Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, MNDL-S

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; and
- an authorization to retain the security and pet damage deposits (the deposits), under section 38.

Tenant RD (the tenant) and agent JD and the landlord attended the hearing. The landlord was represented by property manager JY (the landlord). 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 the parties cannot 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.”

Preliminary Issue – Service

The tenant confirmed receipt of the notice of hearing and the evidence (the materials) and that he had enough time to review the materials.

The tenant did not serve the response evidence submitted to the Residential Tenancy Branch.

Based on the tenant's testimony, I find the landlord served the materials in accordance with section 89 of the Act.

Rule of Procedure 3.15 states:

> 3.15 Respondent's evidence provided in single package
> Where possible, copies of all of the respondent's available evidence should be submitted to the Residential Tenancy Branch online through the Dispute Access Site or directly to the Residential Tenancy Branch Office or through a Service BC Office. The respondent's evidence should be served on the other party in a single complete package.

Per Rule 3.15, I am excluding the tenant's response evidence.

Issues to be Decided

Is the landlord entitled to:

1. a monetary order for loss?
2. an authorization to retain the deposits?

Background and Evidence

While I have turned my mind to the accepted 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 June 01, 2019 and ended on September 30, 2021. Monthly rent was $2,600.00, due on the first day of the month. At the outset of the tenancy a security deposit of $1,300.00 and a pet damage deposit of $1,300.00 were collected and the landlord holds them in trust. The tenancy agreement was submitted into evidence.

The tenant emailed the forwarding address on October 08, 2021 and sent a letter with the forwarding address on October 25, 2021. The landlord believes he received the forwarding address. The tenant did not authorize the landlord to retain the deposits.

The landlord submitted this application on October 18, 2021.

Both parties agreed they scheduled the move out inspection for October 04, 2021 at 3:30 P.M. The tenant affirmed he arrived at the rental unit at 3:30 P.M., the landlord did not conduct the inspection and asked him to sign a document on a tablet. The tenant was not able to see the document that he electronically signed. The landlord stated the inspection happened at 1:00 P.M. without the tenant and the landlord did not show the tenant the document that he signed.

The move out inspection report (the report) states (page 71):

> The parties agree that:
> -During this inspection all spaces and elements of the rented property and everything in the property belonging to the landlord have been properly inspected and the correct state was noted.
> - The inspection has been done in detail with both parties, or their representatives, present and is adequately documented without any additional conditions, other than those mentioned in the report.

Both parties agreed the rental unit is 1,400 square feet, 3-bedroom house built in 1954.

The landlord is claiming cleaning expenses in the amount of $380.00, as the tenant did not clean the rental unit. The landlord believes the unit was cleaned by 2 cleaners for 3 hours. The landlord testified the oven was greasy and the rental unit was not clean to the landlord's standard. The tenant said the rental unit was clean when the tenancy ended.

The landlord is claiming $10.00 for the replacement of a light bulb. The bulb was working properly when the tenancy started. The tenant affirmed that it is possible that a light bulb was not replaced when the tenancy ended.

The landlord is claiming $10.00 for the replacement of the batteries of a thermostat. The tenant stated that it is possible that the thermostat was not working when the tenancy ended.

The landlord submitted two separate invoices for cleaning. The invoice dated October 14, 2021: "Move out cleaning: 396. GST 5% 19.80. Total: $415.80."

The invoice dated February 12, 2021 states: "General cleaning: 380.00. Light bulbs replacement: 10.00. Thermostat batteries replacement: 10.00. Subtotal: 400.00. GST 5%: 20.00. Total: $420.00."

The monetary order worksheet indicates: "Move out cleaning $415.80".

The landlord is claiming wall repair and painting expenses in the amount of $1,161.50, as the tenant damaged the kitchen, the back entrance and the bedroom walls. The walls were not in good condition when the tenancy started. The tenants caused yellow stains on the kitchen walls. The walls were painted prior to June 01, 2019.

The tenant testified he did not damage the walls and they had only wear and tear when the tenancy ended. The tenant is responsible for a few nails or screw holes on the walls. The walls were dirty when the tenancy started. The tenant is not responsible for the yellow stains on the kitchen walls.

The landlord submitted an invoice dated January 11, 2022:

Wall repair and painting – 9'x10'. Patch wall with painting for all walls : 523.25
Painting of nook arc – Extensive patching of wall with holes, color matched paint from wall to wall after patching: 419.75
Painting of wall beside rear entrance – 11 linear feet wall to wall: 143.75.
Painting of wall beside basement rear entrance – 7 linear feet, color matched painting: 74.75

The landlord is claiming bathroom door repair expenses and light switch replacement expenses in the amount of $270.25. The landlord said the tenant damaged the bathroom door and the light switch. The tenant denied damaging the bathroom door and agreed that he damaged the light switch.

The January 11, 2022 invoice states: "Upstairs bathroom. Door Repair on lock set and light switch cover: 270.25."

The landlord is claiming bedrooms doors repair expenses in the amount of $741.75, as the tenant damaged the door frames. The doors were installed in 1954. The tenant affirmed he did not damage the doors. The handyman hired by the landlord caused a slight crack in the basement bedroom door.

The January 11, 2022 invoice states: "Repair of door lock sets and broken door frame x 3 – cracked door frames repair and cracked door repair: 741.75."

The landlord is claiming blinds repair expenses in the amount of $310.50, as the tenant removed two blinds and did not reinstall them. The blinds were more than 10 years old.

The tenant stated that some blinds were not working when the tenancy started and he emailed the landlord to inform him that he removed them and stored them in the furnace room. The tenant testified the landlord replied to the email informing him that he would address the blind issues but he did not.

The move in report states: "bedroom (face yard): one blind, bent a little bit."

The landlord is not sure if he received the email requesting the blinds repair.

The January 11, 2022 invoice states: "Blind reinstallation x 2: 310.50."

The landlord submitted into evidence a monetary order worksheet indicating a claim in the amount of $3,024.00.

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.

Move out inspection

Section 35 of the Act requires the landlord to offer the tenant at least 2 opportunities for the move-out inspection, to complete the inspection together with the tenant and to complete the report in accordance with the regulations.

Section 36(2) of the Act states:

> Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord
> (a)does not comply with section 35 (2) [2 opportunities for inspection],
> (b)having complied with section 35 (2), does not participate on either occasion, or
> (c)having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Residential Tenancy Branch Policy Guideline 17 explains: “7. The right of a landlord to obtain the tenant’s consent to retain or file a claim against a security deposit for damage to the rental unit is extinguished if having made an inspection does not complete the condition inspection report, in the form required by the Regulation, or provide the tenant with a copy of it.”

I accepted the uncontested testimony that the parties agreed to conduct the move out inspection on October 04, 2021 at 3:30 P.M. and the landlord conducted the inspection alone on October 04, 2021 at 1:00 P.M.

I find the landlord extinguished his right to claim against the deposit, per section 36(2)(c) of the Act, as the landlord did not participate in the move out inspection at the agreed time.

The landlord breached section 35(1) of the Act, as he inspected the rental unit alone two and half hours before the agreed time.

Based on the uncontested testimony, I find the tenant signed the report in error, as the landlord did not show the report to the tenant.

Furthermore, the report does not contain the statement required by regulation 20, (k):

> I, ...
> Tenant's name
> [ ] agree that this report fairly represents the condition of the rental unit.
> [ ] do not agree that this report fairly represents the condition of the rental unit, for the following reasons:

Thus, I find the landlord did not comply with regulation 20(k).

Regulation 21 provides:

> Evidentiary weight of a condition inspection report

> 21 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

I find the report has no evidentiary weight, as the landlord did not complete it in accordance with the regulations. Furthermore, as explained on this topic, the landlord did not conduct the inspection in accordance with section 35 of the Act, as he conducted it alone two and half hours before the agreed time.

Cleaning

Section 37(2) of the Act states:

> Leaving the rental unit at the end of a tenancy
> 37(2) 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:

> 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.

The parties offered conflicting testimony regarding the cleanliness state of the rental unit when the tenancy ended. 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.

I have carefully reviewed the testimony offered by both parties, and I find that the landlord has not provided sufficient evidence that the rental unit was not reasonably clean when the tenancy ended.

The applicant did not provide any documentary evidence to support his claim about the cleaning conditions of the rental unit. The applicant did not call any witnesses.

I dismiss the landlord’s claim for compensation for cleaning expenses.

Light bulb

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”.

Based on testimony offered by both parties, I find the tenant failed to comply with section 32(3) of the Act by not changing the damaged light bulb and the landlord suffered a loss as a consequence of the tenant’s failure to comply with the Act.

The landlord did not explain why he submitted two invoices dated February 12 and October 14, 2021 for cleaning services. Furthermore, the October 14, 2021 invoice for $415.80 only mentions cleaning. The monetary order worksheet indicates: “Move out cleaning: $415.80”. The February 12, 2021 invoice mentions the cost of a light bulb, but this invoice was issued seven months before the end of the tenancy and the monetary order worksheet indicates the amount of the October 14, 2021 invoice. I find the landlord failed to prove, on a balance of probabilities, the amount of the loss.

I dismiss the landlord’s claim for compensation for light bulb expenses.

Thermostat Batteries

Based on testimony offered by both parties, I find the tenant failed to comply with section 32(3) of the Act and the landlord suffered a loss as a consequence of the tenant’s failure to comply with the Act.

The February 12, 2021 invoice mentions the cost of a thermostat battery, but this invoice was issued seven months before the end of the tenancy. I find the landlord failed to prove, on a balance of probabilities, the amount of the loss.

I dismiss the landlord’s claim for compensation for thermostat batteries expenses.

Wall repair and painting

Residential Tenancy Branch Policy Guideline 1 states:

> 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).
>
> **PAINTING**

> The landlord is responsible for painting the interior of the rental unit at reasonable intervals. The tenant cannot be required as a condition of tenancy to paint the premises. The tenant may only be required to paint or repair where the work is necessary because of damages for which the tenant is responsible.
> […]
> Cleaning: The tenant is responsible for washing scuff marks, finger prints, etc. off the walls unless the texture of the wall prohibited wiping.
> Nail Holes:
> 1. Most tenants will put up pictures in their unit. The landlord may set rules as to how this can be done e.g. no adhesive hangers or only picture hook nails may be used. If the tenant follows the landlord's reasonable instructions for hanging and removing pictures/mirrors/wall hangings/ceiling hooks, it is not considered damage and he or she is not responsible for filling the holes or the cost of filling the holes.
> 2. The tenant must pay for repairing walls where there are an excessive number of nail holes, or large nails, or screws or tape have been used and left wall damage.
> 3. The tenant is responsible for all deliberate or negligent damage to the walls.

Based on the testimony of both parties, I find the landlord failed to prove, on a balance of probabilities, that the tenant damaged the walls. I find that a few nails or screw holes on the walls are regular wear and tear.

I dismiss the landlord's claim for compensation for wall repair and painting expenses.

Bathroom door and light switch

Based on the testimony of both parties, I find the landlord failed to prove, on a balance of probabilities, that the tenants damaged the bathroom door.

Thus, I dismiss the landlord's claim for compensation for the bathroom door repair.

Based on testimony offered by both parties, I find the tenant failed to comply with section 32(3) of the Act by not repairing the damaged light switch and the landlord suffered a loss as a consequence of the tenant's failure to comply with the Act.

As the January 11, 2022 invoice lists the amount of $270.25 for the bathroom door repair and the light switch replacement, I find the landlord failed to prove, on a balance of probabilities, the amount of the loss for the light switch.

I dismiss the landlord's claim for compensation for bathroom door repair and light switch expenses.

Bedrooms doors

Based on the testimony of both parties, I find the landlord failed to prove, on a balance of probabilities, that the tenant damaged the bedrooms doors. The tenant explained the handyman hired by the landlord caused a slight crack in one of the doors and the landlord did not rebut this testimony.

Furthermore, Residential Tenancy Branch Policy Guideline 40 states the useful life of doors is 20 years.

I accept the landlord's testimony that the doors were installed in 1954. Thus, the doors were 67 years old when the tenancy ended.

I dismiss the landlord's claim for compensation for bedrooms doors repair.

Windows coverings (blinds)

Based on the tenant's convincing testimony, the move in report and the landlord's vague testimony, I find the landlord failed to prove, on a balance of probabilities, that the tenant damaged the blinds. I find the blinds were not working when the tenancy started, the tenant emailed the landlord and informed the blinds were not working and because of this reason the tenants removed the blinds.

Furthermore, Residential Tenancy Branch Policy Guideline 40 states the useful life of blinds is 10 years. I accept the landlord's testimony that the blinds were more than 10 years old when the tenancy ended.

I dismiss the landlord's claim for compensation for blinds replacement.

Deposits

Based on the tenant's convincing testimony I find, on a balance of probabilities, that the tenant served the forwarding address via registered mail on October 25, 2021.

Per section 90 (a) of the Act, the landlord is deemed to have received the forwarding address on October 30, 2021.

The tenancy ended on September 30, 2021 and the tenant did not authorize the landlord to retain the deposits.

Residential Tenancy Branch Policy Guideline 17 states:

> Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit:
> if the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act;
> […]
> If the landlord has obtained the tenant's written agreement to deduct from the security deposit for damage to the rental unit after the landlord's right to obtain such agreement has been extinguished under the Act.

In accordance with section 38(6)(b) of the Act, as the landlord extinguished his right to claim against the deposits and did not return the deposits within the timeframe of section 38(1) of the Act, the landlord must pay the tenant double the amount of the deposits.

Under these circumstances and in accordance with section 38(6)(b) of the Act, I find the tenant is entitled to a monetary award of $5,200.00 (double the security deposit of $1,300.00 and the pet deposit of $1,300.00).

Over the period of this tenancy, no interest is payable on the landlord's retention of the deposits.

Conclusion

Pursuant to section 38 of the Act, I grant the tenant a monetary order in the amount of $5,200.00.

The tenant is provided with this order in the above terms and the landlord must be served with this order. Should the landlord 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: April 28, 2022

Residential Tenancy Branch