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 (the Application) that was filed by the Landlord under the *Residential Tenancy Act* (the *Act*), seeking:

- Compensation for damage caused by the Tenant, their pets, or their guests to the unit, site, or property;
- Authorization to withhold a pet damage deposit or security deposit; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call at 1:30 PM on November 15, 2021, and was attended by the Landlord M.T., the Landlord's parent L.T., who is also part owner of the rental unit, the Tenant, and the Tenant's roommate K.B. The Tenant acknowledged service of the Notice of Dispute Resolution Proceeding Package, which includes a copy of the Application and the Notice of Hearing, from the Landlord and raised no concerns with regards to method or timing of service. As a result, the hearing proceeded as scheduled. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. All testimony was affirmed.

The parties were advised that pursuant to rule 6.10 of the Rules of Procedure, interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The parties were asked to refrain from speaking over one another and to hold their questions and responses until it was their opportunity to speak. The Parties were also advised that pursuant to rule 6.11 of the Rules of Procedure, recordings of the proceedings are prohibited, except as allowable under rule 6.12, and the parties confirmed that they were not recording the proceedings.

Although I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the *Act* and Residential Tenancy Branch Rules of Procedure (the Rules of Procedure), I refer only to the relevant and determinative facts, evidence, and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be emailed to them at the email addresses provided in the hearing.

Preliminary Matters

Preliminary Matter #1

I am satisfied that an inadvertent clerical error occurred in the filing of the Application whereby the Landlord misspelled the street name in the address for the rental unit. As the street name is correctly spelled in the Tenancy agreement and in various other documents before me for consideration, and I am satisfied the spelling in the tenancy agreement is accurate based on the Canada Post information available matching the postal code, I amended the street name in the Application accordingly.

Preliminary Matter #2

At the hearing A.B. and K.B. stated that K.B. was also a tenant of the rental unit. The Landlord M.T. disagreed, stating that only A.B. was a tenant as only A.B. was named in the tenancy agreement.

The tenancy agreement in the documentary evidence before me for consideration names only M.T. as the Landlord and A.B. as the Tenant. As a result, I find that only M.T. is the Landlord and only A.B. is the Tenant under the tenancy agreement. While I acknowledge that K.B. may have resided in the rental unit as well, I find that they were an occupant of the rental unit as A.B.'s roommate, rather than a tenant under the *Act* and the tenancy agreement. I also acknowledge that S.T., who was named as a landlord in the Application, acted on M.T.'s behalf during the tenancy but as they are not named as the Landlord in the tenancy agreement, I find that they were an agent of the Landlord not the landlord under the tenancy agreement.

Based on the above, I have named only M.T. as the Landlord and A.B. as the Tenant in this decision and any accompanying orders.

Preliminary Matter #3

At approximately 1:43 PM I was disconnected from the teleconference hearing without notice, likely due to a service outage as the result of severe inclement weather. I called back in from another phone shortly thereafter and all the participants showed as connected to the teleconference and confirmed that they could hear me.

Towards the end of the hearing, I experienced several brief periods of dead air, likely as the result of cellular tower outages due to severe inclement weather. However, I was not disconnected from the teleconference and after each instance I confirmed with the parties that we could all hear one another, confirmed what we had all last stated and heard, and picked up the hearing from where we had left off.

Towards the end of the hearing, I also lost power and my internet connection due to severe inclement weather, neither of which were restored before the end of the hearing. As a result, I advised the parties that I was unable to view their documentary evidence or the online dispute resolution system in real-time during the remainder of the hearing. However, I was able to continue the hearing from my cellular phone and reassured the parties that I had reviewed their documentary evidence prior to the hearing and that I would re-review it with the evidence and testimony presented during the hearing in mind, prior to rendering a decision.

Preliminary Matter #4

The parties acknowledged at the start of the hearing that they had received each other's documentary evidence and raised no concerns with regards to the documentary evidence, its method of service or the date of service. However, near the end of the hearing the Tenant stated that although they had received copies of the painting invoice and the cleaning invoice, they were in a format that could not be opened by them. As a result, the Tenant stated that they could only view the cleaning bill as they had received a separate copy by email on a different date.

I asked the Tenant if they had alerted the Landlord to their inability to view the documents and they stated they had not, as they only realized they could not open them when they were going through the Landlord's documentary evidence "moments" before the hearing.

Rule 3.10.5 of the Rules of Procedure states that the format of digital evidence must be accessible to all parties and that before the hearing, a party providing digital evidence to

the other party must confirm that the other party has playback equipment or is otherwise able to gain access to the evidence. It also states that if a party or the Residential Tenancy Branch (the Branch) is unable to access the digital evidence, the arbitrator may determine that the digital evidence will not be considered.

There is no evidence before me that the Landlord, prior to the hearing, confirmed with the Tenant that they could access and view the digital evidence sent to them via email, as required by rule 3.10.5 and at the hearing the Tenant provided affirmed testimony that they could not access two of the documents due to their format; the cleaning invoice and the painting invoice. As the Tenant stated that they had received a different copy of the cleaning invoice that was accessible to them, I have accepted the cleaning invoice from the Landlord for consideration. However, as I accept that the Tenant could not access the painting invoice, and I am not satisfied that the Landlord complied with the requirements set out in rule 3.10.5 of the Rules of Procedure, I have excluded the painting invoice from consideration.

Issue(s) to be Decided

Is the Landlord entitled to compensation for damage caused by the Tenant, their pets, or their guests to the unit, site, or property?

Is the Landlord entitled to withhold a pet damage deposit or security deposit?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The tenancy agreement in the documentary evidence before me, dated December 12, 2020, states that the one year fixed term tenancy commenced on January 1, 2021, and was set to end on December 31, 2021. It states that rent in the amount of $1,450.00 is due on the first day of each month, that one tabby cat is permitted in the suite, and that a $500.00 pet deposit is required. It also states that the Landlord is responsible for paying for electricity, water/sewer, natural gas, heating oil/propane and garbage collection and that the Tenant is responsible for the provision of their own internet, cable, and telephone services.

At the hearing the parties agreed that the terms of the tenancy agreement set out above are correct. However, the parties disputed whether a $725.00 security deposit was also required, and if so, what portion of it was paid by the Tenant. The Landlord stated that in

addition to first months rent and the $500.00 pet damage deposit set out in the tenancy agreement, the Tenant was also required to pay half a month rent as a security deposit. The Landlord stated that the Tenant only ever paid $500.00 towards the $1,225.00 owed for deposits, which they attributed to the security deposit. The Landlord stated that they did not take issue with the fact that the Tenant had failed to pay the remaining $225.00 of the security deposit or the $500.00 pet damage deposit as the tenancy appeared to be going well at first, and later when the tenancy relationship began to deteriorate, it did not seem worth it to pursue these amounts.

The Tenant denied that a security deposit was ever required by the Landlord and stated that only the $500.00 pet damage deposit was required and paid. In support of their testimony that only a pet damage deposit was required, the Tenant pointed to the written tenancy agreement in the documentary evidence before me from the Landlord, wherein there is no mention of a security deposit. The Tenant also pointed to an etransfer record dated December 13, 2020, showing an etransfer of $1,950.00 to a person with the same name as the Landlord. In the message details for the etransfer it states, “First month’s rent + pet deposit”. Further to this, the Tenant stated that the Landlord never contacted them to request a security deposit and argued that the Landlord has not submitted any proof regarding the alleged requirement for them to pay a security deposit, such as email communications to that affect, as they do not exist.

Despite their disagreement regarding the purpose of the $500.00 paid by the Tenant to the Landlord on December 13, 2020, the Landlord agreed this amount was paid and that it was still held in trust by them.

Although the parties agreed that there was a mutual agreement to end the tenancy effective May 1, 2021, they disagreed about the date the Tenant actually vacated the rental unit. The Tenant stated that they and their roommate vacated the rental unit on May 1, 2021, as agreed upon and pointed to an email in the documentary evidence before me sent on May 1, 2021, at 9:37 PM stating that they had moved out and left the keys in the mailbox as requested. In contrast, the Landlord stated that the Tenant did not move out until the following day. No corroboratory evidence was submitted by them in support of this testimony. The parties also disagreed about the date upon which the Landlord had received the Tenant’s forwarding address in writing with the Tenant stating that it was sent by registered mail on May 12, 2021, and emailed on May 7, 2021, and the Landlord stating that it was only received by email on May 13, 2021.

The Tenant provided a copy of the registered mail receipt showing the tracking number and that the registered mail was sent on May 12, 2021. The Tenant also provided a

copy of the returned envelope, addressed to the Landlord, with the tracking number still attached, as the Tenant stated that the registered mail was never picked up by the Landlord and was ultimately returned. The Canada Post online tracking system shows that the registered mail was sent on May 12, 2021, that notice cards were left on May 14, 2021, and May 19, 2021, and that the package was returned to sender on May 31, 2021, as it was unclaimed by the recipient. The Landlord confirmed that no registered mail was received.

Although the parties agreed that the move-in condition inspection was completed in an unorthodox manner (by the Tenant via face time and the provision of photographs from the Tenant to the Landlord/their agent) due to the pandemic and the unavailability of the Landlord and their agent at a time acceptable to the Tenant, everyone agreed that it was completed in a satisfactory manner, and that all parties received copies of the move out-condition inspection report as required by the *Act* and regulation. While the parties agreed at the hearing that the move-out condition inspection was to take place in a similar manner on May 2, 2021, and that it did not occur, they disagreed about why. The Landlord stated that it was agreed that the move-out inspection would occur at 1:30 PM on May 2, 2021, and that when they called the Tenant at the appointment time, the call was immediately declined. The Landlord stated that they called the Tenant two more times, with a brief period in between each call, and that each of the calls was declined. The Landlord stated that they then attempted to reach the Tenant by facetime, which was also declined. The Landlord stated that the move-out condition inspection was then completed without the Tenant.

Although the Landlord stated that a move-out condition inspection report was completed, a copy was not provided for my review and consideration and the Tenant denied receipt. The Landlord stated that even after the move-out condition inspection had been completed, they tried to reach the Tenant by email to arrange for a final opportunity to complete it in-person, rather than via face time if that would work better for the Tenant, but the Tenant did not agree. In contrast the Tenant stated that although there had been agreement to complete the move-out inspection on May 2, 2021, they had never been provided with a time, despite repeated requests that they be given an exact time for the inspection. In support of this testimony the Tenant pointed to two emails in the documentary evidence before me, one dated April 25, 2021, and one dated May1, 2021, wherein they request an exact time for the move-out condition inspection on May 2, 2021. The Tenant stated that it was not until the Landlord emailed them on May 2, 2021, that they were given a specific time for an inspection, which was 7:00 PM. The Tenant stated that time did not work for them and that no further efforts

were made by the Landlord to reschedule. The Tenant also denied receiving or declining the Landlords calls on May 2, 2021.

Although the Tenant stated that they had left the rental unit reasonably clean and undamaged except for pre-existing damage and reasonable wear and tear, the Landlord disagreed. Although the Landlord sought $1,470.00 in cleaning costs in their Application, at the hearing they reduced this amount to $280.00, the cost of cleaning the stove and oven. The Landlord stated that the stove and over were very dirty and did not appear to have been cleaned at all. In support of this testimony they provided several photographs and a cleaning invoice. In contrast the Tenant stated that they had cleaned the apartment thoroughly, and left the rental unit, including the stove and oven in a similar state to the one it was in at the start of the tenancy. The Tenant also stated that stove and oven has pre-existing staining. As a result, the Tenant stated that the Landlord should not be entitled to any cleaning costs.

The Landlord also sought recovery of $433.93 in wall repair and painting costs as they and L.T. stated that the Tenants had patched holes improperly, including holes that they created during the tenancy and ones which pre-existed the start o f the tenancy. The Landlord and L.T. stated that the patching was so poor that it protruded from the walls, meaning that it needed to be scraped and sanded prior to painting and that the compound used was still wet at the time the tenancy ended. The Landlord stated that the painter hired to repair the improperly patched holes and paint the walls damaged or improperly repaired by the Tenant charged $258.93 for materials and $175.00 for labour. The Landlord also stated that nothing was repaired or painted for this cost that was not directly related to either damage caused to the rental unit during the tenancy, or the remediation of the hole repairs improperly completed by the Tenant.

Although the Tenant acknowledged causing several small holes and repairing holes in the rental unit, they categorized the holes as reasonable wear and tear. They also stated that they should not be charged for repairing holes that already existed at the start of the tenancy, as shown in the move-in condition inspection report and photos. As a result, the Tenant stated that the Landlord should not be entitled to recovery of any repair or panting costs. When asked, the Landlord stated that none of the repair or cleaning costs sought as part of the Application related to a pet.

The Landlord also sought authorization to retain the Tenant’s $500.00 deposit towards any amounts owed and the Tenant sought it’s return or the return of double its amount, if applicable.

Analysis

Based on the uncontested documentary evidence and affirmed testimony before me for consideration, I am satisfied that a tenancy to which the *Act* applies existed between the parties and that the Landlord holds a deposit of $500.00 in trust.

Although the Landlord argued that the deposit held was a security deposit, I disagree. The Landlord did not submit any documentary or other evidence to corroborate their testimony that the $500.00 held was a portion of a $750.00 security deposit, which was only partially paid by the Tenant. Further to this, the Landlord's testimony is contrary to the tenancy agreement, which states that only a $500.00 pet deposit was required, with no mention of a security deposit. In contrast, the Tenant provided testimony and evidence, which I find to be compelling, that only a $500.00 pet damage deposit was required by the Landlord, paid for by the Tenant, and retained by the Landlord at the end of the tenancy. The Tenant's testimony is in line with what is stated in the tenancy agreement and is supported by an etransfer record stating that the $500.00 paid to the Landlord is a pet deposit. Based on the above I find it more likely than not on a balance of probabilities that the Tenant was only required to pay a $500.00 pet damage deposit, not a $750.00 security deposit, and that the $500.00 paid by the Tenant and retained by the Landlord in trust is in fact a pet damage deposit.

Although the Landlord stated that the Tenants did not vacate the rental unit until May 2, 2020, they did not provide any documentary or other evidence to corroborate this testimony. In contrast the Tenant provided a copy of an email sent to the Landlord at 9:37 PM on May 1, 2021, stating that they had moved out and left the garage key in the mailbox as requested. As a result, I am satisfied that the tenancy ended on May 1, 2021, as stated by the Tenant and that the Tenant and all occupants vacated the rental unit on that date.

During the hearing the Landlord provided affirmed testimony that neither the damage nor the cleaning costs sought as part of the Application relate to the Tenant's pet. Policy Guideline #17 states that a landlord may apply to the Branch to keep all or a portion of a pet damage deposit but only to pay for damage caused by a pet. As a result, I find that the Landlord was not entitled to retain and claim against the pet damage deposit as part of the Application. Having made this finding, I will now turn my mind to whether the Tenant is entitled to its return or double its amount.

Although the parties disagreed about how and when the Tenant provided their forwarding address to the Landlord in writing, there was no disagreement between them

that the Landlord received it. As the Landlord did not return the Tenant's pet damage deposit at all, I find it unnecessary to determine the exact date and method of the Tenant's provision of their forwarding address to the Landlord, as more than 15 days has elapsed after the latest possible date provided at the hearing for its receipt by the Landlord, which is May 13, 2021. I will now turn to whether the Tenant extinguished their right to its return.

Section 35(2) of the *Act* states that the landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection. Although I am satisfied that the parties agreed to complete the inspection on May 2, 2021, I am not satisfied by the Landlord that they ever provided the Tenant with a time for the inspection prior to the end of the tenancy, which I find is a fundamental component of arranging a condition inspection. Further to this, I find that the Tenant made several attempts by email to ascertain a time for the inspection prior to the end of the tenancy so that they could make arrangements to attend, and that the Landlord did not provide the Tenant with that information. As a result, I find that although the Tenant failed to attend the move-out condition inspection, this occurred because the Landlord did not properly comply with section 35(2) of the *Act* or the regulation by failing to provide the Tenant with a time for the inspection and failing to use the Notice of Final Opportunity to Schedule a Condition Inspection form as required.

Policy Guideline #17 states that in cases where both the landlord's right to retain and the tenant's right to the return of the deposit have been extinguished, the party who breached their obligation first will bear the loss. As I find that the Landlord breached their obligations first with regards to the move-out condition inspection, I find that the Tenant has not extinguished their right to the return of their pet damage deposit under section 36 of the *Act*, despite not having attended a move-out condition inspection.

As there is no evidence before me that any of the other grounds set out under section 38 of the *Act* apply, which would have allowed the Landlord to retain the Tenant's pet damage deposit at the end of the tenancy, and I have already found that the Tenant did not extinguish their right to its return, I therefore find that the Landlord was required to return the pet damage deposit to the Tenant pursuant to section 38(1) of the *Act*. As I am satisfied that the Landlord did not comply with section 38(1) of the *Act*, as set out above, thereby retaining the Tenant's pet damage deposit without authorization under the *Act* to do so, I find that the Tenant is entitled $1,000.00, double the amount of the $500.00 pet damage deposit, pursuant to section 38(6) of the *Act*.

I will now turn my mind to the Landlord's claims for compensation. Although the Tenant argued that they had cleaned the stove and oven, they submitted no documentary evidence to support this assertion. In contrast, the Landlord provided several photographs of the oven and stove, which I am satisfied demonstrate that they were not left reasonably clean at the end of the tenancy. The Landlord also submitted a cleaning invoice showing a cost of $280.00 to clean the stove and oven.

Although the Tenant argued that the oven was already stained and that it was left in a similar condition at the end of the tenancy to that in which it was found at the start of the tenancy, section 37(2)(a) of the *Act* and Policy Guideline #1 require tenants to leave the rental unit reasonably clean at the end of the tenancy, regardless of the level of cleanliness at the start of the tenancy. As a result, I find that the level of cleanliness of the rental unit at the start of the tenancy was a matter for the parties to resolve either at the start of the tenancy, or during its tenure, and that the Tenant was not entitled to leave the rental unit in a state of cleanliness other than that set out in the *Act* and Policy Guideline #1, even if it was not reasonably clean at the start of the tenancy.

Regardless, I am satisfied by the photos provided by the Landlord that no serious efforts were made by the Tenant to clean the stove and oven prior to the end of the tenancy, regardless of whether some staining in the oven pre-existed the start of the tenancy. Policy Guideline #16 states that 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 and that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due. Policy Guideline #16 also sets out a 4 part test for determining whether compensation for damage is due, as follows. The arbitrator must be satisfied on a balance of probabilities that:

- A party to the tenancy agreement has failed to comply with the Act, regulations, or tenancy agreement;
- Loss or damage has resulted from this non-compliance;
- The party who suffered the damage or loss has proven 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.

I am satisfied that the Tenant breached section 37(2)(a) of the *Act* by failing to adequately clean the stove and oven and that the Landlord suffered a loss of not less than $280.00 as a result. As I find the amount sought for stove and oven cleaning by the Landlord to be reasonable, I am also satisfied that the Landlord acted reasonably to

mitigate the amount of their loss. As a result, I find that the Landlord is entitled to the $280.00 sought for stove and oven cleaning costs.

Although the Tenant argued that they left the rental unit in a similar condition to that in which it was found at the start, and that any damage constitutes reasonable wear and tear, again I disagree. Policy Guideline #1 defines reasonable wear and tear as natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. Further to this, it states that a 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. The Tenant acknowledged during the hearing that they had caused some holes during the tenancy and there was no disagreement that the Tenant had filled numerous holes in the rental unit, including both those they created and those the pre-existed the start of the tenancy. However, I am satisfied by the photographs submitted by the Landlord that the work done to patch the holes by the Tenant was improperly completed, such that the compound used to patch the holes was not applied evenly, and protruded from the surface to such a degree that it would have required sanding prior to painting.

While Policy Guideline #1 also states that a tenant may only be required to paint or repair a rental unit where the work is necessary because of damages for which the tenant is responsible, I note that term 24 of the tenancy agreement prohibits applying adhesive materials, or inserting nails or hooks in walls or ceilings other than two small picture hooks per wall, painting, wallpapering, redecorating or in any way significantly altering the appearance of the Property. I find that the pictures presented by the Landlord in the documentary evidence before me and the affirmed testimony of the parties at the hearing satisfied me that the Tenant and or persons they permitted into the rental unit, breached term 24 of the tenancy agreement by causing holes greater in number and size than those permitted under the tenancy agreement and by significantly altering the appearance of the property by poorly repairing these, and other holes.

I am satisfied that the Tenant breached section 37(2)(a) of the *Act* by failing to leave the rental unit undamaged except for pre-existing damage and reasonable wear and tear. Although I excluded the Landlord’s copy of a painting invoice from consideration as set out under Preliminary Matter #4, at the hearing the Landlord provide affirmed testimony that it cost $433.93 to have the improper patching repaired and the damaged walls painted. As the Tenant did not dispute that this amount was paid by the Landlord or raise any arguments with regards to the reasonableness of this cost in relation to the actual work done, I find on a balance of probabilities that this amount was paid and that this amount represents a reasonably economic rate for the work completed. As a result,

I am also satisfied that the Landlord suffered a loss of not less than $433.93 in painting and repair costs as a result of the Tenant's failure to comply with section 37(2(a) of the *Act*. As I find the amount sought to be reasonable, I am also satisfied that the Landlord acted reasonably to mitigate the amount of their loss and I award the Landlord the $433.93 sought for painting and repair costs.

As the Landlord was successful in their Application, I also award them recovery of the $100.00 filing fee pursuant to section 72 of the *Act*.

Pursuant to the set-off provisions set out in Policy Guideline #17, I find that the Tenant is entitled to compensation from the Landlord in the amount of $186.07; $1,000.00 for the return of double the amount of their pet damage deposit, less the $813.93 I find that the Landlord is owed for cleaning costs, repair costs, and recovery of the filing fee. Pursuant to section 67 of the *Act*, I therefore grant the Tenant a Monetary Order in the amount of $186.07 and I order the Landlord to pay this amount to the Tenant.

Conclusion

Pursuant to section 67 of the *Act*, I grant the Tenant a Monetary Order in the amount of **$186.07**. The Tenant is 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 Branch under Section 9.1(1) of the *Act*.

Dated: November 17, 2021

Residential Tenancy Branch