord testified that they had not issued the final written attempt to schedule the move-out inspection, on Residential Tenancy Branch form #RTB-22.

The Landlord testified that the Tenant had asked them to complete all cleaning and repairs to the rental unit for the Tenant as the Tenant had been very busy and had no time to complete the required cleaning and repairs before the end of tenancy. The Landlord submitted 11 pages of emails, between themselves and the Tenant, into documentary evidence.

The Tenant testified that they agreed they had inquired with the Landlord as to how much it would cost to have the Landlord complete all cleaning and repairs to the rental unit for them but that when they received the Landlord’s quote, they felt it was too much and decided to complete the cleaning and repairs to the rental unit themselves. The Tenant testified that they had never officially requested the Landlord to clean or repair the rental unit for them.

The Tenant testified that the Landlord was aware that they had moved out of the rental unit early, and that it had been mostly empty between January 16, 2020, to January 31, 2020. The Tenant testified that the Landlord without the Tenant’s knowledge or permission had gone into the rental unit to clean and repair the unit before the tenancy had officially ended.

The Tenant testified that they attended the rental unit often between January 16, 2020, to January 31, 2020, to pick up more of their belonging and clean, stating that on several of these visits to the rental unit the Tenant had noticed that someone had been in the rental unit without their knowledge and had completed cleaning and repairs without their approval.

The Landlord testified that the Tenant had advised them in their email exchange that the Landlord was to go ahead and completed the cleaning and repairs, referencing the eleven pages of emails previously entered into documentary evidence.

The Landlord is claiming for $577.50 for patching nail holes, painting and junk removal. The Landlord testified that the Tenant had left several large nail and screw holes in the walls of the rental unit, and that the Tenant had left a bunch of junk items in the unit that need to be disposed of at the end of this tenancy. The Landlord submitted nine pictures and an invoice for $577.50 for patching nail holes, painting and junk removal into documentary evidence. The Landlord submitted an invoice for the painting and junk removal into documentary evidence.

The Tenant testified that they agreed that the did put nail and screw holes in the walls of the rental unit that would require repair at the end of the Tenancy. However, the Tenant testified that they should not be responsible for the Landlord's cost to repair and paint the holes as the Landlord jumped the gun, by conducting these repairs before the Tenant had even moved out and without the Tenant's permission. The Tenant testified that they were entitled to the opportunity to repair the rental themselves, up until January 31, 2020, when their tenancy ended. Additionally, the Tenant argued that the $420.00 the landlord is charging for patching and painting is too high. Stating that had they been allowed to complete the repairs; they would have done it much cheaper.

The Tenant also agreed that they had left several items in the rental unit at the end of this tenancy but argued that the Landlord is claiming for to dispose of the items was to expensive, given the amount of stuff that was there.

The Landlord is claiming for $126.00 in carpet cleaning $126.00, that they had completed at the end of this tenancy.

The Tenant testified that they agree that the Landlord and completed the carpet cleaning in the rental unit and agreed that they had not done the carpet cleaning themselves. The Tenant testified that they attended the rental unit to do some cleaning and noticed that the carpets had been cleaned, without their permission. During the hearing, the Tenant agreed to the Landlord's costs of $126.00 for carpet cleaning.

The Landlord is claiming for $220.50 for suite cleaning, that they had completed at the end of this tenancy. The Landlord submitted an invoice for the suite cleaning, dated January 29, 2020, into documentary evidence.

The Tenant testified that they agree that the Landlord had gone into the rental unit on January 29, 2020 and conducted suite cleaning. The Tenant argued that this suite cleaning conducted by the Landlord had not been approved by the Tenant, and that the Landlord had not received permission to enter the rental unit nor had they issued a notice of entry to the Tenant. The Tenant testified that they had cleaned the rental unit themselves and that no additional cleaning had been required by the Landlord, for this rental unit.

The Landlord is claiming for $150.00 to replace a parking fob that had not been returned that the end of this tenancy. The Landlord testified that the tenant had been issued two parking fobs for this tenancy and that they had only returned one fob at the end of this tenancy.

The Tenant testified that they had only been issued one parking fob for this tenancy, the Tenant referenced the move-in inspection the Landlord submitted into documentary evidence. The Tenant agreed with the Landlord that they had returned one parking fob at the end of this tenancy, stating that it was the only one they had been issued and that they have no idea with the Landlord is talking about, when they claimed that they were issued a second parking fob for this tenancy.

The Landlord testified that there was $21.00 in unpaid rent left outstanding at the end of this tenancy. The Landlord submitted the transaction listing for the rental account for this tenancy into documentary evidence.

The Tenant agreed that they owed $21.00 in outstanding rent for this tenancy.

Analysis

Based on the above, testimony and evidence, and on a balance of probabilities, I find as follows:

I find that these parties initially entered into a fixed term tenancy agreement that rolled into a month to month tenancy as of January 1, 2019, and that this tenancy ended on January 31, 2020, in accordance with the *Act*.

I accept the agreed-upon testimony of these parties that the Tenant was not in attendance for the move-out inspection for this tenancy. Section 35 of the Act, places the responsibility on the Landlord to ensure that the move-out inspection is scheduled and conducted in accordance with the Act, stating the following:

Condition inspection: end of tenancy

35 *(1) The landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit*

(a) on or after the day the tenant ceases to occupy the rental unit, or

(b) on another mutually agreed day.

(2) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.

(3) The landlord must complete a condition inspection report in accordance with the regulations.

(4) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.

(5) The landlord may make the inspection and complete and sign the report without the tenant if

(a) the landlord has complied with subsection (2) and the tenant does not participate on either occasion, or

(b) the tenant has abandoned the rental unit.

Pursuant to section 35(2) a landlord is required to offer at least two opportunities to a tenant schedule the inspection, section 17 of the *Residential Tenancy Regulations* (the "*Regulations*") provided further clarity on the requirement of these two opportunities, stating the following:

Two opportunities for inspection

17 *(1) A landlord must offer to a tenant a first opportunity to schedule the condition inspection by proposing one or more dates and times.*

(2) If the tenant is not available at a time offered under subsection (1),

(a) the tenant may propose an alternative time to the landlord, who must consider this time prior to acting under paragraph (b), and

(b) the landlord must propose a second opportunity, different from the opportunity described in subsection (1), to the tenant by providing the tenant with a notice in the approved form.

(3) When providing each other with an opportunity to schedule a condition inspection, the landlord and tenant must consider any reasonable time limitations of the other party that are known and that affect that party's availability to attend the inspection.

I accept the testimony of the Landlord that they did not provide a second opportunity to schedule the move-out inspection on the approved Residential Tenancy Branch's form. Accordingly, I find that the Landlord breach section 35(2) of the Act, by not offering the Tenant the second opportunity to schedule the move-out inspection, in accordance with the *Act* and *Regulations*.

Section 36(2) of the *Act* set out the consequences for a landlord when the requirement to offer two attempts to schedule the inspection, in accordance with the Act, are not met, stating the following:

> ***Consequences for tenant and landlord if report requirements not met***
>
> ***36*** *(2) Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord*
>
> *(a) does not comply with section 35 (2) [2 opportunities for inspection],*
>
> *(b) having complied with section 35 (2), does not participate on either occasion, or*
>
> *(c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.*

Consequently, I as I find that the Landlord extinguished their right to make a claim against the security deposit for this tenancy, and that the security deposit should have been returned to the Tenant within 15 days from the later of the day the tenancy ended or the date the Landlord had received the Tenant's forwarding address in writing.

In this case, I find that this tenancy ended on January 31, 2020, the dated the Landlord took back possession of the rental unit. In addition, I accept the testimony of both these parties that the Landlord was in receipt of the Tenant's forwarding address, as of February 6, 2020. Accordingly, the Landlord had until February 21, 2020, to comply with section 38(1) of the *Act* by returning the security deposit in full to the Tenant, which the Landlord did not do.

Section 38 (6) of the *Act* goes on to state that if the landlord does not comply with the requirement to return the deposit within the 15 days, the landlord must pay the tenant double the security deposit.

Return of security deposit and pet damage deposit

38 (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.

Therefore, I find that pursuant to section 38(6) of the *Act,* the value of the security deposit for this tenancy has doubled, and is now valued at $1,850.0, due to the Landlord breach of section 35(2) of the *Act*.

As for the Landlord's claim for $1,096.00 due to damage to the rental unit. Awards for compensation due to damage are provided for under sections 7 and 67 of the *Act.* A party that makes an application for monetary compensation against another party has the burden to prove their claim. The Residential Tenancy Policy Guideline #16 Compensation for Damage or Loss provides guidance on how an applicant must prove their claim. The policy guide states the following:

"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. 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 Landlord has claimed for $420.00 for the repair of nail holes in the rental unit at the end of this tenancy. Section 37(2) of the *Act* requires that a tenant return the rental unit reasonably clean at the end of the tenancy.

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, and

> *(b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.*

The Residential Tenancy policy guideline #1 provided further guidance regarding nail holes:

> "Nail Holes:
> 1. Most tenants will put up pictures in their unit. The landlord may set rules as to how this can be done e.g. no adhesive hangers or only picture hook nails may be used. If the tenant follows the landlord's reasonable instructions for hanging and removing pictures/mirrors/wall hangings/ceiling hooks, it is not considered damage and he or she is not responsible for filling the holes or the cost of filling the holes.
> 2. The tenant must pay for repairing walls where there are an excessive number of nail holes, or large nails, or screws or tape have been used and left wall damage.
> 3. The tenant is responsible for all deliberate or negligent damage to the walls."

I have reviewed the picture evidence submitted to these proceedings, by the Landlord, and note that they show five distinct large nail or screw holes in the walls of the rental unit at the end of this tenancy. I find that the nail or screw hole shown in these pictures to be damaged, as outlined in point two of the Nail Holes section of the Residential Tenancy policy guideline.

Accordingly, I find that the Tenant breached section 37 of the *Act* when they returned the rental unit to the Landlord damaged. I also find that the Landlord has provided sufficient documentary evidence to show that they suffered a loss of $420.00 due to the needed repair of the rental unit at the end of the tenancy. Therefore, I award the Landlord the return of the repair cost in the amount of $420.00.

The Landlord has also claimed for $157.50 to have junk removed from the rental unit at the end of tenancy. I accept the testimony of the Tenant that they agreed that they did leave these items in the rental unit at the end of the tenancy. I find that the Landlord has provided sufficient documentary evidence to show that they suffered a loss of $157.50 due to the needed to remove the items left in the rental unit at the end of the tenancy. Therefore, I award the Landlord the return of the junk removal cost in the amount of $157.50.

I accept the agreed-upon testimony of these parties that the Landlord had the carpets cleaning at the end of this tenancy at the cost of $126.00. As the Tenant agreed to these costs, during this hearing, I award the Landlord $126.00, in the recovery of their cost to have the carpets cleaning at the end of this tenancy.

The Landlord has also requested to recover their cost, in the amount of $220.50, to have the rental unit cleaned at the end of this tenancy. I find that the parties, in this case, offered conflicting verbal testimony regarding the cleanliness of the rental unit at the end of the tenancy and the need for the Landlord to do additional cleaning. 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, in this case, that is the Landlord.

An Arbitrator normally looks to the inspection report as the official document that represents the condition of the rental unit at the beginning and the end of a tenancy; as it is required that this document is completed in the presence of both parties and is seen as a reliable account of the condition of the rental unit. As it has already been determined that the Tenant was not provided with the required opportunities to attend the move-out inspection, I find the inspection report I have before me to be an unreliable account of the condition of this rental unit at the end of tenancy.

In the absence of a reliable inspection report, I must rely on the additional documentary evidence submitted by the Landlord to support this portion of their claim. I note that the Landlord submitted six pictures of the rental unit taken at the end of this tenancy. I find that these pictures show a reasonably clean rental unit.

Pursuant to section 37(1a) of the *Act*, I find that the Tenant returned the rental unit in a reasonably clean state as required by the *Act*. Therefore, I must dismiss the Landlord's claim for $220.50 in cleaning costs.

I acknowledge the Landlord's argument that the Tenant had emailed them and asked them to clean the rental unit. I have reviewed these emails, and I find that these parties did enter into an email conversation regarding what it would cost the Tenant to have the Landlord clean the rental unit for them at the end of this tenancy. However, I find that there is insufficient evidence before me to show that the Tenant had formally agreed to hire the Landlord to clean for them or to contract out the cleaning on the Tenant's behalf.

The Landlord has also requested to recover their cost, in the amount of $150.00, to have the second parking fob replaced that was not returned at the end of this tenancy. The Landlord and Tenant offered conflicting verbal testimony regarding whether or not a second parking fob had been issued to the Tenant for this tenancy.

As the move-in inspection had been completed and signed by both the Landlord and the Tenant, I find the move-in portion of the inspection report to be a reliable account of the rental unit at the beginning of this tenancy, and I will consider that document in regard to this portion of the Landlord's claim. I note that this document records that one parking fob had been issued to the Tenant. I have also reviewed the remainder of the Landlord's documentary evidence and I noted that there was nothing submitted, to show that a second parking fob had been issued, to the Tenant, during this tenancy. Accordingly, I find that only one parking fob had been issued to the Tenant.

I accept the agreed-upon testimony of these parties that one parking fob had been returned to the Landlord at the end of this tenancy. As the Landlord has not proven that a second parking fob had been issued to the Tenant, I must dismiss the Landlord's claim to recover the replacement cost of an unreturned second parking fob.

Finally, I accept the agreed-upon testimony of these parties, that $21.00 in unpaid rent was left outstanding at the end of this tenancy. As the tenant agreed to these costs, during this hearing, I award the Landlord $21.00, in the recovery of their unpaid rent for this tenancy.

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord has been partially successful in their claim, I find that the Landlord is entitled to the recovery of their $100.00 filing fee paid for their application.

Overall, I grant the Landlord permission to retain $724.50; consisting of $420.00 in repairs, $157.50 in junk removal, $126.00 for carpet cleaning, $21.00 in unpaid rent, and $100.00 in the recovery of the filing fee for this hearing, from the security deposit they are holding for this tenancy, in full satisfaction of the amounts awarded above.

I order the Landlord to return the remaining $1,025.50 of the security deposit that they are holding for this tenancy to the Tenant within 15 days of receiving this decision.

Additionally, I grant the Tenant a conditional monetary order in the amount of $1,025.50, to be served on the Landlord in the event that they do not comply as ordered.

Conclusion

I grant permission to the Landlord to retain $724.50 from the security deposit for this tenancy, and I order the Landlord to return the retain $1,025.50 of the security deposit they are holding for this tenancy to the Tenant, within 15 days of the date of this decision.

I grant the Tenant a conditional **Monetary Order** in the amount of **$1,025.50** for the return of the remaining value of security deposit. 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 they not comply as ordered. 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: July 13, 2020

Residential Tenancy Branch