Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, MNDL-S, FFL (Landlord)
MNSDS-DR, FFT (Tenant)

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on March 24, 2020 (the "Landlord's Application"). The Landlord applied as follows:

- For compensation for monetary loss or other money owed;
- For compensation for damage to the rental unit;
- To keep the security deposit; and
- For reimbursement for the filing fee.

The Tenant filed an Application for Dispute Resolution on July 20, 2020 (the "Tenant's Application"). The Tenant sought return of the security deposit and reimbursement for the filing fee. The Tenant confirmed this is the only requests in the Tenant's Application.

The Landlord and Tenant appeared at the hearing. I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence for the Landlord's Application. The Tenant confirmed receipt of the hearing package in March or April. The Tenant confirmed she was prepared to address all issues outlined in the updated Monetary Order Worksheet. The Tenant testified that she received the Landlord's evidence July 23, 2020. The Tenant confirmed she had a chance to review the Landlord's evidence.

The Landlord testified that he received the Tenant's evidence a couple days before the hearing. He testified that the evidence was for the Tenant's Application. The Landlord took issue with the timing of service. The Landlord testified that some of his evidence was served on the Tenant in March but could not say what was in the March package and what was in the July package.

The Landlord's evidence should have been served on the Tenant by April 02, 2020 pursuant to rule 3.1 of the Rules of Procedure (the "Rules"). The Landlord was required to serve his evidence on the Tenant no later than July 20, 2020 pursuant to rule 3.14 of the Rules. I am not satisfied any evidence was served on the Tenant prior to July 23, 2020. The parties disagreed about this. It is the Landlord who has the onus to prove his evidence was served in accordance with the Rules. The Landlord did not seem to know what was served when. The Landlord failed to prove evidence was served other than on July 23, 2020. The Landlord failed to comply with rule 3.14 of the Rules. This could have led to all of the Landlord's evidence being excluded under rule 3.17 of the Rules. However, the Tenant acknowledged having had a chance to review the evidence and therefore I did not find it appropriate to exclude the Landlord's evidence.

However, I also did not find it appropriate to exclude the Tenant's evidence. The Tenant was required to serve her evidence not less than seven days before the hearing pursuant to rule 3.15 of the Rules. I accept that the Tenant did not do so. However, the Tenant received the Landlord's evidence late and therefore I did not find it appropriate to admit the Landlord's late evidence but exclude the Tenant's late evidence.

I told the Landlord I would not exclude the Tenant's evidence and that he could seek an adjournment if he needed more time to review and respond to the Tenant's evidence. The Landlord asked if the matter could be adjourned to the hearing date set for the Tenant's Application and I told the Landlord I would consider this. I also suggested the Landlord consider the issues before me and whether all of the evidence served on him is relevant to those issues because if it is not relevant to the issues I have to decide, I will not consider it in any event. The Landlord chose to proceed.

The Landlord asked at the outset of the hearing if the Tenant's Application could be crossed with the Landlord's Application. At first, I told the parties I would not cross the applications as parties are expected to comply with the deadlines and processes in place for having applications crossed. At the end of the hearing, I looked at the Tenant's Application and determined that it only relates to return of the security deposit and reimbursement for the filing fee. As explained to the parties, return of the security deposit will be dealt with on the Landlord's Application. Given this, I agreed to cross the

applications and decide them both. The parties agreed to this process. The Tenant confirmed she understood I would only consider the request for return of the security deposit and reimbursement for the filing fee.

Given the Tenant's Application has been crossed with the Landlord's Application and decided in this decision, the hearing on August 28, 2020 at 11:00 a.m. is cancelled. Neither party is required to attend the August 28, 2020 hearing.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered the documentary evidence and all oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Landlord entitled to compensation for monetary loss or other money owed?

2. Is the Landlord entitled to compensation for damage to the rental unit?

3. Is the Landlord entitled to keep the security deposit?

4. Is the Landlord entitled to reimbursement for the filing fee?

5. Is the Tenant entitled to return of the security deposit?

6. Is the Tenant entitled to reimbursement for the filing fee?

Background and Evidence

The Landlord sought the following compensation:

Item	Description	Amount
1	Fridge	$200.00
2	Utilities	$29.93
		$10.60
		$37.06
3	Painting	$1,925.00
4	Filing fee	$100.00
	TOTAL	**$2,302.59**

Two written tenancy agreements were submitted as evidence and the parties agreed they are accurate. The first agreement started February 15, 2018 and was for a fixed term ending March 01, 2019. Rent was $1,250.00 per month. The Tenant paid a $625.00 security deposit. There was an addendum with term 10 which states:

10. Tenant will return unit to pre rental condition at end or residency ie paint

The second agreement started March 01, 2019 and was for a fixed term ending March 01, 2020. Rent was $1,280.00 per month due on the first day of each month. The security deposit was carried over from the first agreement. There was an addendum with the same term 10 as above.

The parties agreed the tenancy ended February 29, 2020.

The Tenant testified that she sent her forwarding address to the Landlord on the RTB form by mail March 09, 2020. The Landlord testified that he received this March 16, 2020.

The parties agreed the Landlord did not have an outstanding monetary order against the Tenant at the end of the tenancy. The parties agreed the Tenant did not agree in writing at the end of the tenancy that the Landlord could keep some or all of the security deposit.

The Landlord testified that he did not do a move-in inspection because he did not know the rules. The Tenant agreed no move-in inspection was done.

The Landlord testified that he tried to do a move-out inspection, but the Tenant said she was busy. The Landlord testified that he did not provide the Tenant a second opportunity to do a move-out inspection on the RTB form. The Landlord testified that he did an inspection on his own but did not complete a Condition Inspection Report. The Tenant agreed no move-out inspection was done and she was not provided an opportunity to do one on the RTB form.

#1 Fridge

The Landlord testified that the fridge in the rental unit was replaced during the tenancy and at the end of the tenancy had dents and scratches on it that are beyond reasonable wear and tear. The Landlord testified that these could not have been there prior to the tenancy as the fridge was brand new during the tenancy.

The Landlord submitted photos of the damage to the fridge. The Landlord submitted a receipt for the fridge showing it cost $785.39.

The Tenant testified that she took photos of the fridge on the day she vacated and the photos show a slight indentation but no holes or scratches as shown in the Landlord's photos. The Tenant testified that she did not cause the damage shown in the Landlord's photos.

The Tenant submitted photos of the fridge.

#2 Utilities

The Tenant agreed to pay the Landlord for utilities in the amounts requested. I told the parties I would allow the Landlord to keep the amount from the security deposit.

#3 Painting

The Landlord testified as follows. The Tenant painted the rental unit purple and yellow during the tenancy. Term 10 in the addendum states the Tenant will return the rental unit to the original paint which was grey. The rental unit had been painted prior to the Tenant moving in. The Tenant did not have the unit painted at the end of the tenancy. The unit had to be painted because of this.

The Landlord further testified as follows. There was a chip in the drywall above a window in the rental unit at move-out. The Tenant must have done this during the tenancy because otherwise the Tenant would have painted over it when she painted the unit. The damage is beyond reasonable wear and tear.

The Landlord testified that the Tenant broke the closet door handle which required him to get a new closet door which the painter painted.

The Landlord acknowledged that the remainder of the damage to the walls of the rental unit was reasonable wear and tear.

The Landlord submitted photos of the chip above the window and broken closet door handle. The Landlord submitted an invoice for the painting.

In relation to painting the rental unit purple and yellow, the Tenant testified that the Landlord's position about term 10 meaning she had to paint the unit grey upon vacating

is not reflected in term 10 of the addendum. The Tenant testified that her understanding of term 10 in the addendum was that she would have to paint the unit if there was damage to the paint or walls and not that she had to paint regardless.

In relation to the chip above the window, the Tenant testified that she took photos of the rental unit on the day she moved out and there was no damage above the window in her photos. The Tenant testified that the chip was not there when she vacated.

The Tenant denied she caused damage to the closet as shown in the Landlord's photos.

Analysis

Pursuant to rule 6.6 of the Rules, it is the applicant who has the onus to prove their claim. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

When 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 claim and the claim fails.

Security Deposit

Pursuant to sections 24 and 36 of the *Residential Tenancy Act* (the "*Act*"), landlords and tenants can extinguish their rights in relation to the security deposit if they do not comply with the *Act* and *Residential Tenancy Regulation* (the "*Regulations*"). Further, section 38 of the *Act* sets out specific requirements for dealing with a security deposit at the end of a tenancy.

Based on the testimony of both parties, I find the Landlord did not provide the Tenant two opportunities to do a move-in or move-out inspection, one on the RTB form. Therefore, I find the Tenant did not extinguish her rights in relation to the security deposit pursuant to sections 24 or 36 of the *Act*.

It is not necessary to decide whether the Landlord extinguished his rights in relation to the security deposit because the Landlord sought compensation for unpaid utilities and extinguishment only relates to claims for damage.

Based on the testimony of the parties, I am satisfied the tenancy ended February 29, 2020.

Based on the testimony of the parties, I am satisfied the Tenant sent the Landlord her forwarding address March 09, 2020 and the Landlord received this March 16, 2020.

Pursuant to section 38(1) of the *Act*, the Landlord was required to repay the security deposit or claim against it within 15 days of March 16, 2020, the date he received the Tenant's forwarding address. The Landlord's Application was filed March 24, 2020, within time. I find the Landlord complied with section 38(1) of the *Act*.

Compensation

Section 7 of the *Act* states:

> 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.

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

> 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:
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> - 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.

Section 37(2) of the *Act* sets out the obligations of a tenant upon vacating a rental unit and states:

> (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…

Pursuant to section 5 of the *Act*, parties cannot contract out section 37 of the *Act*. For example, landlords cannot require tenants to return a rental unit in the exact same condition it was at the start of the tenancy. This is because section 37 of the *Act* allows for reasonable wear and tear and a landlord cannot change this.

#1 Fridge

The Landlord takes the position that the Tenant damaged the fridge with dents and scratches. The Tenant takes the position that the dents and scratches were not there when she vacated. The Landlord did not complete a Condition Inspection Report or provide the Tenant an opportunity to do a move-out inspection on the RTB form, both of which are required by the *Act*. Therefore, I do not have a Condition Inspection Report before me which would have shown the condition of the fridge at the end of the tenancy.

The Landlord has the onus to prove the damage to the fridge shown in his photos was present when the Tenant vacated the rental unit. The photos submitted are not date or time stamped such that I can tell when they were taken. There is no further documentary evidence before me proving the state of the fridge upon the Tenant vacating.

In the absence of further evidence, I am not satisfied the Tenant caused the damage to the fridge shown in the Landlord's photos. I cannot be satisfied that the damage was done by the Tenant versus after the Tenant vacated given the Tenant testified that she did not cause the damage, there is no Condition Inspection Report before me and the photos are not date and time stamped to prove they were taken immediately upon the Tenant vacating. I also note that, in my view, even photos taken immediately after the Tenant vacated are not compelling evidence. I would expect to see a Condition Inspection Report and photos taken while the Tenant was present, or similar evidence, when parties disagree about whether there is damage at the end of the tenancy.

Given I am not satisfied the Tenant caused the damage to the fridge shown in the Landlord's photos, I am not satisfied the Tenant breached the *Act* in this regard and am not satisfied the Landlord is entitled to compensation for the damage.

I acknowledge that the Tenant submitted a photo of a small dent in the fridge. I note that I do not find this to be beyond reasonable wear and tear and therefore would not award compensation for it even if caused by the Tenant.

#2 Utilities

Pursuant to the Tenant's agreement, the Landlord is entitled to $77.59 in total for unpaid utilities.

#3 Painting

As stated, section 37 of the *Act* only required the Tenant to leave the rental unit undamaged expect for reasonable wear and tear. The Landlord cannot change this requirement.

Policy Guideline 01 states at page four:

> PAINTING
>
> The landlord is responsible for painting the interior of the rental unit at reasonable intervals. The tenant cannot be required as a condition of tenancy to paint the premises. The tenant may only be required to paint or repair where the work is necessary because of damages for which the tenant is responsible.

In my view, term 10 of the addendum is an attempt by the Landlord to contract out of section 37 of the *Act* and require the Tenant to repaint the unit upon vacating. The Landlord is not permitted to do so pursuant to section 5 of the *Act*.

I acknowledge that the Tenant painted the unit purple and yellow during the tenancy and that the Landlord wanted it returned to grey. In my view, if the Landlord did not want the rental unit to be purple and yellow, the Landlord should not have permitted the Tenant to paint the unit purple and yellow. Further, if the Landlord agreed to allow this on the condition that the Tenant paint it back to grey, I would expect to see a clear indication of this in writing. Term 10 of the addendum is not a clear indication of this. Term 10 is not clear in relation to the expectation regarding paint. It does not state

anything about particular colors. The Tenant testified that she did not understand term 10 to mean she had to repaint the entire unit regardless of damage. I do not find this to be an unreasonable understanding given the wording of term 10.

In the circumstances, I am not satisfied term 10 of the addendum required the Tenant to paint the unit grey at the end of the tenancy. Nor am I satisfied there was an agreement between the parties that the Tenant would paint the unit grey at the end of the tenancy. Therefore, I am not satisfied the Tenant breached the *Act* or tenancy agreement by not painting the unit grey at the end of the tenancy.

In relation to the chip in the drywall above a window, I am not satisfied the Tenant caused this chip. The Tenant testified that this damage was not there when she vacated the rental unit. There is no Condition Inspection Report before me showing the state of the rental unit at the end of the tenancy. The photos of the chip are not date and time stamped such that I can tell when they were taken. In the circumstances, I am not satisfied the Tenant caused the chip versus it being caused after the Tenant vacated.

In relation to the closet door handle, even accepting the Tenant caused this damage, I am not satisfied this required a new closet door that then needed to be painted. The broken handle could have easily been replaced. The only "damage" to the door from the broken handle consists of four "chips" in the paint that are so small they could not reasonably be considered damage. These "chips" could have been painted by anyone with minimal time, effort and materials. I do not accept that these "chips" required the Landlord to get a new closet door or required a professional painter to fix. In my view, these "chips" are reasonable wear and tear and the type of "damage" landlords should expect over the years as people live in the rental unit.

Given the above, I am not satisfied the Landlord has proven a breach of the *Act* or tenancy agreement in relation to the painting and therefore am not satisfied the Landlord is entitled to compensation.

Filing fee

I decline to award the Landlord reimbursement for the filing fee. The only claim the Landlord was successful on is the claim for utilities. I do not accept that the Landlord needed to make an Application for Dispute Resolution to obtain this compensation as the Tenant agreed to pay utilities in a letter prior to the hearing and at the hearing

without any dispute. In my view, the Landlord could have dealt with unpaid utilities with the Tenant without making an Application for Dispute Resolution.

In summary, the Landlord is entitled to $77.59 for utilities. The Landlord can keep $77.59 of the security deposit pursuant to section 72(2) of the *Act*. The Landlord must return the remaining $547.41 to the Tenant. The Tenant is issued a Monetary Order for this amount.

In relation to the Tenant's Application, I have addressed whether the Tenant is entitled to return of the security deposit above. I decline to award the Tenant reimbursement for the filing fee. The Tenant filed the Tenant's Application July 20, 2020. The Tenant acknowledged receiving the hearing package for the Landlord's Application at the end of March or start of April. The Tenant should have known the security deposit would be dealt with on the Landlord's Application as the Landlord sought to keep it. There was no need for the Tenant to file an Application for Dispute Resolution to have the security deposit dealt with. The Tenant's Application was unnecessary and therefore the Tenant is not entitled to reimbursement for the filing fee.

Conclusion

The Landlord can keep $77.59 of the security deposit. The Landlord must return the remaining $547.41 to the Tenant. The Tenant is issued a Monetary Order for this amount. If the Landlord does not return $547.41 to the Tenant, this Order must be served on the Landlord. If the Landlord does not comply with the Order, it may be filed in the Provincial Court (Small Claims) 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: August 05, 2020

Residential Tenancy Branch