



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL

Introduction

The landlord filed an application for dispute resolution (the “Application”) on May 30, 2021 seeking an order for compensation for damage caused by the tenant. The landlord applied to use the security deposit towards compensation on this claim, and to recover the filing fee for the Application.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on November 30, 2021. The tenant and the landlord both attended the hearing, and I provided each with the opportunity to present oral testimony.

Preliminary Matter

The landlord confirmed they forwarded prepared documentary evidence to the tenant, via registered mail. The tenant confirmed they received this material.

The tenant stated they filed their own application for dispute resolution at the Residential Tenancy Branch. They stated they received “what appears to be an application for direct request.” They had sent printed material to the Residential Tenancy Branch via courier on May 20. They could not provide a file number in the hearing. The tenant’s application, as they stated in the hearing, concerned the return of the security deposit, and the return of funds stemming from an illegal rent increase.

Because the tenant could not provide a file number, I cannot link any other open application file to this matter. I am not satisfied the tenant has an application in place. The matter of a rent increase is not the subject of this hearing, and the tenant will have to rectify with the Residential Tenancy Branch whether their application was received

and processed in due course. The matter of the security deposit is a subject of my consideration in this hearing, and I examine that issue below in line with the landlord's claim.

Issue(s) to be Decided

Is the landlord entitled to compensation for damage to the rental unit, pursuant to s. 67 of the *Act*?

Is the landlord entitled to recover the filing fee for their Application, pursuant to s. 72 of the *Act*?

Background and Evidence

The landlord produced a copy of the tenancy agreement for this hearing and both parties spoke to its terms. The agreement bears each party's signature showing their agreement to the basic rent amount of \$850 at the start of the tenancy in 2008. This amount increased over time. Both parties confirmed the tenant paid an initial security deposit amount of \$425.

The tenancy ended on April 30, 2021. Both parties verbally agreed to this. The tenant stated their intention to end the tenancy was because the landlord would not address deficiencies.

The parties met twice prior to the tenant moving out to examine the condition of the unit. These were "in person walk throughs", with issues or damage identified between the two parties. The landlord had the opportunity to examine issues on April 29, and they listed these in a document, noting 7 separate points. Though they included the list of 7 items in their evidence, the landlord verified that their claim is only for two items: the hole located in the corner of the bedroom floor; and damage to the entrance door of the rental unit. The tenant verified they had the opportunity to address other items in the list and rectified those concerns prior to their move out.

The landlord's account has it that the tenant became defensive when they discussed the issue of the hole in the bedroom floor. The written account shows the tenant placed tape over the hole in order to avoid inhaling toxic substances.

The landlord provided photos of the area and the door. They provided a quote dated May 8, 2021. This shows \$100 for floor repair, and a door replacement for \$50. Combined with parts, the quote is \$260. The landlord verified their claim in this hearing was \$225 as set out in their Application. They stated they “decided to absorb some of the cost”. The repairman had examined the damage with regard to the use of the damage deposit to determine what would be fair.

The tenant’s position is that the rental unit was occupied prior to the start of their tenancy, and their own tenancy lasted for 13 years. They presented this was an old house, built in the 50s or 60s, so “structurally, the house is old-aged”. Specific to the hole in the floor, this was caused by the bed itself on that spot in the room. The door itself bears chips and other deficiencies, and in the tenant’s estimation “this is not even damage.” They questioned the completeness of the invoice that the landlord provided; in their view this appears “arbitrary” and as if “anyone can do that [i.e., complete this kind of invoice]”.

Analysis

The relevant portion of the *Act* regarding the return of the security deposit is s. 38:

- (1) . . .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. . .any security deposit. . .to the tenant. . .;
 - (d) make an application for dispute resolution claiming against the security deposit. . .

Following this, s. 38(4) sets out that the landlord may retain an amount from the security deposit with either the tenant’s written agreement, or by a monetary order of this office.

In this hearing, I find the landlord properly applied for dispute resolution within the 15 days set out in the *Act*. The issue then is the assignment of responsibility, if at all present, for any damage to the unit requiring reimbursement.

The *Act* s. 37(2) requires a tenant, when vacating a rental unit to leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Given the age of the rental unit, I apply the principle of the useful life of building elements. This policy guideline #40, developed by the Residential Tenancy Branch, is in place to give a statement of the policy intent of the *Act*, and sets out that “Useful life is the expected lifetime, or the acceptable period of use, of an item under normal circumstances.”

The items at issue here are a section of the floor in the bedroom, and the rental unit entrance door. From the photo evidence, I find they are well outside of the useful life range, that of 20 years each. It is not known when the original floor or the door were installed; however, I find that is well outside the useful life cycle, and flaws are natural at this stage. I find it more likely than not, minus evidence to the contrary, that these are original building materials with the house being built in the 50s or 60s.

Because of this finding, I find the tenant is not responsible for the cost of repair or replacement of these items. With regard to the criteria set out above, I am not satisfied these issues arise from a violation of the *Act*, and given the age of the rental unit, the value of the damage or loss is not established. I dismiss the landlord’s claim in its entirety for this reason.

I find the landlord must return all of the security deposit to the tenant. I provide the tenant with a monetary order for that full amount of \$425.

Because the landlord was not successful in their Application, I find they are not entitled to recover the Application filing fee.

Conclusion

I dismiss the landlord’s Application in its entirety, without leave to reapply.

Pursuant to s. 38 of the *Act*, I grant the tenant a Monetary Order in the amount of \$425 for the return of the security deposit. I provide the tenant with this Order, and they must

serve it to the landlord as soon as possible. Should the landlord fail to comply with this Order, the tenant may file it in the Small Claims Division of the Provincial Court where it will be 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 s. 9.1(1) of the *Act*.

Dated: November 30, 2021

Residential Tenancy Branch