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 (application) by the landlords seeking remedy under the *Residential Tenancy Act* (Act) for authorization to retain all or part of the tenant's security deposit, and to recover the cost of the filing fee.

Landlord, AW (landlord) and the tenant, GL, who also goes by the name of JSD (tenant) appeared at the teleconference hearing and gave affirmed testimony. During the hearing the parties were given the opportunity to provide their testimony and ask questions about the hearing process. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

The tenant confirmed having received the landlords' evidence prior to the hearing and that they had the opportunity to review that evidence prior to the hearing. The tenant did not submit any documentary evidence in response to the landlords' application in accordance with the Residential Tenancy Branch (RTB) Rules of Procedure (Rules).

Preliminary and Procedural Matters

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 6.11. The parties were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, the parties were informed that if any recording was surreptitiously made and used for any purpose, they will be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation under the Act. Neither party had any questions about my direction pursuant to RTB Rule 6.11.

In addition, the parties confirmed their respective email addresses at the outset of the hearing and stated that they understood that the decision and any applicable orders would be emailed to the applicable party.

Issues to be Decided

- Is the landlord entitled to a monetary order under the Act, and if so, in what amount?
- What should happen to the tenant's security deposit under the Act?
- Is the landlord entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

The tenancy agreement was submitted in evidence. A month to month tenancy began on May 1, 2017. The parties agreed that monthly rent in the amount of $850.00 was due on the first day of each month and was never increased during the tenancy. A security deposit of $425.00 was paid by the tenant at the start of the tenancy, which the landlords continue to hold.

The landlords have applied to retain the tenant's $425.00 security deposit only, plus the filing fee. The landlords set out the total amount of $634.25 in support of their application as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Cleaning 1	$100.00
2. Cleaning 2	$50.00
3. Garbage dump	$11.75
4. Graffiti removal	$472.50
TOTAL	**$634.25**

As noted above, the landlords are limiting their claim to $425.00 plus the filing fee.

Firstly, there is no dispute that an incoming Condition Inspection Report (CIR) was not completed, which I will address later in this decision. Secondly, the tenancy ended on November 30, 2020, which was the date the tenant vacated the rental unit.

The outgoing CIR was dated November 30, 2020 and was not signed by the landlord or the tenant. The tenant did provide their written forwarding address on the outgoing CIR,

which was submitted in evidence. The landlord filed their application on December 11, 2021.

The tenant stated that they did not agree to any deductions from their $425.00 security deposit and does not agree with the landlords' claim. The tenant also denies that the rental unit was new at the start as the rental unit had used windows in it for example.

Given that item 4 was in the amount of $472.50, which exceeds the amount of the security deposit being claimed, I will address that item first. The landlords have claimed $472.50 for the cost to remove yellow spray-paint lines from outside of the rental unit. Several photos were submitted in evidence, which were reviewed. The landlords also submitted an invoice in the amount of $472.50 for the cost to steam-clean graffiti left on asphalt, with a note on the invoice that they were not able to remove all of the graffiti from the driveway. The invoice includes GST and is from a steam-cleaning with a GST registration number.

The tenant denied that they spray-painted the large yellow rectangle with an arrow and the number 6 on the asphalt directly in front of the entrance to the rental unit. The tenant also stated under oath that they did not know who sprayed the yellow paint on the asphalt. The tenant stated that he works with landlord SW, and that they have had a previous dispute. The landlord denied that any of the landlords or anyone else on behalf of the landlords sprayed their own driveway with the yellow paint. The landlord stated that the tenant sprayed the driveway with yellow paint in October 2020 after alleging that SW was coming too close to their entrance and due to COVID, the tenant must have been trying to enforce social distancing as the number 6 is painted with an arrow pointing to the rectangle outside of the rental unit entrance door.

The tenant's response to the landlords' claim was that the landlords extinguished their right to the security deposit as the landlords failed to complete an incoming CIR, which I will address later in this decision.

Although both parties provided evidence regarding the remainder of the landlords' claim, I do not find it necessary to review that evidence in this decision, for the reasons stated below.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Item 4 – As the tenant raised the issue of extinguishment, I will first address that issue. Section 24(2) of the Act applies and states:

> **Consequences for tenant and landlord if report requirements not met**
>
> **24**(2) The right of a 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 23 (3) *[2 opportunities for inspection]*,
>
> (b)having complied with section 23 (3), does not participate on either occasion, or
>
> (c)does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

In addition, RTB Policy Guideline 17, Security Deposit and Set off (Policy Guideline 17), states under 9, the following:

> 9. **A landlord who has lost the right to claim against the security deposit for damage to the rental unit,** as set out in paragraph 7, **retains the following rights:**
>
> • to obtain the tenant's consent to deduct from the deposit any monies owing for other than damage to the rental unit;
>
> • to file a claim against the deposit for any monies owing for other than damage to the rental unit;
>
> • to deduct from the deposit an arbitrator's order outstanding at the end of the tenancy; and
>
> • **to file a monetary claim for damages arising out of the tenancy, including damage to the rental unit.**
>
> [emphasis added]

As a result of the above, I am applying Policy Guideline 17 and I find the landlords filed their application on December 11, 2021, which is within 15 days of the tenant providing their written forwarding address on the outgoing CIR dated November 30, 2020. Therefore, I find the landlords are entitled to make the claim before me and I will now address the merits of that claim.

Firstly, section 37(2)(a) of the Act applies and 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, …**

[emphasis added]

I find the tenant's testimony that they did not spray-paint the yellow rectangle outside of their own rental unit to be unbelievable. I prefer the evidence of the landlord over that of the tenant as I find the landlord's explanation to be logical and consistent with a tenant that did not want their landlord within 6 feet of their entry door. Therefore, I find it more likely than not that the tenant, or a person asked by the tenant, spray the yellow spray-paint on the asphalt with an arrow and the number 6 to remind the landlords and possibly others not to come within 6 feet of their entrance. I also find that by doing this, the tenant is liable for all costs to repair the damage to the driveway. Based on the above, I find the tenant breached section 37(2) of the Act by purposely spray-painting the driveway with yellow paint. I find there is no logical explanation for the landlords to have damaged their own property.

I also find it is not necessary to consider any other evidence regarding items 1, 2 and 3 as item 4 exceeds the amount of the security deposit.

As a result, I find the landlords have provided sufficient evidence to retain the tenant's entire security deposit of $425.00, which has accrued no interest under the Act. Therefore, I authorize the landlords to retain the tenant's full **$425.00** security deposit effectively immediately pursuant to section 38 and 62(3) of the Act.

As the landlords were successful with their monetary claim, I grant the landlords the recovery of the filing fee in the amount of **$100.00** pursuant to section 72 of the Act**.** Therefore, pursuant to sections 67 and 72 of the Act, I grant the landlords a **$100.00** monetary order for the filing fee.

Conclusion

The landlords' claim was successful. The landlord has been authorized to retain the tenant's $425.00 security deposit as described above.

The landlords have also been granted a monetary order under section 67 for the balance owing by the tenant to the landlords in the amount of $100.00. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and

enforced as an order of that court. The tenant is also reminded that they could be held liable for all costs related to enforcement of the monetary order.

This decision will be emailed to both parties. The monetary order will be emailed to the landlords only for service on the tenant.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: April 27, 2021

Residential Tenancy Branch