Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDL-S, FFL**

Introduction

This hearing was convened by way of conference call in response to an application for dispute resolution ("Application") filed by the Landlord pursuant to the *Residential Tenancy Act* (the "Act"). The Landlord applied for the following:

- a Monetary Order for $450.00 as compensation to make repairs that the Tenant, their pets or their guests caused during the tenancy pursuant to section 67;
- authorization to keep the Tenant's security deposit pursuant to section 38; and
- authorization to recover the application fee of the Application from the Tenant pursuant to section 72.

The Landlord and the Tenant attended the hearing. I explained the hearing process to the parties who did not have questions when asked. I told the parties they were not allowed to record the hearing pursuant to the *Residential Tenancy Branch Rules of Procedure*. The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The Landlord stated he served the Notice of Dispute Resolution Proceeding ("NDRP") on the Tenant by email on November 1, 2021. Although the Tenant did not consent in writing to service of the NDRP by email, the Tenant acknowledged he received the NDRP by email. I find that the Tenant was sufficiently served with the NDRP on November 4, 2021 pursuant to section 71(2)(b) of the Act.

The Landlord stated he served his evidence on the Tenant by email on November 28, 2022. As the Tenant acknowledged he received the Landlord's evidence by email, I find

the Tenant was sufficiently served with the Landlord's evidence on December 1, 2022 pursuant to section 71(2)(b) of the Act

The Tenant stated he served his evidence on the Landlord by email on April 23, 2022. As the Landlord acknowledged he received the Tenant's evidence by email, I find the Landlord was sufficiently served with the Tenant's evidence on April 26, 2022 pursuant to section 71(2)(b) of the Act.

Preliminary Matter – Removal of a Respondent from Application

At the outset of the hearing, I noted that the Tenant's spouse ("SL") was not named as a tenant in the tenancy agreement. The Landlord acknowledged that only the Tenant was named in the tenancy agreement and not SL. The Landlord requested that I amend the Application to remove SL as a respondent to the Application.

Rule 4.2 of the *Residential Tenancy Branch Rules of Procedure* states ("RoP"):

> **4.2 Amending an application at the hearing**
>
> In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.
>
> If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

With the consent of the Tenant, I amended the Application to remove SL as a respondent on the Application pursuant to Rule 4.2,

Preliminary Matter – Correction of Tenant's Name

I noted the surname of the Tenant appearing in the Application was spelled differently from the spelling of surname of the Tenant in the tenancy agreement. The Landlord stated that there was a typographical error in the spelling of the Tenant's surname in the Application and requested that I amend the Application to state the correct Tenant's surname.

As the Landlord's request could reasonably be anticipated by the Tenant, I amended the Application to correct the spelling of the Tenant's surname pursuant to Rule 4.2.

Issues to be Decided

Is the Landlord entitled to:

- a Monetary Order for damage arising out of this tenancy?
- retain all or a portion of the Tenant's security deposit in partial satisfaction of the monetary award requested?
- recovery of his filing fee for the Application?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Application and my findings are set out below.

The Landlord submitted a copy of the tenancy agreement between the Landlord and Tenant dated September 25, 2020 into evidence. The Landlord stated the tenancy commenced on October 1, 2020, for a fixed term of seven months, with rent of $950.00 payable on the 1st day of each month. The Tenant was required to pay a security deposit of $475.00 to the Landlord. The Landlord acknowledged the Tenant paid the security deposit and that he was holding it in trust for the Tenant. The parties agreed the Tenant vacated the rental unit on July 30, 2021.

The Landlord stated a move-in condition report was performed prior to the Tenant moving into the rental unit on November 1, 2019 but it was not signed by the Tenant. When I asked, The Tenant stated that no move-in inspection was completed before he moved into the rental unit. The Landlord did not submit a copy of the unsigned move-in condition inspection report. The Landlord stated a move-out condition report was performed with an agent for the Tenant on August 9, 2021. The Landlord submitted only the portion of the move-out inspection report that was signed by the Tenant's agent.

The Landlord stated damages were found after the Tenant vacated the rental unit and he submitted photos of the following:

1. pull loops on large area carpet;
2. scuffs and smudges on walls;
3. a small pile of clothing; and
4. less than a small dustpan of floor sweepings.

The Landlord submitted two advertisements of comparable area carpets for $189.00 and $219.00. The Landlord did not submit an invoice for the cost of cleaning the rental unit.

The Tenant disputed the Landlord's claim that he or another occupant or guest damaged the carpet. The Tenant submitted the scuffs and smudges on the walls were normal wear and tear and that the Landlord was responsible for performing repairs on the walls.

Analysis

Rule 6.6 Residential Tenancy Branch Rules of Procedure ("RoP") states:

> **6.6 The standard of proof and onus of proof**
>
> 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 their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

Sections 7, 37(2) and 67 of the Act state:

> 7(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.

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, and

(b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

67 Without limiting the general authority in section 62 (3) *[director's authority respecting dispute resolution proceedings]*, if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Based on the foregoing, the Landlord must prove it is more likely than not that the Tenant breached section 37(2) of the Act, that he suffered a quantifiable loss as a result of this breach, and that he acted reasonably to minimize his loss.

Residential Tenancy Branch Policy Guideline 16 ("PG 16") addresses the criteria for awarding compensation. PG 16 states in part:

> 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:
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> - 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.
>
> These criteria may be applied when there is no statutory remedy (such as the requirement under section 38 of the Residential Tenancy Act for a landlord to pay double the amount of a deposit if they fail to comply with the Act's provisions for returning a security deposit or pet deposit).

> An arbitrator may award monetary compensation only as permitted by the Act or the common law. In situations where there has been damage or loss with respect to property, money or services, the value of the damage or loss is established by the evidence provided.

Accordingly, the Landlord must provide sufficient evidence that the four elements set out in PG 16 have been satisfied. However, before I can consider the Landlord's testimony and evidence regarding the damages claimed, I must firstly consider whether the Landlord complied with the requirements for performance of a move-in and move-out condition inspection reports pursuant to sections 23 of the Act.

Sections 23 and 24 the Act state:

23(1) *The landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.*

(2) The landlord and tenant together must inspect the condition of the rental unit on or before the day the tenant starts keeping a pet or on another mutually agreed day, if

(a) the landlord permits the tenant to keep a pet on the residential property after the start of a tenancy, and

(b) a previous inspection was not completed under subsection (1).

(3) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.

(4) *The landlord must complete a condition inspection report in accordance with the regulations.*

(5) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.

(6) The landlord must make the inspection and complete and sign the report without the tenant if

(a) the landlord has complied with subsection (3), and

(b) the tenant does not participate on either occasion.

24 (1) *The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if*

(a) the landlord has complied with section 23 (3) [2 opportunities for inspection], and

(b) the tenant has not participated on either occasion.

(2) The right of a 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 23 (3) *[2 opportunities for inspection]*,

(b) having complied with section 23 (3), does not participate on either occasion, or

(c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

[emphasis in italics added]

The Landlord stated a move-in condition inspection report was completed but it was unsigned. The Tenant stated that a move-in inspection report was not completed. As the Landlord did not provide a signed move-in condition inspection report that was signed by the Landlord and Tenant, I find the Landlord has not complied with section 23(5) of the Act. As such, I find the right of the Landlord to claim against the security deposit for damage to the residential property is extinguished pursuant to section 24(2)(c). Based on the foregoing, I dismiss the Landlord's claim for compensation from the Tenant.

As the Landlord has been unsuccessful in his claim, the Landlord is not entitled to recover the filing fee for the Application.

In accordance with section 38(1) of the Act, I order the Landlord repay, as provided by subsection 38(8), the security deposit of $475.00 to the Tenant within 15 days after the date the Landlord receives the Tenant's forwarding address in writing. I note that section 39 of the Act states:

39 Despite any other provision of this Act, if a tenant does not give a landlord a forwarding address in writing within one year after the end of the tenancy,

(a) the landlord may keep the security deposit or the pet damage deposit, or both, and

(b) the right of the tenant to the return of the security deposit or pet damage deposit is extinguished.

Based on section 39, in the event the Tenant does not give the Landlord his forwarding address in writing within one year after the end of the tenancy, the Landlord may keep the security deposit and the right of the Tenant to the return of the security deposit is extinguished.

Conclusion

The Application is dismissed in its entirety.

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 15, 2022

Residential Tenancy Branch