Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Bayside Property Services Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **MNDL-S, FFL**

Introduction

This hearing dealt with an application filed by the landlord pursuant the *Residential Tenancy Act* (the "*Act*") for:

- A monetary order for damages caused by the tenant, their guests to the unit, site or property and authorization to withhold a security deposit pursuant to sections 67 and 38; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

The tenant attended the hearing, and the landlord was represented at the hearing by property manager, KO ("landlord"). As both parties were present, service of documents was confirmed. The tenant acknowledged service of the landlord's Notice of Dispute Resolution Proceedings package and evidence; the landlord acknowledged receiving a set of photographs from the tenant on October 25th by registered mail. The landlord does not acknowledge receipt of the tenant's other two pieces of evidence: an email between the tenant and the city's revenue department and a screenshot of a text message exchange.

The tenant testified that he personally put the documents in the package that was sent by registered mail to the landlord. Despite this, the tenant was unable to provide the tracking number for the mailing. I note that the tenant uploaded the email exchange to the Residential Tenancy Branch's evidence presentation system on October 22, 2021, while the photos were uploaded two days earlier, on October 20, 2021. On a balance of probabilities, I accept the landlord's testimony that the tenant did not include the email and the text message in his evidence package exchanged with the landlord. As such, I exclude those documents from consideration for this decision. The tenant's photographs were admitted as evidence.

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Rule 6.11 of the Residential Tenancy Branch Rules of Procedure ("Rules"). The parties were informed that if any recording was made without my authorization, the offending party would be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation and potential fine under the Act. Both parties confirmed that they were not recording the hearing.

Issue(s) to be Decided

Is the landlord entitled to a monetary order?
Can the landlord retain all or part of the tenant's security deposit?
Can the landlord recover the filing fee?

Background and Evidence

At the commencement of the hearing, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony pursuant to rule 7.4. In accordance with rules 3.6, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

While I have turned my mind to all the admitted documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

A copy of the tenancy agreement was provided as evidence. The tenancy began on September 01, 2016 with rent set at $966.00 per month. A condition inspection report was done at the commencement of the tenancy and a security deposit of $437.50 was collected by the landlord which she continues to hold.

The landlord gave the following testimony. The tenant ended the tenancy by giving notice effective July 31, 2021. A condition inspection report was done on that date with the building manager and the tenant present. The landlord does not know why the building manager used a different condition inspection report from the one used upon move-in, acknowledging he should have. The landlord submits that many charges were brought to the tenant's attention on the move-out condition inspection report, including suite cleaning and carpet cleaning. The landlord testified that the tenant refused to sign the report or provide his forwarding address on July 31st, but supplied it to the landlord within the next 24 or 48 hours.

The landlord argues that upon move-out, the condition of the unit was not the same as it was upon move-in. The tenant is expected to return the rental unit to move-in ready condition upon vacating the unit. The landlord points to the photos of the oven, the floor under the refrigerator, inside cabinets and drawers and baseboards to show the dirty condition of the unit upon move-out. The landlord acknowledges that the tenant was not provided with a list of cleaning requirements was expected of the tenant upon move out. She further acknowledged that the fridge is not on wheels but isn't so heavy so that any person is capable of moving it alone.

The suite was thoroughly cleaned by the building manager at a cost of $200.00. Cleaning suites is not a regular duty of the building manager, and the building manager was paid $200.00 to do the work. In addition, the building manager professionally cleaned the carpets at a cost of $105.00 including GST.

Lastly, the landlord testified the tenant moved out of the unit and didn't pay the remainder of his hydro bill to the city. The landlord testified that her accounting department paid the outstanding bill of $53.32 to the city, however proof of payment was not provided for the hearing.

The tenant gave the following testimony. He agreed with the building manager that the building manager could clean the carpets for $105.00 and that it could be taken from his security deposit.

The remainder of the unit was very clean upon move out and the tenant points to the photos he took the day of the condition inspection report. The building manager did not bring a camera and the tenant questions the photos provided for this hearing by the landlord, alleging that the photos may not depict his unit. The tenant also argues that the building manager is not licensed and the landlord is therefore illegally using his services in doing business with the tenant. The tenant does not know who the property manager representing the landlord today is, stating that all his interactions were with the building manager or the building manager's mother.

The tenant argues that he was never told that he had to clean under the fridge or the sides of the oven. The expectation that he does it is ridiculous. The standard of cleanliness has somehow become higher after he moved out.
Lastly, the tenant argues that he paid the hydro bill to the city on October 7th. The contents of the email were read in during the hearing, however the email was excluded

as documentary evidence for this decision due to the tenant's failure to exchange it with the landlord.

Analysis

Section 37(2)(a) of the Act states: When a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

This notion is further elaborated in Residential Tenancy Branch Policy Guideline PG-1 [Landlord & Tenant – Responsibility for Residential Premises] which states:
the tenant must maintain "reasonable health, cleanliness and sanitary standards" throughout the rental unit or site, and property or park. The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard. 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). (emphasis added)***

The tenant's legal obligation is "reasonably clean" and this standard is less than "perfectly clean" or "impeccably clean" or "thoroughly clean" or "move-in ready". Oftentimes a landlord wishes to turn the rental unit over to a new tenant when it is at this higher level of cleanliness; however, it is not the outgoing tenant's responsibility to leave it that clean. If a landlord wants to turn over the unit to a new tenant at a very high level of cleanliness that cost is the responsibility of the landlord.

PG-1 states:
At the end of the tenancy the tenant must clean the stove top, elements and oven, defrost and clean the refrigerator, wipe out the inside of the dishwasher.

However, the same guideline also states:
If the refrigerator and stove are on rollers, the tenant is responsible for pulling them out and cleaning behind and underneath at the end of the tenancy. If the refrigerator and stove aren't on rollers, the tenant is only responsible for pulling them out and cleaning behind and underneath if the landlord tells them how to move the appliances without injuring themselves or damaging the floor. ***If the appliance is not on rollers and is difficult to move, the landlord is responsible for moving and***

cleaning behind and underneath it. (emphasis added)

In this case, the landlord clearly stated that the fridge and stove were not on rollers. I accept the landlord's argument that they were not heavy and not difficult to move, however I do not find the tenant was given any instructions to clean those areas or even told he was required to do so. I find it unreasonable that the tenant would be expected to clean these areas without specific direction to do so before the end of the tenancy by the landlord.

I have reviewed the photos of the rental unit submitted by both the landlord and the tenant after the tenant moved out. I note that although the condition inspection report states on every line that the unit was "D" or dirty; based on the photos taken by the tenant on the day of the condition inspection, it does not appear to be excessively dirty for a tenancy lasting a duration of five years. Although it may not have been cleaned to the standard the landlord wanted it to be cleaned, I find the tenant has complied with section 37(2)(a) of the Act, leaving the rental unit reasonably clean, and undamaged except for reasonable wear and tear. Consequently, I dismiss the landlord's claim of $200.00 for cleaning.

Rule 6.6 of the Residential Tenancy Rules of Procedure indicate the onus to prove their case is on the person making the claim. The standard of proof is on a balance of probabilities. Regarding the landlord's claim of $53.32 payment to the city for the hydro utility, I find the landlord has not provided sufficient evidence to satisfy me they paid the hydro debt to the city on the tenant's behalf. The tenant gave equally plausible testimony indicating he paid the utility bill himself on October 7th. The landlord did not provide a proof of payment to the city, only her testimony that somebody in the accounting department made the payment because they were required to do so. As the burden of proof falls upon the applicant, I do not find the landlord's version to be the more likely version of events and I dismiss the landlord's application seeking to recover the payment of the hydro utility.

The tenant agreed that he is responsible for paying for the carpet cleaning done after he vacated the rental unit. As such, the landlord is entitled to recover the $105.00 paid to have the carpets cleaned and I award the landlord this amount pursuant to section 67 of the Act.

The recovery of the filing fee is at the sole discretion of the arbitrator. I find that the landlord was successful in less than half of the claim and I decline to award the landlord recovery of the filing fee.

The landlord continues to hold the tenant's security deposit in the amount of $437.50. In accordance with the offsetting provision of section 72 of the Act, the landlord is to retain $105.00 of the security deposit and return the remaining $332.50 to the tenant.

Conclusion

I issue a monetary order in the tenant's favour in the amount of **$332.50.**

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 25, 2022

Residential Tenancy Branch