



Dispute Resolution Services

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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 damages for losses under the *Act*, permission to retain the security deposit and for the return of their filing fee. The matter was set for a conference call.

Both Tenants and the Landlord attended the conference call hearing and were affirmed to be truthful in their testimony. Both parties were provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing. Both parties were advised of section 6.11 of the Residential Tenancy Branches Rules of Procedure, prohibiting the recording of these proceedings.

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.

Issues to be Decided

- Is the Landlord entitled to monetary compensation for damages under the *Act*?
- Is the Landlord entitled to retain the security deposit for this tenancy?
- Is the Landlord entitled to the return of their 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 recorded that this tenancy began on August 10, 2019, as a month-to-month tenancy. Rent in the amount of \$1,175.00 was to be paid by the tenth

day of each month, and the Landlord had been given a \$587.50 security deposit at the outset of the tenancy. Both parties submitted a copy of the tenancy agreement into documentary evidence.

The Landlord testified that they did not complete a written move-in or move-out inspection for this tenancy.

The parties agreed that this tenancy ended on January 26, 2021, due to a Two-month notice to end tenancy for the Landlord's use of the property and the Tenants decision to move out early under that notice.

The Landlord testified that when they took back possession of the rental unit, there was damage to the toilet, causing a water leak. The Landlord testified that the Tenants had installed a bidet without their permission and that when the Tenants removed the bidet at the end of tenancy, they stripped the screw holding the water line to the toilet, causing it to leak. The Landlord testified that they called a plumber who advised them that due to work involved in repairing the connection, it would be best to it just replace the whole toilet. The Landlord is requesting \$587.50 in the recovery of their costs to replace the toilet. The Landlord submitted a copy of the plumbing bill, two undated pictures and an undated video into documentary evidence.

The Tenants testified that they agreed they had installed a bidet but that the Landlord had asked them to remove it in June 2019, which they did remove as requested. The Tenants testified that the toilet worked well during their tenancy and that there was no leak at the end of their tenancy. The Tenants submitted a video recording of the rental unit taken January 23, 2021, into documentary evidence.

The Tenants testified that they served a written letter to the Landlord on January 23, 2021, providing the Landlord with their forwarding address by leaving a copy of the letter in the Landlord's mailbox. The Tenants testified that they served their forwarding address to the Landlord a second time on May 14, 2021. The Tenants submitted copies of both forwarding address letters and a video record of the service into documentary evidence.

Analysis

Based on the evidence before me, the testimony of the Landlords, and on a balance of probabilities that:

I accept the testimony of the Landlord that they did not conduct the move-in inspection for this tenancy. Section 23 of the *Act* states the following:

Condition inspection: start of tenancy or new pet

23 (1) *The landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.*

(2) *The landlord and tenant together must inspect the condition of the rental unit on or before the day the tenant starts keeping a pet or on another mutually agreed day, if*

(a) the landlord permits the tenant to keep a pet on the residential property after the start of a tenancy, and

(b) a previous inspection was not completed under subsection (1).

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

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

(5) *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.*

(6) *The landlord must make the inspection and complete and sign the report without the tenant if*

(a) the landlord has complied with subsection (3), and

(b) the tenant does not participate on either occasion.

I find that the Landlord breached section 23 of the *Act* when they did not complete the required move-in inspection of the rental unit at the beginning of this tenancy. Section 24(2) of the *Act* outlines the consequence for a landlord when the inspection requirements are not met.

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.

Pursuant to section 24(2) of the *Act*, I find that the Landlord extinguished their right to make a claim against the security deposit for damage to the residential property for this tenancy.

Section 38 of the *Act* sets the requirements on how a security deposit is handled at the end of a tenancy, stating the following:

Return of security deposit and pet damage deposit

38 (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.*

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) [tenant fails to participate in start of tenancy inspection] or 36 (1) [tenant fails to participate in end of tenancy inspection].

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

- (a) the director has previously ordered the tenant to pay to the landlord, and*
- (b) at the end of the tenancy remains unpaid.*

(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.*

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) [landlord failure to meet start of tenancy condition report requirements] or 36 (2) [landlord failure to meet end of tenancy condition report requirements].

I accept the agreed-upon testimony of these parties, and I find that this tenancy ended on January 26, 2021, the dated the Landlord took back possession of the rental unit. In addition, I accept the testimony of the Tenants, supported by their documentary evidence that they had provided their forwarding address to the Landlord in writing on January 23, 2021, by leaving a letter containing their new address in the Landlord's mailbox. This is also supported by the Landlord's application for these proceedings, where the Landlord listed the address for the Tenants on their application to this office as the address provided by these Tenants' in their letter. I find that the Landlord was deemed to have received the Tenants forwarding address on January 26, 2021, three days after the letter was left in the Landlord's mailbox, pursuant to the deeming provisions set out in section 90 of the *Act*.

Accordingly, the Landlord had until February 10, 2021, to comply with sections 38(1) and 38(5) of the *Act* by repaying the security deposit in full to the Tenants, as the Landlord had extinguished their right to claim against the deposit for damages caused during this tenancy.

However, in this case, the Landlord did not return the security deposit, as required, but instead made a claim against the deposit for damages even though they had extinguished their right to make this claim when they did not complete the move-in inspection as required by the *Act*.

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 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 security deposit for this tenancy has double in value to the amount of \$1,175.00.

As for the Landlord's, claim for the recovery of their cost to replace a toilet, in the amount of \$587.50, 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.

In order to decide if the Landlord is entitled to their requested claim, I must first determine if there has been a breach of the *Act* by these Tenants. Pursuant to section 37 of the *Act*, a tenant is required to return the rental unit and property in an unclean and undamaged state at the end of a tenancy. Section 37(2) of the *Act* states the following:

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.

Throughout these proceedings, the parties offered conflicting verbal testimony regarding the condition of the toilet at the end of this tenancy. 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, it is the Landlord, as the applicant to these proceedings, who holds the burden of providing proof beyond their verbal testimony to establish their entitlement to their claim.

Normally, an Arbitrator will look to the move-in/move-out inspection 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. In the absence of that document, I must rely upon the Landlord's supporting documentary evidence to establish the condition of the rental unit at the beginning and the end of the tenancy.

I have carefully reviewed the Landlord's documentary evidence, and I find that the Landlord has not provided any evidence to prove the condition of this rental unit at the beginning of the tenancy and has insufficient evidence to show the condition of the rental unit at the end of this tenancy.

The Tenants, on the other hand, have provided a date stamped video, showing a full walkthrough of the rental unit on January 23, 2021, and I noted that the toilet in question looked reasonably clean and in normal working order.

Overall, I find that the Landlord has provided insufficient evidence to support their claim for the recovery of the costs of a full replacement of a toilet in the rental unit at the end of tenancy; therefore, I dismiss the Landlord's claim.

Additionally, 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 not been successful in their application, I find that the Landlord is not entitled to the recovery of their \$100.00 filing fee paid for this application.

I order the Landlord to return the \$1,175.00 security deposit they are holding for this tenancy to the Tenants within 15 days of the date they received this decision.

In order to ensure compliance with the above order, I grant the Tenants a **Monetary Order** in the amount of **\$1,175.00** for the return of their security deposit pursuant to section 38 of the *Act*.

Conclusion

I dismiss the Landlord's claim for damages in its entirety.

I find that the Landlord breached sections 23 and 38 of the *Act* when they failed to conduct the move-in inspection and failed to repay the security deposit for this tenancy to the Tenants as required for this tenancy.

Due to the Landlord's breach of the *Act*, I find that the value of the security deposit paid for this tenancy has doubled in value due to the Landlord's breach of section 38 of the *Act*. I order the Landlord to return the doubled security deposit they are holding for this tenancy to the Tenant within 15 days of the date they received this decision.

I grant the Tenants a **Monetary Order** in the amount of **\$1,175.00** for the return of their security deposit pursuant to sections 38 and 67 of the *Act*. The Tenants are 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 2, 2021

Residential Tenancy Branch