Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Wynn Real Estate Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

For the Landlord: MNDCL-S, MNDL-S, FFL
For the Tenants: MNSDS-DR, FFT

Introduction

The Landlord filed an Application for Dispute Resolution on June 23, 2021 seeking compensation for monetary loss to them, and for damage caused by the Tenant. Additionally, they are seeking reimbursement of the Application filing fee.

The Tenant filed their own Application on July 17, 2021 seeking the return of the security deposit, and reimbursement of the filing fee. They applied via the direct request method; however, with the Landlord's Application already in place, the Tenant's Application was crossed with that of the Landlord. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the "*Act*") on January 14, 2022.

Both parties attended the conference call hearing. I explained the process and both parties had the opportunity to ask questions and present oral testimony during the hearing. Both parties confirmed they received the prepared evidence of the other. On this basis, the hearing proceeded.

Issues to be Decided

Is the Landlord entitled to compensation for monetary loss or other money owed, pursuant to s. 67 of the *Act*?

Is the Landlord entitled to compensation for damage caused by the Tenant, pursuant to s. 67 of the *Act*?

Is the Landlord entitled to reimbursement of the Application filing fee, pursuant to s. 67 of the *Act*?

Is the Tenant entitled to the return of the security deposit, pursuant to s. 38 of the *Act*?

Is the Tenant entitled to reimbursement of the Application filing fee, pursuant to s. 67 of the *Act*?

Background and Evidence

Both parties provided a copy of the tenancy agreement, signed by the Tenant on February 7, 2020 and the Landlord on February 22, 2020. This was for the tenancy starting on March 1, 2020 for a one-year fixed term, to revert to a month-to-month agreement after that time. The rent amount was $2,100 payable on the first day of each month. The Tenant paid a security deposit amount of $1,050.

The addendum to the tenancy agreement provides that the Tenant "must not keep or allow on the residential property any animals, including dog . . .". Also: "The Tenant acknowledges that [they] shall be responsible for the cost of repairs or any damages to the rental property caused by them. Normal wear and tear accepted."

The Landlord provided a copy of the Tenant's letter dated May 24, 2021. This advised the Landlord that the Tenant would move from the renal unit by June 30, 2021 at 1:00pm.

damages to the rental unit -- $1,500

The Tenant and Landlord met on June 30 for a final inspection meeting of the rental unit. The Landlord documented that meeting in the Condition Inspection Report form, the same used at the start of the tenancy. This listed damages: door, carpet, ensuite mirror, kitchen floor & blinds to balcony. The Landlord's notation says: "to confirm cost" and the amount of security deposit deduction was "to be determined after quote." The Tenant provided their signature to indicate their agreement that the report represents the condition of the rental unit. On this document, the Tenant also provided a forwarding address.

The Tenant on July 17 contacted the Landlord and reiterated to them: "Actually you said you would get an estimate." And "[the Condition Inspection Report] said you would determine my damage deposit after quote." The Tenant made their point that they did not receive any quote

for damages from the Landlord within 15 days. This was the Tenant informing the Landlord that they had initiated a dispute for the return of the security deposit.

In response to this, the Landlord clarified that the specific materials were an issue for the broken door, mirror, and flooring. Because of this, the repairman "had to source it to determine the cost it has taken some time to get the quote." The Landlord gave a $900 amount to make repairs; however, this would not fully fix the door and it may have needed replacement. The Landlord noted that they filed their claim for damages within the 15-day period and were holding the deposit as they were legally entitled to do.

The Landlord's claim for damages to the rental unit includes $600 "for other miscellaneous repairs" as listed in the Condition Inspection Report. There is no invoice from the contractor or handyman for these items. The Landlord provided a photo of the broken door in the evidence.

In their evidence, the Tenant provided copies of ads showing the rental unit for sale. The Tenant's family member inquired and made a visit to the unit open house on July 18. This same family member was present at the end of the tenancy to assist the Tenant with cleanup and preparation for move-out. On their open-house visit, they observed "the door frame and door was the same" because the Tenant had a contractor come to repair the door frame before they moved. The door was not replaced, and there was "only a hairline crack near the bolt lock which did not affect the use of the door or lock." Further, floor damage in front of the oven was still there, and the patio blinds and bathroom mirror were not replaced or repaired. The carpets, previously cleaned on June 23, "were in the same condition."

The Tenant provided a copy of the invoice for carpet cleaning in the rental unit on June 23, 2021.

After this, the same family member visited the unit on September 17, 2021. They took pictures of the door, blinds, front door, and bathroom mirror, presented by the Tenant in their evidence for this hearing. This family member observed "it was still in the same condition as it was when I left on June 30th . . .as well as when I seen it on July 18th . . ."

hazmat cleanup -- $1,201.58

Additionally, there is an invoice for $1,201.58 that is a hazmat team clean-up from March 14, 2021. The strata initiated this necessary clean-up due to the Tenant's guest who entered the building and moved through the common area while bleeding, leaving blood on the walls and floors. The strata notified the Tenant about this directly in a letter dated May 6, 2021. The strata agent forwarded pictures of the immediate cleanup need to the Tenant directly on May 7. The strata did not include an invoice for this work.

Regarding the strata hazmat clean-up charge, the Tenant explained the incident in question. In the hearing, they stated that they had no problem with this charge.

strata fines

There was an ongoing issue with the Tenant in their rental unit concerning a dog. The Tenant questioned the charges from the strata during the tenancy and the strata provided pictures and video of the Tenant with the dog. This dog caused disturbance to other building residents who provided information to the strata about the ongoing issue. The Landlord provided the tenancy agreement to show there are no pets allowed without approval. In this case the Tenant did not have approval for this dog which the Landlord deemed to be a pet.

As a result of bylaw infractions, the strata at the property issued fines. The Landlord provided two statements of account from the strata: one dated March 19 shows 8 charges for fines at $200 each; the second statement dated May 6, 2021 adds 4 more. On May 5 the strata wrote to the Tenant and advised of the outstanding fees for the rental unit totalling $5,080.36.

In the Application on June 23, the Landlord requested $4,078.78. In the July 17 email to the Tenant, the Landlord advised of the outstanding strata fees of $6,780.36; these are "the strata fines generated during your tenancy as you know." The Landlord requested payment for this "substantially overdue" amount. The Tenant responded to say the matter was being handled "through resolutions" so the Landlord could not hold them accountable at that time.

In the hearing, the Tenant clarified that they took up the issue with the strata. This ever-growing account was because the strata was fining them $200 per week because of their knowledge of the dog in the building. Their version is that when they moved out the strata filed a claim with the civil resolution tribunal in order to resolve the matter. The Tenant presented a message from that tribunal informing them that the strata withdrew the case on August 24.

Additionally, they made one payment of $200 to the strata on January 17, 2021, shown in their evidence, and it was not reflected in the account. Their pleas to the strata were not met with a response; in the hearing, the Landlord acknowledged hearing the same statement from the Tenant earlier.

The unit was sold in the summer, and on July 20, 2021 a representative of the strata advised of the outstanding amount owing to the strata, unpaid after the end of the tenancy. This was $5,701.58. The Landlord paid this amount to the strata on August 5, 2021. An image of the receipt for this amount is in the Landlord's evidence.

Tenant's claim for security deposit

The Tenant made their Application for double the amount of the security deposit. They feel they are entitled to this amount because the Landlord did not provide an amount to them for damages or other money owing after 15 days. The Tenant set out their position to the Landlord in the July 17 email. They informed the Landlord in that message that they applied for the hearing "for [the Landlord's] failure to contact me within 15 days of vacating." The amount claimed by the Tenant is $2,100. This is double the $1,050 original deposit, "for not contacting me within 15 days."

The Landlord in response informed the Tenant that the Landlord filed their Application within 15 days. This allowed them to hold the security deposit until the conclusion of the dispute resolution process.

Analysis

Under s. 7 of the *Act*, a landlord or tenant who does not comply with the legislation or their tenancy agreement must compensate the other for damage or loss. Additionally, the party who claims compensation must do whatever is reasonable to minimize the damage or loss. Pursuant to s. 67 of the *Act*, I shall determine the amount of compensation that is due, and order that the responsible party pay compensation to the other party if I determine that the claim is valid.

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.

damages to the rental unit

I am not satisfied of the completion of work with the door, floor damage, patio blinds or bathroom mirror. The Tenant produced evidence that gives a clear account that the work was not completed. As of mid-July, the repair of the door was not completed, and the Landlord did not give clear evidence that work was finished on either repair or replacement of the door. I find it more likely than not that the door was unrepaired as of the Tenant's family member's visit to the unit on September 17, and the Landlord provided no record of actual completion of that work. I find there is nothing to verify the estimate from any contractor, such as communication from a contractor directly to the Landlord on that specific piece. I find the Landlord provided that amount tentatively to the Tenant, but there is nothing to verify that $900 amount. I am not satisfied of the value of the damage; therefore, I make no award for this piece of the Landlord's claim.

Similarly, I find there is no record of completed work for the other items listed in the Condition Inspection Report. There is no invoice or schedule of work completed. As with the door, I find it more likely than not that work was not completed on these other items as observed by the Tenant's own family member in their visits. I am satisfied of neither the damage listed, nor the value thereof. I make no award for these items that the Landlord estimated at $600.

hazmat cleanup -- $1,201.58

For the hazmat cleanup, there was no source info of the $1201.58 charge to the strata. I do see that a hazmat team completed the clean up; I also see the need for cleanup in the photos the strata provided. The ledger provided by the strata to the Landlord does show the invoice number. I find the Landlord paid this amount to the strata in their August 8 payment. In the hearing, the Tenant stated they accept this charge. I find it was clean-up of an urgent nature and undertaken as a priority. I grant this amount to the Landlord because they paid this amount on the Tenant's behalf.

strata fines

As set out above, the burden is on the Landlord to provide sufficient evidence to show the value of the monetary loss to them. I find the Landlord has not succinctly provided the amount they are claiming as recompense for the fines they paid to the strata. The amount of $5,701.58 that they evidently paid is not calculated in their evidence. On their Application, they provided the amount of $4,078.78. That was before the end of the tenancy. On July 17, they

informed the Tenant this amount was $6,780.36, and this was *after* they filed their Application here.

Additionally, the evidence they provided which is the strata's statement of account for the rental unit/Tenant show 12 separate fines of $200 each; this equals $2,400. Even without the addition of the hazmat cleanup, the equation is not clearly presented on the amount that the Landlord is claiming here. Though the strata did advise the Landlord of the amount of $5,701.58 (in a record that does not clearly show the party who is acting as the strata's agent), that amount is not clearly identified as being exclusively tied to fines levied against the Tenant here. The overall record provided by the Landlord lacks clarity. The Landlord in the hearing similarly did not set this out clearly.

In sum, the Landlord put forth differing amounts for their claim, and there is insufficient evidence to show the correct amount. For these reasons, I make no award to the Landlord for strata fines levied against the Tenant. The burden was on the Landlord to establish that amount with evidence and they have not done so here.

Tenant's claim for security deposit

The *Act* s. 38(1) states:

> . . .within 15 days of 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 a landlord may retain an amount from the security deposit with either the tenant's written agreement, or by a monetary order of this office.

Further, s. 38(6) provides that

> 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 . . .

I find the Landlord had the Tenant's forwarding address when the Tenant provided that at the move-out inspection meeting on June 30, 2021. The Landlord pre-emptively applied for dispute resolution even before the end of the tenancy; however, this does not result in prejudice against the Tenant because they had already advised the Landlord of the end of tenancy prior to this, on May 24.

Above, I find the Landlord had a valid monetary claim for the hazmat cleanup amount owing, of $1,201.58. I grant the Landlord the full of the security deposit amount to cover this expense to them. After setting off the security deposit amount of $1,050, there is a balance owing of $151.58. I am authorizing the Landlord to keep the security deposit and award the balance of $151.58 as compensation for the hazmat cleanup costs.

As a result of the Landlord establishing this claim as set out above, the Tenant's Application for the return of the security deposit is dismissed, without leave to reapply.

Because the Landlord was moderately successful in their claim, I award the $100 Application filing fee. I dismiss the Tenant's claim for the Application filing fee because the matter of the security deposit would have been resolved in any event even without their Application.

Conclusion

I order that the Tenant pay to the Landlord the amount of $251.58. I grant the Landlord a monetary order for this amount. The Landlord may file this monetary order at the Provincial Court (Small Claims) 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: February 1, 2022

Residential Tenancy Branch