Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Landlord on June 30, 2021, under the *Residential Tenancy Act* (the *Act*), seeking:

- Compensation for damage caused by the Tenants, their pets, or their guests to the unit, site, or property;
- Compensation for monetary loss or other money owed; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call at 1:30 PM on January 18, 2022, and was attended by an agent for the Landlord (the Agent), the Tenant, and the Tenant's support person/interpreter, all of whom provided affirmed testimony. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The parties were advised that pursuant to rule 6.10 of the Rules of Procedure, interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The parties were asked to refrain from speaking over me and any other participants and to hold their questions and responses until it was their opportunity to speak. The parties were also advised that pursuant to rule 6.11 of the Rules of Procedure, recordings of the proceedings are prohibited, except as allowable under rule 6.12, and confirmed that they were not recording the proceedings.

The Residential Tenancy Branch Rules of Procedure (the Rules of Procedure) state that the respondent(s) must be served with a copy of the Application, Notice of Hearing, and any amendments to the Application (Amendments). As the Tenant acknowledged

receipt of the NODRP and Amendment(s) from the Landlord and raised no concerns with regards to service methods or service dates, I find that the Tenant was therefore served in accordance with the *Act* and the Rules of Procedure.

Although I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Rules of Procedure, I refer only to the relevant and determinative facts, evidence, and issues in this decision.

At the request of the parties, a copy of the decision and any orders issued in their favor will be emailed to them at the email addresses provided in the Application.

Preliminary Matters

Preliminary Matter #1

At the outset of the hearing the Tenant and their support person requested that the Tenant be provided with an interpreter. I advised the parties that although rule 6.7 of the Rules of Procedure allow parties to a dispute resolution hearing to be assisted by an advocate, an interpreter, or any other person whose assistance the party requires in order to make their presentation, the Residential Tenancy Branch (the Branch), does not provide these services. I asked if the Tenant's support person was able to interpret for the Tenant and advised them that if not, the hearing may need to be adjourned and rescheduled. The Tenant's support person indicated that they could function as an interpreter for the Tenant as they spoke both English and the Tenant's language of fluency, and as I was satisfied that the support person could perform these duties, the hearing continued.

As the Tenant's support person was not a professional interpreter, the hearing proceeded slowly, with many stops in the testimony, to allow the Tenant's support person sufficient time to translate information and testimony back and forth, and to ensure that the Tenant and the Tenant's support person could easily follow along.

Preliminary Matter #2

The Tenant acknowledged receipt of the Landlord's documentary evidence and raised no concerns with regards to service dates or methods. As a result, I have accepted the Landlord's documentary evidence for consideration. However, the Tenant acknowledged that they served the documents before me only on the Branch and not

the Landlord. The documents before me from the Tenant consist of a two page written summary of submissions and two pages of photographs of a fridge door.

The Rules of Procedure require parties to exchange documentary evidence ahead of the hearing, to allow them the opportunity to review and respond to it. As the Tenant did not serve the documents before me on the Landlord, I find that it would be a breach of both the Rules of Procedure and the principles of administrative fairness to consider the Tenant's photographs as the Landlord was not provided with the opportunity to view them prior to the hearing. As a result, I have excluded those photographs from consideration. However, as parties are allowed to make oral submissions and arguments at the hearing without the need to provide a written summary of such submissions and arguments to the other party in advance, I allowed the Tenant's support person to read the two page written document verbatim at the hearing as part of the Tenant's oral testimony, submissions, and arguments.

Preliminary Matter #3

As the hearing progressed slowly due to the need for interpretation, I offered the parties the option of an adjournment when the scheduled time for the hearing had passed. All the parties present indicated that they wished to continue without an adjournment, and as I was available to continue with the hearing, the hearing continued without an adjournment.

Preliminary Matter #4

Although the parties engaged in settlement discussions during the hearing, ultimately a settlement agreement could not be reached between them. As a result, I proceeded with the hearing and rendered a decision in relation to this matter under the authority delegated to me by the Director of the Branch under Section 9.1(1) of the *Act*.

Issue(s) to be Decided

Is the Landlord entitled to the recovery of cleaning costs?

Is the Landlord entitled to the recovery of cost incurred due to damage caused by the Tenant, their pets, or their guests?

Is the Landlord entitled to recovery of the filing fee?

Is the Landlord entitled to withhold all or a portion of the security deposit?

Background and Evidence

The tenancy agreement in the documentary evidence before me states that the periodic (month-to-month) tenancy commenced on April 1, 2020, at a monthly rent amount of $2,870.00. It states that rent is due on the first day of each month and that a security deposit in the amount of $1,400.00 is required. At the hearing the parties agreed that the $1,400.00 security deposit was paid and is still held in trust by the Landlord. The parties agreed that move-in and move-out condition inspections and reports were completed, and copies provided to the Tenant, in accordance with the *Act* and the *Regulations*. They also agreed that the tenancy ended on June 28, 2021, and that the Tenant's forwarding address was provided to the Agent on that date by way of the move-out condition inspection report.

The parties agreed that the Tenant is responsible for the $362.25 sought by the Landlord for cleaning costs. However, they disputed whether there was any pre-existing damage to the rental unit at the start of the tenancy, whether any damage to the rental unit at the end of the tenancy constitutes reasonable wear and tear, and whether the Tenant is responsible for the cost of any repairs needed.

The Agent argued that the condition inspection report clearly shows that there was no damage to the fridge at the start of the tenancy, and that there was damage to the fridge door, in the form of scratching, at the end of the tenancy. The Agent stated that the fridge was only three years old at the start of the tenancy and that the level of scratching present does not constitute reasonable wear and tear for a tenancy just over one year in length. The Agent hypothesized that the scratching was the result of magnets, and the use of writing implements on a calendar that was positioned on the door of the fridge by the Tenant. The Agent stated that the new occupants requested that the fridge door be replaced as it was not in good condition, so four quotes were obtained, and the Landlord replaced the fridge door at the lowest quoted price of $1,248.11. The Agent submitted photographs, videos, an invoice for replacement of the fridge door, a Monetary Order Worksheet, and a copy of the condition inspection report(s) in support of their claim.

The Tenant denied damaging the fridge door and questioned when the photographs presented by the Agent were taken. The Tenant acknowledged that they disagreed with the Agent's assessment of the condition of the rental unit at the end of the tenancy, which is why they disagreed about the condition on the move-out condition inspection

report. The Tenant further argued that in the event that I find that the fridge was scratched during the course of the tenancy, this scratching should constitute reasonable wear and tear and as such, they should not be responsible for any costs associated with it. Finally, the Tenant argued that even if they are found to have damaged the door, and that such damage is not reasonable wear and tear, replacement of the door was not necessary, as scratching is purely cosmetic and does not impact the function of the door.

In addition to the above noted claims for damage and cleaning costs, the Landlord sought recovery of the $100.00 filing fee and retention of the Tenant's security deposit towards any amounts owed.

Analysis

As there is no evidence before me to the contrary, I find that a tenancy agreement to which the *Act* applies existed between the parties, the terms of which are set out in the tenancy agreement before me for consideration, as summarized above.

Section 37 of the *Act* states that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. Section 7 of the *Ac*t states that if a tenant does not comply with the *Act*, the regulations or their tenancy agreement, the non-complying tenant must compensate the landlord for damage or loss that results. It also states that the landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with the *Act*, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Further to the above, Residential Tenancy Policy Guideline (Policy Guideline) #1 defines reasonable wear and tear as natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. As the fridge would have been approximately four years old at the end of the tenancy, I would expect there to be some deterioration in the finishes of the fridge. However, the photographs and videos submitted by the Landlord shows more than a minimal amount of deterioration to the finish on the door of the fridge. Significant scratching can be seen, almost as if the surface was cleaned with something abrasive. In addition to this, a small dent can be seen. Although the Tenant disputed the state of the fridge, no documentary evidence was submitted to support their claims that either the fridge was not damaged at the end of the tenancy or that there was pre-existing damage to the fridge. Based on the Landlord's documentary evidence, I am satisfied that the fridge was scratched and

dented during the course of the tenancy, and I find that the level of damage shown is more than what can reasonably be considered wear and tear on a four year old fridge during a 13 month tenancy.

Based on the above, I find that the Tenant therefore breached section 37(2)(a) of the *Act*. The invoice submitted by the Landlord shows a cost of $1,248.11 for replacement of the fridge door and while the Tenant argued that replacement of the door was unnecessary as functionality of the door was not impacted, I disagree. Policy Guideline #5 states that the purpose of compensation is to restore the landlord or tenant to a position as if the damage or loss had not occurred and I find that given the nature of fridge doors, the only reasonable option open to the Landlord to place them in the same position they would have been if the damage had not occurred, was to replace the fridge door. However, Policy Guideline #5 states that repairing damage or replacing damaged items sometimes puts the landlord or tenant suffering damage or loss in a better position than they were before the damage or loss occurred. While this is permissible, Policy Guideline #5 makes it clear that the person responsible for the damage is only responsible for an amount that covers the loss and that the extra cost is not the responsibility of the person who caused the damage.

As the fridge was already 3 years old at the start of the tenancy and was four years or more old at the end of the tenancy, I therefore find that the Landlord was in a better position than they would have otherwise been when they replaced the four year old fridge door with a new fridge door at the end of the tenancy. Policy Guideline #40 states that the useful life of a fridge is 15 years. As neither party argued that another useful life period should apply for the particular fridge in the rental unit, I therefore use the 15 year time period set out in Policy Guideline #40. Based on the useful life of a fridge, I find that the Landlord is therefore only entitled to recover $915.28 for replacement of the fridge door ($1,248.11/15 years x the 11 years remaining on the useful life of the fridge at the end of the tenancy). As the parties agreed that the Tenant also owes $362.25 in cleaning costs, I award the Landlord that amount.

As the Landlord was successful in their Application, I also award them recovery of the $100.00 filing fee pursuant to section 72(1) of the *Act*. As there is no evidence before me that either party extinguished their rights in relation to the security deposit under the *Act*, I find that they did not. As the tenancy ended on June 28, 2021, the parties agree that the Tenant provided their forwarding address to the Landlord in writing on June 28, 2021, and the Application was filed on June 30, 2021, I therefore find that the Landlord complied with section 38(1) of the *Act*. Pursuant to section 72(2)(b) of the *Act*, I therefore authorize the Landlord to retain $1,377.53 of the $1,400.00 security deposit in

repayment of the above owed amounts. Pursuant to section 67 of the *Act* and Policy Guideline 17, I therefore grant the Tenant a Monetary Order in the amount of $22.47 for the balance of their security deposit.

Conclusion

Pursuant to section 67 of the *Act*, I grant the Tenant a Monetary Order in the amount of **$22.47**. The Tenant is provided with this Order in the above terms and the Landlord must be served with this Order as soon as possible. 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.

The Landlord is also authorized to retain **$1,377.53** from the security deposit.

This decision has been rendered more than 30 days after the close of the proceedings, and I sincerely apologize for the delay. However, section 77(2) of the *Act* states that the director does not lose authority in a dispute resolution proceeding, nor is the validity of a decision affected if a decision is given after the 30 day period in subsection (1)(d). As a result, I find that neither the validity of this decision and the associated Monetary Order, nor my authority to render this decision and grant the Monetary Order, are affected by the fact that this decision and the associated Monetary Order were rendered more than 30 days after the close of the proceedings.

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: May 6, 2022

Residential Tenancy Branch