Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDL-S, FFL**

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The tenant was assisted by an advocate.

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

As both parties were present service was confirmed. The tenant testified that they received the landlord's materials and had not served any evidence of their own. Based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the *Act*.

At the outset of the hearing the tenant noted a typographic error in the spelling of their name and provided their correct name. The corrected name is used in the style of cause for this decision and any orders.

Issue(s) to be Decided

Is the landlord entitled to a monetary award as claimed?
Is the landlord entitled to retain the deposit for this tenancy?
Is the landlord entitled to recover their filing fee from the tenant?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The parties agree on the following facts. This tenancy began on March 1, 2020. The monthly rent was $900.00 payable on the first of each month. A security deposit of $450.00 was paid at the start of the tenancy and is still held by the landlord. There was an additional co-tenant at the start of the tenancy who vacated the rental unit and the present tenant assumed all of the rights and responsibilities under the signed tenancy agreement.

The tenant submits that in addition to the security deposit they paid $25.00 towards the pet damage deposit to the landlord. The landlord testified that they have no record of such payment despite a pet damage deposit of $450.00 being required under the tenancy agreement.

There was a move-in condition inspection report prepared by the parties. A copy was submitted into evidence. The report does not identify any issues or deficiencies at the start of the tenancy.

The tenancy ended on June 30, 2021. No move-out inspection report was prepared at the end of the tenancy. The landlord submits that they offered the tenant an opportunity to schedule an inspection in accordance with the Act and regulations but the tenant declined to provide available dates. A copy of email correspondence from the landlord dated June 5, 2021 was submitted into evidence. The landlord writes:

> Please have the following issues addressed before your move-out.
> …
> 6. Once you have addressed all issues, suggest a date for the Move Out Inspection.

The tenant submits that the email correspondence is insufficient to meet the requirements of the Act and regulations in attempting to schedule a date and time for a condition inspection.

The tenant writes in response on June 13, 2021:

> Honestly I'm not comfortable going back and doing work at the place… Just take the security deposit…

No condition inspection report was prepared, either with both parties or by the landlord alone, at the end of the tenancy. The landlord submits that the rental unit required major work as it was left in a state of damage and disrepair beyond what would be expected from simple wear and tear. The landlord submits that doors were broken, flooring needed to be replaced throughout the rental unit, walls and ceilings were marred. The landlord submitted into evidence estimates from third party companies providing quotes of $14,347.46 and $14,534.74 for the proposed work. The landlord testified that no work has been done on the rental unit.

The tenant testified that they did create a hole in the ceiling to install a fixture and installed a dishwasher in the rental suite that was left at the end of the tenancy.

Analysis

I accept the undisputed evidence of the parties that a security deposit of $450.00 was collected for this tenancy. I find insufficient evidence in support of the tenant's submission that they paid an additional $25.00 towards the pet damage deposit. The tenant made reference to a receipt but provided no documentary evidence. The amount does not correspond with the amount required on the signed tenancy agreement and is disputed by the landlord. I find insufficient evidence that anything more than $450.00 was paid for this tenancy.

Section 35(2) of the Act provides that a landlord must offer the tenant at least 2 opportunities, as prescribed, to schedule a date and time for a move out condition inspection.

In the present case the parties disagree on whether the email correspondence in June, 2021 constitutes sufficient attempts to schedule a move out inspection in accordance with the regulations.

I find that the message by the landlord to be a good faith attempt to find a mutually agreed upon date and time pursuant to Regulation 16(1). I find that the tenant clearly stated their intention not to attend a condition inspection at any time in their email response. Under such circumstances where the tenant has stated that they will not attend an inspection regardless of the date and time proposed I find it would be futile and a waste of time and effort to propose alternate opportunities.

I find it is not open for a tenant to state in writing that they will not attend any inspection and subsequently claim the landlord has extinguished their right to claim against the deposit for the tenancy.

I find the tenant's message "Just take the security deposit" to be an unambiguous written authorization for the landlord to retain the full amount of the security deposit for this tenancy. Therefore, pursuant to section 38(4)(a) I find the landlord is authorized to retain the $450.00 security deposit for this tenancy.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

In the present case, I accept the testimony of the tenant that they created a hole in the ceiling of the rental unit and has left a dishwasher installed in the rental unit. I find that much of the other claims of the landlord to not be sufficiently established in their evidence. I find the handful of photographs submitted to simply show some minor scratches and wear that would be expected from a tenancy of this length in a property of similar age and character.

I find that the nature and scope of the work for which the landlord has obtained estimates to be more in the nature of renovations to improve the rental unit rather than simply restoring to its pre-tenancy condition. I find work such as installing laminate and flooring throughout the rental unit, installing new baseboards and re-painting to be either improvements or simply the expected work as the expected useful life of building elements, noted in Residential Tenancy Policy Guideline 40, have expired.

Based on the totality of the evidence before me I am unable to find, on a balance of probabilities, that the landlord has experienced damages and losses as claimed. I find insufficient evidence that the rental unit was damaged beyond what would be reasonable in a tenancy or that the cost of work obtained is a result of the actions or negligence of the landlord.

I accept the evidence of the tenant that they failed to remove a dishwasher from the rental unit and have caused one hole in the ceiling of the rental unit. I therefore issue the landlord a monetary award for the estimated work to rectify these specific issues in the amount of $300.00.

As the landlord was somewhat successful in their claim I allow them to recover their filing fee from the tenant.

Conclusion

The landlord is authorized to retain the full deposit for this tenancy of $450.00.

I issue a monetary order in the landlord's favour in the amount of $400.00, representing their claim for damages and loss and recovery of the filing fee. The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order 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 *Residential Tenancy Act*.

Dated: March 8, 2022

Residential Tenancy Branch