Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by J.F., the Landlord, on May 21, 2021 (the "Application"). J.F. applies as follows:

- For compensation for damage to the rental unit
- To keep the security deposit
- For reimbursement for the filing fee

J.F. appeared at the hearing with B.F. to assist. Nobody appeared at the hearing for D.O., the Tenant. I explained the hearing process to J.F. and B.F. I told J.F. and B.F. they were not allowed to record the hearing pursuant to the Rules of Procedure (the "Rules"). J.F. and B.F. provided affirmed testimony.

Preliminary Issues

K.E.B.

K.E.B. was originally named as a landlord on the Application. K.E.B. called into the hearing. I had a hearing with J.F., B.F. and K.E.B. on November 18, 2021 for File Number 555. K.E.B. is the owner of the rental unit. K.E.B. rented the unit to J.F. and three other tenants. J.F. sublet the unit to D.O. During the November 18th hearing, it was discussed that there is no contractual relationship between K.E.B. and D.O. (see Policy Guideline 19, page 3). In the circumstances, the parties agreed I could remove K.E.B. from the Application and that K.E.B. would exit the hearing. I have removed K.E.B. from the Application which is reflected in the style of cause. K.E.B. exited the hearing.

Decision on File 555

As stated, I heard File 555 on November 18th. File 555 was between K.E.B. and four tenants including J.F. One of K.E.B.'s claims was for compensation to replace a burned countertop in the kitchen of the rental unit. K.E.B. sought compensation for replacing the countertop from the tenants, including J.F. D.O. appeared as a witness at the November 18th hearing and acknowledged that they left a hot pot on the counter which left a burn mark on the countertop. The decision on File 555 was that the tenants, including J.F., breached section 37 of the *Residential Tenancy Act* (the "*Act*"). I accepted that replacing the countertop cost $1,026.62. I accepted that K.E.B. mitigated their loss. However, I awarded K.E.B. $821.30 given the age of the countertop pursuant to Policy Guideline 40 on the useful life of building elements.

At the November 29th hearing, J.F. had not yet received the decision on File 555. I provided a summary of the decision on File 555 to J.F. Both J.F. and B.F. confirmed they were prepared to proceed with the hearing based on the summary of the decision. Given this, I proceeded with the hearing despite J.F. not yet having the written decision on File 555.

Application

During the discussion about File 555, B.F. stated that J.F. is seeking to recover all costs awarded to K.E.B. on File 555. Pursuant to rule 2.2 of the Rules, I told J.F. and B.F. that the Application only states that J.F. is seeking $1,026.62 for compensation for damage to the countertop and therefore this is the only claim I can consider.

Service

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and J.F.'s evidence.

J.F. testified that the hearing package and evidence were served on D.O. around June 08, 2021 by email to an address obtained through an agreement with D.O. about email service. J.F. submitted an email chain showing the hearing package was sent to D.O. and that they replied to the email.

D.O. submitted evidence for this hearing on June 23, 2021 which indicates that D.O. received the hearing package. D.O. was at the November 18th hearing for File 555 and present for a discussion about this matter and the hearing date.

The hearing for this matter was originally set for November 23, 2021 and was changed to November 29, 2021 pursuant to the discussion with J.F. and D.O. at the November 18th hearing for File 555. RTB notes show that a new hearing package was emailed to D.O. November 19, 2021 for the November 29th hearing.

Based on the undisputed testimony of J.F. and the email chain, I find D.O. was served with the hearing package and J.F.'s evidence in accordance with sections 88(j) and 89(1)(f) of the *Act* as well as sections 43(1) and 43(2) of the *Residential Tenancy Regulation* (the "*Regulations*") on June 08, 2021. Based on the email chain, I find D.O. received the hearing package and evidence June 08, 2021. I find J.F. complied with rules 3.1 and 3.14 of the Rules in relation to the timing of service.

In relation to the new hearing package for the November 29th hearing, I confirmed with D.O. at the November 18th hearing for File 555 that they could be contacted by email about a change in the hearing date for this matter. Pursuant to the RTB notes, and section 71(2) of the *Act*, I find D.O. was sufficiently served with the new hearing package on November 19, 2021 and find D.O. received the new hearing package November 22, 2021, in sufficient time to appear at the hearing.

Given I was satisfied of service, I proceeded with the hearing in the absence of D.O. J.F. and B.F. were given an opportunity to present relevant evidence and make relevant submissions. I have considered all testimony provided and reviewed the documentary evidence submitted. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Landlord entitled to compensation for damage to the rental unit?

2. Is the Landlord entitled to keep the security deposit?

3. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

J.F. is seeking $1,026.62 in compensation related to the cost of replacing the burned countertop in the kitchen of the rental unit.

J.F. submitted a written tenancy agreement between them and D.O. The tenancy started March 01, 2021 and was for a fixed term ending April 31, 2021. Rent was $620.00 per month. The Tenant paid a $310.00 security deposit.

J.F. testified that the tenancy ended April 30, 2021.

J.F. testified that D.O. provided their forwarding address in writing around June 08, 2021.

J.F. acknowledged they did not have an outstanding monetary order against D.O. at the end of the tenancy and D.O. did not agree to J.F. keeping the security deposit.

J.F. testified that a move-in inspection was not done with D.O. and that they included D.O. in the move-out inspection they did with K.E.B., their landlord and the owner of the rental unit.

J.F. seeks compensation from D.O. because D.O. burned the countertop in the kitchen of the rental unit during the tenancy. K.E.B. had sought compensation for replacing the countertop from J.F. and their co-tenants. As stated, K.E.B. has been awarded $821.30 for the countertop in the decision on File 555. J.F. is seeking to recoup the amount they now owe to K.E.B. for replacing the countertop.

J.F. confirmed their position is as follows. D.O. breached section 37 of the *Act* by burning the countertop. J.F. now must pay K.E.B. $821.30 to replace the countertop and therefore J.F. has suffered loss due to D.O.'s breach. The value of the loss is $821.30 because this is what has been awarded to K.E.B.

Analysis

Security deposit

Pursuant to sections 24 and 36 of the *Act*, landlords and tenants can extinguish their rights in relation to the security deposit if they do not comply with the *Act* and *Regulations.* Further, section 38 of the *Act* sets out specific requirements for dealing with a security deposit at the end of a tenancy.

Based on the testimony of J.F., I find D.O. was not offered two opportunities, one on the RTB form, to do a move-in or move-out inspection and therefore I find D.O. did not extinguish their rights in relation to the security deposit pursuant to sections 24 or 36 of the *Act*.

Section 24 of the *Act* states:

> (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.
>
> (emphasis added)

Based on the testimony of J.F., I find they did not do a move-in inspection with D.O. and therefore extinguished their right to claim against the security deposit for damage to the rental unit pursuant to section 24(2) of the *Act*.

I acknowledge that J.F. and their co-tenants did move-in and move-out inspections with K.E.B, their landlord. However, when J.F. sublet the rental unit to D.O., J.F. became a landlord pursuant to the definition of “landlord” in section 1 of the *Act*. J.F. therefore had the same rights and obligations of any other landlord pursuant to the *Act* and was

required to complete move-in and move-out inspections with D.O. pursuant to sections 23 and 25 of the *Act*.

Section 38(1) of the *Act* states:

> 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
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> (b) the date the landlord receives the tenant's forwarding address in writing,
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> 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.

However, given J.F. extinguished their right to claim against the security deposit for damage to the rental unit, they were required to return the security deposit to D.O. or file a claim against the security deposit for something other than damage within 15 days of June 08, 2021 when the received D.O.'s forwarding address. J.F. did neither of these things as they still held the security deposit on the hearing date and the claim is solely for damage to the rental unit.

Section 38(6) of the *Act* states:

> (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.

Given J.F. did not repay the security deposit or file a claim against the security deposit for something other than damage within 15 days of receiving D.O.'s forwarding address, J.F. cannot claim against the security deposit and must return double the security deposit to D.O. **J.F. therefore must return $620.00 to D.O.**

J.F. is still entitled to claim for compensation and I consider that now.

Compensation

Section 7 of the *Act* states:

> 7 (1) If a…tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying…tenant must compensate the [landlord] for damage or loss that results.
>
> (2) A landlord…who claims compensation for damage or loss that results from the [tenant's] non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

> 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.

Section 37 of the *Act* states:

> (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…

Policy Guideline 1 defines reasonable wear and tear as follows (page 1):

> 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 or Manufactured Home Park Tenancy Act (the Legislation).
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> Reasonable wear and tear refers to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. An arbitrator may determine whether or not repairs or maintenance are required due to reasonable wear and tear or due to deliberate damage or neglect by the tenant. An arbitrator may also determine whether or not the condition of premises meets reasonable health, cleanliness and sanitary standards, which are not necessarily the standards of the arbitrator, the landlord or the tenant.

Pursuant to rule 6.6 of the Rules, it is the Landlord as applicant who has the onus to prove the claim. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

I find D.O. burned the kitchen countertop by placing a hot pot on it based on the testimony of D.O. at the hearing for File Number 555. I found the burn to be beyond reasonable wear and tear in the decision on File Number 555 and therefore I find D.O. breached section 37 of the *Act*.

On File Number 555, I found J.F. and their co-tenants responsible for paying the cost of replacing the countertop to K.E.B., their landlord and the owner of the rental unit. I found K.E.B. is entitled to $821.30 for replacement of the countertop in the decision on File Number 555. Given these two points, I find J.F. has suffered loss in the amount of $821.30 due to D.O.'s breach of section 37 of the *Act*. I find J.F. mitigated their loss by appearing at the hearing for File Number 555 and disputing the amount sought by K.E.B. for replacement of the countertop.

Given the above, and pursuant to section 67 of the *Act*, I find **J.F. is entitled to recoup the $821.30 from D.O.**

Given J.F. was successful in the Application, **I award them $100.00** as reimbursement for the filing fee pursuant to section 72(1) of the *Act*.

In summary, D.O. owes J.F. $921.30. However, J.F. owes D.O. $620.00 and therefore I deduct this from the $921.30 owed to J.F. pursuant to section 72(2) of the *Act*. Given this, D.O. owes J.F. $301.30 and J.F. is issued a Monetary Order in this amount.

Conclusion

D.O. owes J.F. $301.30 and J.F. is issued a Monetary Order in this amount. This Order must be served on D.O. If D.O. fails to comply with this Order, it 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 *Act*.

Dated: December 02, 2021

Residential Tenancy Branch