Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes For the tenants: MNDCT, FFT
For the landlord: MNDL-S, FFL

Introduction

This hearing dealt with two applications. The tenant's application pursuant to the Residential Tenancy Act (the Act) is for:

- a monetary order for loss under the Act, the regulation or tenancy agreement, pursuant to section 67; and
- an authorization to recover the filing fee for this application, under section 72.

The landlord's application pursuant to the Act is for:

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

Both parties attended the hearing. Tenant EN represented tenant JF. Both tenants were assisted by advocates CM (the tenant) and HB. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

I note the tenant's application lists tenant EN as applicant and landlord JL as respondent. The landlord's application lists landlord JL as applicant and tenants EN and JF as respondents.

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

Per section 95(3) of the Act, the parties may be fined up to $5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than $5 000."

Preliminary Issue – Crossed Applications

The hearing of the tenant's application was scheduled for August 20, 2021 and the hearing of the landlord's application was scheduled for February 08, 2022.

At the outset of the hearing both parties agreed to hear both matters on August 20, 2021.

Pursuant to Section 73(2) of the Act and Rule of Procedure 2.14 I crossed the tenant's and the landlord's applications and heard them on August 20, 2021.

Preliminary Issue – Correction of the Tenant's Name

At the outset of the hearing tenant EN corrected the spelling of her first name. Pursuant to section 64(3)(a) of the Act, I have amended the tenant's and the landlord's applications.

Preliminary Issue – Tenant's application for a Monetary Order

The tenant's application states:

> I want all of part of my security deposit and/or pet damage deposit back. Total amount you are seeking: 6,500.00.
> We requested the return of the damage deposit and pet damage deposit but neither have been returned. The landlord gave us a cheque for the pet damage deposit but we were unable to cash it because it was in both my husband and my name and we do not have a joint account.

The tenant's notice of hearing states: "I want compensation for my monetary loss of other money owed. $6,500.00."

The landlord affirmed he understands the tenant is claiming for an order for the return of double the security and pet damage deposits (the deposits).

As such, I accept the tenant's application for an order for the return of double the deposits under section 38 of the Act.

Preliminary Issue – Service

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

Are the tenants entitled to:

1. an order for the landlord to return double the deposits?
2. an authorization to recover the filing fee?

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?

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 and tenant's claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is the applicants' obligation to present the evidence to substantiate their applications.

Both parties agreed the tenancy started on November 20, 2019 and ended on January 31, 2021. The parties conducted a move-in inspection at the outset of the tenancy. Monthly rent was $3,250.00, due on the first day of the month. A copy of the tenancy agreement was submitted into evidence. It indicates the tenants are EN and JF and the pet damage deposit is $1,625.00.

The tenant affirmed the landlord collected a security deposit of $1,625.00 and a pet damage deposit of $1,625.00 and holds in trust the deposits in the amount of $3,250.00.

The landlord stated he collected a security deposit of $1,625.00 at the outset of the tenancy and a pet damage deposit of $1,600.00 in cash at a later point. The landlord was expecting the tenant to pay a pet damage deposit of $1,625.00, but he noticed the

tenant paid $1,600.00 after he collected the money. The tenant testified she has a receipt for the pet damage deposit in the amount of $1,625.00.

The tenant did not authorize the landlord to retain the deposits. The tenant confirmed receipt of a cheque (submitted into evidence) dated February 17, 2021 in the amount of $1,600.00 for part of the pet damage deposit addressed to tenants EN and JF. The tenant said the cheque could not be cashed because EN and JF do not have a joint bank account.

The tenant affirmed that she did not provide her forwarding address and confirmed she received from the landlord a copy of the condition inspection report (the report) on February 26, 2021 containing the forwarding address. The tenant corrected the forwarding address during the hearing (recorded on the cover page of this decision).

The landlord stated he learned of the tenants' forwarding address from another landlord. The landlord wrote the tenants' forwarding address in the report and sent a copy of the report to the tenants. The address recorded in the report has a different number from the address confirmed by the tenant during the hearing.

The landlord confirmed receipt of the tenants' notice to end tenancy (the tenants' notice) on December 31, 2020 indicating the tenants will vacate the rental unit on January 31, 2021. The landlord testified he tried to schedule a move-out inspection multiple times by calling the tenants and knocking on the rental unit's door, but the tenants did not communicate with the landlord. The landlord said he may have received the rental unit's keys on January 31, 2021 at night. The landlord attached the notice of final opportunity to schedule the move-out inspection (the notice of final opportunity) on the rental unit's door on February 01, 2021.

The tenant affirmed the landlord did not schedule the move-out inspection and that she returned the keys to the landlord's mother on January 31, 2021 at 8:00 P.M. because the landlord was not at the rental unit. The landlord's mother refused to conduct the move-out inspection. The landlord stated his mother is not authorized to represent him and he inspected the rental unit alone on January 31, 2021.

Both parties agreed the rental unit is a 3-bedroom, 1,800 square feet house built in the 1970s and it was in good condition when the tenancy started.

The landlord is claiming for $469.17 for plumbing expenses. The landlord testified the tenant damaged the bathroom pipes and sink. The tenant said she did not damage the bathroom. The landlord submitted into evidence an invoice for plumbing expenses in the amount of $469.17. The invoice states: “Replace 1 kitchen faucet + 1 bathroom faucet, replace 2 shut-off valves”

The landlord is claiming for $240.00 for cleaning expenses. The landlord affirmed the rental unit’s appliances, kitchen counter and walls were dirty when the tenancy ended and the landlord paid $240.00 for eight hours of cleaning. The landlord submitted into evidence an invoice and eleven photographs taken on January 31 and February 01, 2021 showing dirty appliances, walls and floor. The tenant stated the rental unit was clean when the tenancy ended. The tenant submitted into evidence four photographs taken on January 31, 2021 showing clean appliances, walls and floor.

The landlord is claiming for $162.20 for stove repair expenses. The landlord testified the stove was new when the tenancy started and the tenant damaged two burners. The landlord submitted into evidence an invoice for stove repair in the amount of $176.41. The tenant said she did not damage the stove. Later the tenant affirmed that all the burners were working when the tenancy started, three burners broke during the tenancy and she did not ask the landlord to repair them.

The landlord is claiming for $1,075 for painting expenses. The landlord stated the rental unit was painted in July 2019 and the tenants damaged the painting and the drywall. The landlord submitted into evidence an invoice for $1,075.00 dated February 03, 2021:

> Description: Patch marked walls, paint wall that required painting, many walls needed full paint as they were heavily marked, fix caulking issues, replace boards as needed, paint ceiling that was heavily marked up, fix flooring as needed.

The tenant testified the invoice does not identify the rooms painted, she is not responsible for caulking and replacing the boards and that she did not damage the walls.

The landlord submitted into evidence a monetary order worksheet indicating a total claim in the amount of $1,946.37.

Analysis

Section 7 of the Act states:

> Liability for not complying with this Act or a tenancy agreement
> (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:
>
> - 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.

Move-out Inspection

Section 35 of the Act requires the landlord to offer the tenant at least 2 opportunities for the move-out inspection and to complete the report in accordance with the regulations.

Regulation 17 states:

> (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.

Section 88 of the Act provides:

> All documents, other than those referred to in section 89 [special rules for certain documents], that are required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways:
> (a)by leaving a copy with the person;
> (b)if the person is a landlord, by leaving a copy with an agent of the landlord;
> (c)by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
> (d)if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;
> (e)by leaving a copy at the person's residence with an adult who apparently resides with the person;
> (f)by leaving a copy in a mailbox or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;
> (g)by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;
> (h)by transmitting a copy to a fax number provided as an address for service by the person to be served;
> (i)as ordered by the director under section 71 (1) [director's orders: delivery and service of documents];
> (j)by any other means of service provided for in the regulations.

Based on the landlord's uncontested testimony, I find the landlord did not serve the notice of final opportunity in accordance with section 88 of the Act, as the landlord served the notice of final opportunity by attaching it to the rental unit's door after the tenants moved out.

As the landlord did not serve the notice of final opportunity in accordance with section 88 of the Act, I find the landlord did not comply with regulation 17 and section 35 of the Act.

Regulation 21 provides:

> Evidentiary weight of a condition inspection report
> 21 In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary

I find the move-out report has no evidentiary weight, as the landlord did not complete it in accordance with the regulations.

Plumbing repair expenses

Section 32(3) of the Act states: "A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant".

The parties agreed the rental unit was in good condition when the tenancy started. Based on the landlord's convincing testimony and the invoice, I find, on a balance of probabilities, the tenants breached section 32(3) of the Act by failing to repair the plumbing damage and the landlord suffered a loss of $469.17.

As such, I award the landlord $469.17 for plumbing expenses.

Cleaning expenses

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.

I find the photographs submitted by the landlord offer a better perspective of the rental unit's cleanliness condition when the tenancy ended than the photographs submitted by the tenant.

Based on the landlord's convincing testimony, the photographs and the invoice, I find, on a balance of probabilities, the tenants breached section 37(2)(a) of the Act by failing to clean the rental unit when the tenancy ended and the landlord incurred a loss in the amount of $240.00.

I award the landlord $240.00 for cleaning expenses.

Stove repair expenses

The tenant's testimony was not convincing. Based on the landlord's convincing testimony and the invoice, I find, on a balance of probabilities, the tenants breached section 32(3) of the Act by failing to repair the stove and the landlord suffered a loss of $176.41.

The landlord applied for compensation in the amount of $162.20. As such, I award the landlord $162.20 for stove repair expenses.

Painting expenses

Residential Tenancy Branch Policy Guideline 1 states:

> 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.
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.

(emphasis added)

Based on the landlord's testimony, the photographs and the invoice, I find, on a balance of probabilities, the tenants breached section 37(2)(a) of the Act by failing to paint the damaged walls and the landlord incurred a loss.

The invoice submitted by the landlord indicates the $1,075.00 expense was for painting, as well as caulking and replacing boards. I find the landlord failed to prove, on a balance of probabilities, that he suffered a loss of $1,075.00 for painting.

Residential Tenancy Branch Policy Guideline 40 states the useful life of interior painting is 4 years. The paint was 1,5 year old when the tenancy ended.

Considering the rental unit's size and the age of the painting when the tenancy ended, I award the landlord $400.00 for painting expenses.

Deposits
Based on the tenant's more convincing testimony and the tenancy agreement, I find the landlord collected a pet damage deposit in the amount of $1,625.00.

I accept the tenant's undisputed testimony that the landlord returned the amount of $1,600.00 from the pet damage deposit. I find the landlord retained and currently holds the amount of $25.00 from the pet damage deposit and $1,625.00 from the security damage deposit, totalling $1,650.00.

Section 38(1) of the Act requires the landlord to either return the tenant's deposit in full or file for dispute resolution for an authorization to retain the deposit 15 days after the later of the end of a tenancy and upon receipt of the tenant's forwarding address in writing.

As the tenants did not provide their forwarding address in writing, the timeframe of section 38(1) did not start.

Thus, I dismiss the tenant's claim for an order for the return of double the deposits.

Filing fee and Summary

As the landlord was successful in his application, I find the landlord is entitled to recover the $100.00 filing fee.

The tenant must bear the cost of her filing fee, as the tenant was not successful.

In summary, the landlord is awarded:

Item	**Amount $**
Plumbing expenses	469.17
Cleaning expenses	240.00
Stove repair	162.20
Painting	400.00
Filing fee	100.00
Total	1,371.37

Residential Tenancy Branch Policy Guideline 17 states:

> 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.

As such, the landlord is authorized to retain the amount of $1,371.37 from the balance of the security and pet damage deposits to offset the monetary award for losses incurred due to the tenants' non-compliance with the Act. The landlord must return the balance of the deposits in the amount of $278.63.

Conclusion

Pursuant to section 38, 67 and 72 of the Act, I authorize the landlord to retain the amount of $1,371.37 from the tenants' deposits in total satisfaction of the losses incurred and grant the tenants a monetary award in the amount of $278.63.

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: August 25, 2021

Residential Tenancy Branch