Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Centurion Property Associates Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S, FFL

Introduction

This hearing was scheduled to deal with a landlord's application for compensation for damage to the rental unit and authorization to retain the tenant's security deposit and/or pet damage deposit.

Both parties appeared or were represented for the hearing. The parties were affirmed and the parties were ordered to not record the proceeding.

The hearing was held over two dates and an Interim Decision was issued on December 7, 2021. The Interim Decision should be read in conjunction with this decision.

As seen in the Interim Decision, the hearing was adjourned to permit delivery of the tenant's evidence package that had been delayed in transit by Canada Post. At the reconvened hearing, the landlord's agent confirmed receipt of the tenant's evidence package during the period of adjournment.

Having been satisfied both parties were in receipt of the materials of the other party, the materials were admitted and considered in making this decision.

Issue(s) to be Decided

1. Has the landlord established an entitlement to compensation from the tenants, as claimed, for damage to the rental unit?
2. Is the landlord authorized to retain any or all of the tenant's security deposit and pet damage deposit?
3. Award of the filing fee.
4. Disposition of the security deposit and pet damage deposit.

Background and Evidence

A one year fixed term tenancy agreement started on August 29, 2020 and was set to expire on August 31, 2021. The monthly rent was set at $1750.00 payable on the first day of every month. The landlord collected a security deposit of $499.00 and a pet damage deposit of $300.00. The landlord continues to hold the tenant's deposits pending the outcome of this proceeding.

The tenancy came to an end on May 30, 2021 pursuant to a mutual agreement reached during a previous dispute resolution proceeding held on January 11, 2021.

Move-In Inspection report

The landlord prepared a move-in inspection report and presented it as evidence. The move-in portion of the report bears the signatures of the tenant's mother and the landlord's former property manager.

The tenants testified that the former property manager was very busy when they were moving in and the former property manager told the tenants that they needed to sign the inspection report before they could move in and that he would return to inspect the unit with the tenants at a later time. The parties signed the move-in inspection report but the former property manager never returned to do an inspection.

The tenants acknowledged the rental unit was new and had never been occupied before the tenancy began; however, there were some deficiencies that they observed, such as little pieces of green tape stuck to the walls, paint or drywall mud on the patio tile, and a door that hit the wall when it was opened. The tenant stated she asked for a door stopper but she never did get a response to her request from the former property manager.

Move-Out Inspection report

The landlord prepared a move-out inspection report and presented it as evidence. The move-out section of the report does not provide for the signature of the landlord or the tenant or the tenant's agents. Rather, I noted that there was a large squiggly line through the move-out column and asked the landlord what that signified. The landlord's agents were unable to explain it as they did not prepare the report and the former property manager no longer works for the landlord.

The tenant's mother and father participated in the move-out inspection with the former property manager. The tenant's father testified that the former property manager appeared to be completing a report during the inspection but the report was not presented to them so they could review it and sign it. Nor were they given a copy at that time, or within 15 days of the tenancy ending. Rather, they did not receive a copy of the report until they received the landlord's evidence package in July 2021.

The parties did provide consistent statements that there was no authorization for the landlord to make any deductions from the tenant's security deposit or pet damage deposit; and, the tenant did provide a forwarding address to the landlord.

Landlord's claim for damage

The landlord filed its Application for Dispute Resolution on June 9, 2021 and seeks recovery of amounts expended for two repairs: repainting the rental unit and replacing the stove top. Below, I have summarized the parties' respective positions.

Repainting -- $1417.50

The landlord is of the position the tenant caused damage to the walls, trim and door beyond reasonable wear and tear especially considering this was a relatively short tenancy of 9 months. The tenant had applied drywall compound to the holes in the walls and then applied paint that was not a perfect match to the existing wall colour, making the touched up spots appear worse. The landlord expects to repaint approximately every four years but in this case the landlord wanted to make the rental unit look "brand new" again for prospective tenants since the building was only 9 months old so the landlord had the entire unit professionally repainted. The landlord's agent pointed to photographs and the painter's invoice in support of its claim.

The tenant testified that she asked the landlord for the paint colour of the walls so that she could touch up the walls with the matching paint. The landlord provided her with the name of the paint and she searched for it at a paint store but the paint store was unable to provide the same line of paint due to a supply chain issue. The tenant purchased the closest match she could find. After making the touch ups the manager came along and said it was not good enough and the entire walls would need to be re-painted.

The tenant stated she was not about to purchase gallons of paints to repaint all of the walls because the exact paint was not available especially when pin holes are not even required to be touched up.

The tenant submitted that she was given a move-out checklist by the landlord and she followed it exactly. The tenant pointed to the photographs of the rental unit she took upon moving out, the communication with the paint store, and images of the paint she purchased.

The tenant's father argued that the move-out inspection report does not even reflect damage on the walls and there was no damage caused by the tenant as she only dapped over pin holes. The tenant's father also suggested that the landlord had no intention of returning the deposits.

Stove top -- $699.90

The landlord submitted that at the end of the tenancy the "dual element" on the stove top was significantly scratched beyond what one would expect from a 9 month tenancy. Rather, the landlord expects that a stove top would last closer to 10 years and this stove top look liked it had suffered from 5 years of use. Since the landlord wanted to advertise the rental unit as being "brand new" a new stove top was purchased. The landlord provided a quote for a replacement stove top but confirmed that a new stove top was purchased for the amount quoted. The landlord pointed to its photographs and quotation in support of its claim.

The tenant acknowledged there were scratches on the stove top but was of the position that it was within the realm of reasonable wear and tear. The tenant submitted that the stove top worked perfectly fine and did not need replacement. The tenant submitted that other stove tops in the building were also showing signs of scratching from ordinary use.

Analysis

Upon consideration of everything before me, I provide the following findings and reasons.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. Awards for compensation are

provided in section 7 and 67 of the Act, and, as provided in Residential Tenancy Policy Guideline 16: *Compensation for Damage or Loss* it is before me to consider whether:

- a party to the tenancy agreement violated the Act, regulation, or tenancy agreement;
- the violation resulted in damages or loss for the party making the claim;
- the party who suffered the damages 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 21 of the Residential Tenancy Regulations provide that a condition inspection report prepared in accordance with the regulations is evidence of the condition of the rental unit in a dispute resolution proceeding unless there is preponderance of evidence to the contrary.

A condition inspection report is to be completing upon inspecting the rental unit together, as required under section 23 of the Act. The tenant submitted testimony that the move-in inspection was not done because the property manager was busy and did not return to perform the inspection. I accept that statement in the absence of evidence to the contrary. Therefore, I find the move-in inspection report is not evidence as to the condition of the rental unit at the start of the tenancy.

As for the move-out inspection report, I heard that a move-out inspection was performed with the tenant's representatives (her parents) but I also heard unopposed testimony that the move-out inspection was not presented to the tenant's parents for their review and signature as is required under section 35 of the Act. Nor was the move-out inspection report sent to the tenant within 15 days of the date the inspection was performed or receipt of the forwarding address as is required under the regulations. Therefore, I find the move-out inspection report was not completed in accordance with the regulations and I do not consider it to be evidence as to the condition of the rental unit at the end of the tenancy.

As far as evidence of the condition of the rental unit at the start of the tenancy, it was agreed that the rental unit was new and had never been occupied before the tenancy started; however, the tenant indicated there were wall imperfections when she moved in, as evidenced by pieces of green tape on the wall, and the door hit the wall because a door stopper was installed. Although the unit was new, it does not necessarily mean that a unit is free from deficiencies or imperfections. As such, I accept the tenant's

statements that there were some pre-existing imperfections or deficiencies at the start of the tenancy in the absence of evidence to the contrary.

As far as the evidence as to the condition of the rental unit at the end of the tenancy, I was provided with photographs by both parties and I find the photographs to be the best evidence as to the condition of the rental unit at the end of the tenancy.

Section 32 of the Act provides that a tenant is required to repair damage caused to the rental unit or residential property by their actions or neglect, or those of persons permitted on the property by the tenant. Section 37 of the Act requires the tenant to leave the rental unit undamaged at the end of the tenancy. However, sections 32 and 37 provide that reasonable wear and tear is not considered damage. Accordingly, a landlord may pursue a tenant for damage caused by the tenant or a person permitted on the property by the tenant due to their actions or neglect, but a landlord may not pursue a tenant for reasonable wear and tear or pre-existing damage.

It is important to note that monetary awards are intended to be restorative. A landlord is expected to repair and maintain a property at reasonable intervals. Where a building element is so damaged that it requires replacement, an award will generally take into account depreciation of the original item. To award the landlord full replacement value of certain building elements that were already used would result in a betterment for the landlord. Residential Tenancy Policy Guideline 40: *Useful Life of Building Elements* provides average useful life of building elements to aid in estimating depreciation where necessary.

Repainting

It was undisputed that the tenant touched up the walls with a small amount of paint just prior to the end of the tenancy. From the photographs, I accept that the paint was not an exact match and the touch ups were fairly visible, as seen in the landlord's photographs. In the tenant's photographs the touch ups were much harder to see; however, the tenant's photographs were taken from a greater distance away and I find the tenant's photographs are inferior to the landlord's. Accordingly, I rely upon the landlord's photographs and I accept that the tenant's attempts to touch up the walls made the walls look worse despite the tenant's good intentions.

The landlord seeks to recover the entire cost to repaint the entire unit from the tenants and I find that claim to be unreasonable. The tenant is not responsible for repairing reasonable wear and tear and the landlord was trying to pass the rental unit off as being

brand new after the tenancy when in fact it was no longer a new unit. That business/marketing decision on part of the landlord does not come at the tenant's expense. Further, the painter's invoice indicates all walls were repainted and I am unsatisfied from the photographs that every wall needed to be repainted.

Although I find the landlord's claim to be unreasonable, in recognition that there were some gouges, which is beyond ordinary wear and tear, and the paint touch ups made the walls appear worse, I find it reasonable to apportion the liable amongst the parties based on an estimation. Upon review of the photographs and taking into account all of the above, I find it reasonable to hold each party responsible for 50% of the painting invoice. Therefore, I award the landlord $708.75 ($1417.50 x 50%).

Stove top

I was provided consistent evidence from the parties that the stove top was still operational although there were scratches over the dual element burner. The parties were in dispute as to whether the scratches were beyond reasonable wear and tear.

I am of the view that the intended use of a stove top is for cooking and this involves placement of pots and fry pans on the element. The repeated and frequent placement of pots and pans is likely the cause of the scratching especially considering the stove top appears to be glass and pot and pans are typically metal or cast iron.

From the photographs, it appears to me that the dual element was the most used burner as the other elements have very few marks or scratches, if any. However, I was not provided any evidence to suggest the tenant did anything on the stove top except cook, which is its intended purpose. It is unreasonable to expect a landlord may place limits on how often a tenant cooks on the stove top. Further, with a pandemic and health mandates in place during this tenancy, I would expect tenants are cooking at home more than historically and landlords ought to expect that. Finally, the landlord acknowledged that they are trying to have the rental unit look brand new even though it was not and, as I stated previously, this business/marketing decision of the landlord is not the tenant's responsibility to fulfill.

Considering all of the above, I find I am unsatisfied that the scratches on the stove top are the result of anything beyond repeated and frequent cooking, which is the intended use and to be expected. Therefore, I accept the tenant's position that the scratches on the stove top are the result of reasonable wear and tear and I dismiss the landlord's request for compensation for a new stove top from the tenant.

Filing fee

The landlord was partially successful in this application and I award the landlord recovery of 50% of the filing fee, or $50.00.

Security Deposit, Pet Damage Deposit and Monetary Order

For reasons already provided above, I have found the landlord failed to perform a move-in inspection with the tenant and give the tenant a copy of the move-out inspection report within 15 days of the move-out inspection or receiving the forwarding address. As such, the landlord extinguished its right to make a claim for damage against the tenant's deposits. Further, a pet damage deposit may not be used for amounts other than those related to pet damage and I find the tenant entitled to return of the pet damage deposit as there was no evidence that any of the damage was attributable to the tenant's pet. Therefore, I find the tenant entitled to the return of the deposits.

Although the landlord extinguished the right to claim against the tenant's deposits, the landlord had the right to make a claim for compensation against the tenant, which it has done.

I make no award for return of double the deposits under section 38(6) of the Act as the landlord did make its Application for Dispute Resolution on June 9, 2021, which is within 15 days of the tenancy ending or receiving the tenant's forwarding address, as required under section 38(1) of the Act.

Instead of issuing a Monetary Order to the tenant for return of the deposits and a Monetary Order to the landlord for the awards for repainting and the filing fee, pursuant to the authority afforded me under section 72 of the Act, I offset to the amounts and order the landlord to refund the tenant the net amount $40.25 without delay, as calculated below:

Security deposit	$499.00
Pet damage deposit	300.00
Total deposits	$799.00
Less: award for repainting (50%)	(708.25)
Less: award for filing fee (50%)	(50.00)
Monetary Order for tenant	$ 40.25

In keeping with Residential Tenancy Policy Guideline 17, I provide the tenant with a Monetary Order for the net balance of $40.25 due to the tenant.

Conclusion

The landlord is awarded compensation totalling $758.25 and I have offset this sum from the tenant's security deposit and pet damage deposit. The landlord is ordered to refund $40.25 to the tenant without delay. The tenant is provided a Monetary Order in the amount of $40.25 to ensure payment is made.

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: February 9, 2022

Residential Tenancy Branch