Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The landlord applied for:

- a monetary order for loss under the Act, the regulation or tenancy agreement, pursuant to section 67;
- an authorization to retain the security deposit (the deposit), under section 38; and
- an authorization to recover the filing fee for this application, under section 72.

Landlord BE (the landlord) and tenants CD (the tenant) and CL attended the hearing. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing the attending parties affirmed they understand it is prohibited to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to $5,000.00 if they record this hearing: “A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than $5 000.”

As both parties were present service was confirmed. The parties each confirmed receipt of the application and evidence (the materials). Based on the testimonies I find that each party was served with the respective materials in accordance with sections 88 and 89 of the Act.

Preliminary Issue – request to adjourn the hearing

The landlord submitted this application on August 19, 2021.

The landlord affirmed he lost his cell phone about six months ago. The landlord would like the hearing to be adjourned because he found his cell phone less than 14 days before the hearing and he would like to submit into evidence the text messages stored in his cell phone.

Rule of Procedure 7.9 states:

> Without restricting the authority of the arbitrator to consider other factors, the arbitrator will consider the following when allowing or disallowing a party's request for an adjournment:
> • the oral or written submissions of the parties;
> • the likelihood of the adjournment resulting in a resolution;
> • the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment;
> • whether the adjournment is required to provide a fair opportunity for a party to be heard; and
> • the possible prejudice to each party

I find that finding a lost cell phone which contained possible evidence is not a reason to adjourn the hearing, per Rule of Procedure 7.9. The landlord had to serve his evidence at least 14 days before the hearing, per Rule of Procedure 3.14, regardless of finding or not finding his cell phone. I did not accept the landlord's request to adjourn the hearing.

Issues to be Decided

Is the landlord entitled to:

1. a monetary order for loss?
2. an authorization to retain the deposit?
3. an authorization to recover the filing fee?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is the landlord's obligation to present the evidence to substantiate the application.

Both parties agreed the tenancy started on March 01, 2013 and ended on August 07, 2021. Monthly rent was $1,928.11, due on the first day of the month. At the outset of the tenancy a security deposit of $775.00 was collected and the landlord holds it in trust. A tenancy agreement dated January 23, 2013 was submitted into evidence. It indicates the tenant is CL. A tenancy agreement dated August 31, 2020 was submitted into evidence. It indicates the tenants are CL and CD.

Both parties agreed the tenants provided their forwarding address in writing on August 07, 2021.

Both parties agreed that gas and electricity were not included in rent and the tenants paid 2/3 of the gas and electricity bills.

The landlord submitted a copy of the move out inspection report (the report). It is signed by the landlord's representative and the tenants. It states: "I agree that this report represents the condition of the rental unit – I agree to this".

The landlord is claiming compensation in the amount of $1,013.82 for the front door replacement. The landlord affirmed the tenants' children damaged the metal front door by hitting a hockey puck on the door. The puck caused multiple dings and black marks. The report states: "Front entrance door needs repair" and "Front door damage already being discussed". The landlord stated the door needs to be replaced because of the dings and provided an estimate indicating it will cost the amount claimed to replace and install the door.

The tenant testified the door damages are wear and tear, the door is functional and that the door does not contain holes. The tenant said his children played hockey near the rental unit, but he is not aware of the puck hitting the front door.

The landlord submitted three photographs of the door and the tenants submitted one photograph.

The landlord is claiming compensation in the amount of $300.00 for the staircase spindle replacement, as the tenants damaged it. The landlord submitted an estimate indicating it will cost the amount claimed to replace the staircase spindle: "$200 for the template plus $100 for each custom turning." The landlord affirmed the spindle needs to be custom made so it matches the other spindles. The landlord submitted one photograph showing the damaged spindle.

The tenant stated the damaged spindle is wear and tear. The tenant is not sure how the spindle broke.

The landlord is claiming compensation in the amount of $329.96 for cleaning expenses, as the landlord paid this amount to clean the 1,600 square feet, 3 bedroom rental unit. The landlord submitted into evidence a receipt. The landlord does not know how many hours the cleaner worked to clean the rental unit. The amount claimed is for cleaning the entire rental unit. The landlord testified the tenants did not clean behind the stove and the refrigerator, inside the cupboards and the washing machine. The blinds were also dirty. The stove is on rollers, but the refrigerator is not. The landlord did not provide special instructions for the tenants to remove the fridge and the stove.

The report indicates the oven and the refrigerator needed to be cleaned and that the other areas of the rental unit were in good condition when the tenancy ended. The landlord said he does not know why the report does not indicate the cleanliness state of the rest of the rental unit.

The tenant affirmed the suite was clean when the tenancy ended. The tenant stated he did not pull the stove because of the gas connection and because the stove is not on rollers. Both parties submitted photographs into evidence.

The landlord is claiming compensation in the amount of $26.49 for the gas bill and $60.19 for the electricity bill. The landlord testified he sent the gas and electricity bills to the tenants and they did not pay them. The amounts claimed are the tenants' share of the bills.

The tenants said that they believe that they did not have to pay for these bills because the landlord served a 2 month notice to end tenancy for landlord's use of the rental unit.

The landlord is claiming compensation in the total amount of $1,830.46.

Analysis

Section 7 of the Act states:

> Liability for not complying with this Act or a tenancy agreement
> (1)If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

> (2)A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Residential Tenancy Branch Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

> The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. 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:
>
> - 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.

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove the case is on the person making the claim.

Front door

Section 32(3) of the Act states: “A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.”

Section 37(2)(a) of the Act states:

> 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...

Residential Tenancy Branch policy guideline 1 states:

> 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.

Based on the landlord's convincing testimony, I find the tenants' children played hockey near the rental unit and hit the puck on the front door. I find the dings caused by the puck on the door are not wear and tear.

I find the photographs submitted by the landlord provide a better overview of the damages caused by the tenants' children to the front door.

Based on the landlord's convincing testimony and the photographs, I find the landlord needs to replace the front door. Based on the estimate, I find the landlord suffered a loss of $1,013.82 to replace the door damaged by the tenants' children.

Thus, I find the landlord proved, on a balance of probabilities, that the tenants breached section 32(3) of the Act by damaging the front door and the landlord suffered a loss in the amount claimed.

I award the landlord $1,013.82 in compensation for this loss.

Spindle

Based on the landlord's undisputed testimony, the estimate and the photograph, I find the tenants breached section 32(3) of the Act by not repairing the rental unit's staircase spindle and the landlord suffered a loss. I find the damaged staircase spindle is not wear and tear. I find it is reasonable that the landlord purchases a custom spindle to match the other spindles.

As such, I award the landlord $300.00 in compensation for this loss.

Cleaning

Regulation 21 states:

> In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

Based on the report, I find the only areas of the rental unit that were not clean when the tenancy ended were the oven and the refrigerator.

Based on the testimony offered by both parties and the photographs, I find that the areas dirty were specifically behind and underneath the stove and the refrigerator.

Residential Tenancy Branch Policy Guideline 1 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.

Based on the landlord's undisputed testimony, I find the refrigerator is not on rollers.

In the case before me the parties provided conflicting testimony about the stove having rollers. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

The landlord did not provide any documentary evidence to support his claim that the stove is on rollers. The landlord did not call any witnesses.

Per Policy Guideline 1, the tenants are not responsible to clean behind and underneath the stove and the refrigerator, as they are not on rollers.

Thus, I find the landlord failed to prove, on a balance of probabilities, that the tenants breached the Act.

I dismiss the landlord's application for compensation for cleaning expenses.

Utilities

Section 51(1) of the Act states:

> (1)A tenant who receives a notice to end a tenancy under section 49 [landlord's use of property] is entitled to receive from the landlord on or before the effective date of the

> landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

Section 51(1) of the Act establishes that the tenants are entitled to compensation in the amount of one month's rent, not the utilities owed for this month.

Based on the landlord's undisputed testimony, I find the tenants must pay 2/3 of the gas and electricity bills and did not pay the amount of $26.49 for the gas bill and $60.19 for the electricity bill.

I find the tenants breached the tenancy agreement by not paying the utility bills and the landlord suffered a loss of $86.68.

As such, I award the landlords $86.68 in compensation for this loss.

Deposit

Section 38(1) of the Act requires the landlord to either return the tenants' deposits in full or file for dispute resolution for authorization to retain the deposits 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing.

The landlord confirmed receipt of the tenant's forwarding address on August 07, 2021 and submitted this application on August 19, 2021, within the timeframe of section 38(1) of the Act.

As explained in section D.2 of Policy Guideline #17, the monetary amount or cost awarded to a landlord may be deducted from the security or pet damage deposit held by the landlord. I order the landlord to retain the $775.00 deposit.

Filing fee and summary

As the landlord was successful in this application, I find that the landlord is entitled to recover the $100.00 filing fee.

In summary:

Item	Amount $
Front door	1,013.82
Spindle	300.00
Utilities	86.68
Filing fee	100.00
Sub-total	1,500.00
Minus deposit	775.00 (subtract)
Total monetary award	**725.50**

Conclusion

Pursuant to sections 38, 67 and 72 of the Act, I authorize the landlord to retain the $775.00 deposit and grant the landlord a monetary order in the amount of $725.50.

The landlord is provided with this order in the above terms and the tenants must be served with this order. Should the tenants 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 10, 2022

Residential Tenancy Branch