Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, FFL

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The landlord applied for:

- a monetary order for loss under the Act, the regulation or tenancy agreement, pursuant to section 67;
- an authorization to retain a portion of the tenants' security deposit, under section 38; and
- an authorization to recover the filing fee for this application, under section 72.

The landlord and tenant EK attended the hearing. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing both parties affirmed they understand it is prohibited to record this hearing.

As both parties were present service was confirmed. The parties each confirmed receipt of the application and evidence (the materials). Based on the testimonies I find that each party was served with the respective materials, in accordance with sections 88 and 89 of the Act.

Issues to be Decided

Is the landlord entitled to:

1. a monetary order for loss?
2. an authorization to retain the tenants' security deposit?
3. 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 submission and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is the landlord's obligation to present the evidence to substantiate the application.

Both parties agreed the tenancy started on March 10, 2016 and ended on November 30, 2020. Monthly rent was $1,508.00, due on the first day of the month. At the outset of the tenancy a security deposit (the deposit) of $725.00 was collected. The landlord returned $116.50 on December 14, 2020 and $28.53 on January 01, 2021 and currently holds $579.97. The tenancy agreement was submitted into evidence.

Both parties also agreed a move-in inspection did not occur and a move-out inspection occurred on November 30, 2020, at which time the tenants provided their forwarding address in writing to the landlord. The condition inspection report (the report) was not submitted into evidence. The tenant did not authorize the landlord to retain the deposit. This application was filed on December 12, 2020.

The landlord affirmed when the tenancy started the rental unit was in excellent condition and when the tenancy ended the rental unit was not clean. The landlord submitted into evidence photographs showing the cupboards, the appliances (refrigerator, dishwasher and stove) and the bathroom were not clean. The landlord paid $278.24 (including taxes) to clean the 1 bedroom, 650 square feet rental unit, and submitted a receipt into evidence.

The tenant said when the tenancy started the rental unit was not clean and when the tenancy ended she did not clean some cupboards. The tenant affirmed she would have further cleaned the rental unit if the landlord had allowed her extra time. At a later point in the hearing the tenant testified the kitchen and the bathroom were reasonably clean. The tenant stated the report indicates the dishwasher and the fridge were clean when the tenancy ended.

The landlord stated the balcony was not clean when the tenancy ended. The landlord submitted photographs showing the balcony not clean. The landlord paid $52.11 (including taxes) to clean the balcony and submitted a receipt into evidence. The tenant agreed to pay this amount.

At a later point in the hearing both parties agreed the report indicates the kitchen, the bathroom and the balcony needed additional cleaning when the tenancy ended.

The landlord affirmed when the tenancy started the carpet was steam cleaned and when the tenancy ended the carpet was not clean. The landlord submitted into evidence photographs. The landlord paid $149.52 (including taxes) to steam clean the carpet and submitted a receipt into evidence. The tenant testified the carpet was clean when the tenancy ended. The tenant submitted into evidence a receipt indicating she rented a carpet cleaning machine on November 29, 2020 and photographs.

The landlord is claiming for $479.87. The landlord submitted a monetary order worksheet into evidence indicating higher amounts because these amounts were estimates the landlord had when she submitted the application.

Analysis

Section 7 of the Act states:

> 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.

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:
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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.

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 the case is on the person making the claim.

Deposit

Section 23(1) of the Act requires the landlord and tenant to complete a condition inspection report in accordance with the regulations on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day. Section 23(3) states the landlord must offer the tenant at least two opportunities for the move-in inspection.

Section 23(4) states: "The landlord must complete a condition inspection report in accordance with the regulations."

As the landlord did not offer the tenant two opportunities for the move-in inspection and did not conduct one, I find the landlord did not comply with section 23(4) of the Act. Thus, the landlord extinguished her right to claim against the deposit, per section 24(2)(c) of the Act:

> 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.**
>
> **(emphasis added)**

Residential Tenancy Branch Policy Guideline 17 states the landlord extinguishes the right to retain or file a claim against a deposit if:

> 7. The right of a landlord to obtain the tenant's consent to retain or file a claim against a security deposit for damage to the rental unit is extinguished if9:
> • **the landlord does not offer the tenant at least two opportunities for inspection as required** (the landlord must use Notice of Final Opportunity to Schedule a Condition Inspection (form RTB-22) to propose a second opportunity);
> […]
> 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 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]

Section 38(1) of the Act requires the landlord to either return the tenant's 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.

The forwarding address was provided in writing on November 30, 2020. The landlord returned $116.50 on December 14, 2020 and $28.53 on January 01, 2021 and retained $579.97 from the deposit.

In accordance with section 38(6)(b) of the Act, as the landlord extinguished her right to claim against the deposit and did not return the full amount of the deposit within the timeframe of section 38(1) of the Act, the landlord must pay the tenants double the amount of the deposit.

Residential Tenancy Branch Policy Guideline 17 is clear that the arbitrator will double the value of the deposit when the landlord has not complied with the 15 day deadline; it states:

> 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 A: A tenant paid $400 as a security deposit. At the end of the tenancy, the landlord held back $125 without the tenant's written permission and without an order from the Residential Tenancy Branch. The tenant applied for a monetary order and a hearing was held.
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> The arbitrator doubles the amount paid as a security deposit ($400 x 2 = $800), then deducts the amount already returned to the tenant, to determine the amount of the monetary order. In this example, the amount of the monetary order is $525.00 ($800 - $275 = $525).

Under these circumstances and in accordance with section 38(6)(b) of the Act, I find the tenants are entitled to a monetary award of $1,304.97 (double the deposit of $725.00 minus the $145.03 returned).

Kitchen and bathroom 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 out in the Residential Tenancy Act.**

First the tenant said she did not clean some cupboards, later the tenant affirmed she would have further cleaned the rental unit if the landlord has allowed her extra time and that the kitchen and bathroom were reasonably clean. I find the tenant's testimony was not convincing.

Based on the photographs, the detailed and convincing landlord's testimony and the invoice, I find the tenant breached section 37(2)(a) of the Act by not cleaning the rental unit at the end of the tenancy. The landlord has proven the value of her loss from this breach with the receipt submitted into evidence and I award the landlord $278.24 for cleaning expenses.

Balcony cleaning

The tenant agreed to pay the amount of $52.11 for balcony cleaning.

As such, I award the landlord the amount of $52.11.

Carpet cleaning

Residential Tenancy Branch Policy Guideline 1 states the tenant is responsible for cleaning the carpet at the end of the tenancy:

CARPETS

1. At the beginning of the tenancy the landlord is expected to provide the tenant with clean carpets in a reasonable state of repair.
2. The landlord is not expected to clean carpets during a tenancy, unless something unusual happens, like a water leak or flooding, which is not caused by the tenant.
3. **The tenant is responsible for periodic cleaning of the carpets to maintain reasonable standards of cleanliness. Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year.** Where the tenant has deliberately or carelessly stained the carpet he or she will be held responsible for cleaning the carpet at the end of the tenancy regardless of the length of tenancy.

(emphasis added)

Based on the photographs submitted by both parties and the carpet cleaning receipt dated November 29, 2020 submitted by the tenant, I find the carpet had reasonable wear and tear and was reasonably clean when the tenancy ended.

I find the landlord has not proved, on a balance of probabilities, that the tenants failed to comply with the Act or tenancy agreement.

Thus, I dismiss the landlord's claim for carpet cleaning expenses.

Filing fee and summary

As the landlord was partially successful in this application, the landlord is entitled to recover the $100.00 filing fee.

The tenants are awarded a monetary award of $1,304.97.

The landlord is awarded:

Item	**Amount $**
Kitchen and bathroom cleaning	278.24
Balcony cleaning	52.11
Filing fee	100.00
Total	**430.35**

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 tenants	$1,304.97
Award for the landlord	$430.35
Final award for the tenants	**$874.62**

Conclusion

Pursuant to section 38(6)(b) of the Act, I grant the tenants a monetary order in the amount of $874.62.

The tenants are provided with this order in the above terms and the landlord must be served with **this order**. 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: April 26, 2021

Residential Tenancy Branch