Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CANADIAN GENERAL PROPERTY and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCL-S, MNDL-S, FFL

Introduction

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

- Compensation for monetary loss or other money owed;
- Compensation for damage caused to the rental unit by the tenants, their pets, or their guests;
- Retention of the security deposit and or the pet damage deposit; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call at 1:30 P.M. on February 1, 2022, and was attended by an agent for the Landlord D.C. (the Agent) and the Tenants, 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 Residential Tenancy Branch Rules of Procedure (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 one another 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 the parties confirmed that they were not recording the proceedings.

The *Act* and the Rules of Procedure state that respondents must be served with a copy of the Application and Notice of Hearing. As the Tenants acknowledged receipt and

raised no concerns with regards to service date or method, I find that they were therefore properly served for the purposes of the *Act* and the Rules of Procedure, and the hearing proceeded as scheduled.

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 Agent, a copy of the decision and any orders issued in favor of the Landlord will be emailed to them at the email addresses provided by them in the Application and confirmed at the hearing. At the request of the Tenants, a copy of the decision and any orders issued in their favor will be mailed to them at the mailing address provided at the hearing. For the benefit of the parties, I have noted that mailing address on the cover page of this decision.

Preliminary Matters

Preliminary Matter #1

I noted that the name of the landlord in the tenancy agreement, R.G., was different from the name of the landlord in the Application, a corporation, and that only the applicant S.B. was named as a tenant in the written tenancy agreement. The parties agreed that the corporation named as the landlord in the application is correct, and that R.G. was a previous property manager, not the landlord. They also agreed that although the other applicant K.M. is not named as a tenant in the written tenancy agreement, they are a tenant under the agreement rather than an occupant. As a result, I find that the landlord named in the Application is the correct party to be named as the landlord, despite the discrepancy with the written tenancy agreement, and have therefore referred to them as the “Landlord” throughout this decision. I also find that the applicant K.M. is a tenant under the *Act* and the tenancy agreement, and therefor has both rights and obligations under the *Act* and the tenancy agreement.

Preliminary Matter #2

The Agent stated that the amount claimed in the Application, $15,386.51, is incorrect and that the lower amount of $7,501.51 shown in the monetary order worksheet, plus $100.00 for recovery of the filing fee, is the correct amount being sought. As there was

no objection from the Tenants, the amount of the Landlord's monetary claim was amended.

Preliminary Matter #3

The Tenants acknowledged receipt of the documentary evidence before me from the Landlord and raised no concerns with regards to service date or method. As a result, I have accepted the documentary evidence before me for consideration.

Although there was no documentary evidence before me from the Tenants, the Tenants stated that it was submitted to the Residential Tenancy Branch (the Branch) via service BC on January 9, 2022, and the parties agreed that the Tenants had served their documentary evidence on the Landlord as required by the Rules of Procedure. I therefore permitted the Tenants to re-submit their documentary evidence to the Branch for my consideration, no later than end of day Friday February 4, 2022.

With agreement from the parties, I also permitted the parties to submit to the Branch and serve on each other, evidence related to the payment, or lack thereof, of a security deposit and or pet damage deposit, no later than end of day Friday February 4, 2022. During the hearing I was also able to locate documentary evidence from the Tenants on another file with a different hearing date. Relevant documentary evidence from the Tenants on that file as well as any documentary evidence submitted within the timeframe set out above has therefore been considered by me in rendering this decision, as agreed to by the parties. The file number where some of the Tenants' documentary evidence is located has been recorded on the cover page of this decision as "Upcoming File"

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 compensation for monetary loss or other money owed?

Is the Landlord entitled to compensation for damage caused to the rental unit by the tenants, their pets, or their guests?

Is the Landlord entitled to retain all or a part of the security deposit and or the pet damage deposit?

Is the Landlord entitled to recovery of the filing fee?

Are the Tenants entitled to the return of all, some, none, or double the amount of their security deposit and or pet damage deposit?

Background and Evidence

The tenancy agreement in the documentary evidence before me states that the periodic (month-to-month) tenancy commenced on December 1, 2015, at a monthly rent amount of $567.00, and that rent was due on the first day of each month. Although they agreed that a $300.00 security deposit was required, they disputed whether it was ever paid and whether a $300.00 pet damage deposit was also required or paid. The parties were agreed that a move-in condition inspection occurred at the start of the tenancy, but the Tenants denied receipt of a copy of the report, and although the Agent stated that one was likely provided to the Tenants by the previous agent for the Landlord, they could not be sure.

The parties agreed that the tenancy was supposed to end on October 31, 2021, as the Landlord obtained an Order of Possession for that date from the Branch as the result of a different Application for Dispute Resolution. They also agreed that the Tenant did not move out on time, subsequently vacating the rental unit on November 5, 2021, after having received a Notice of Final Opportunity to Schedule a Condition Inspection on that date. The Landlord therefore sought $567.00 in rent for November 2021. While the Tenants were thankful for the extra time to move out, they disputed that they owed the $567.00 sought by the Landlord for November, stating that they did not mean to move out late but simply could not find a place and kept the Landlord up to date on how move out was going.

The parties agreed that a move-out condition inspection was conducted on November 6, 2021, as scheduled, but disputed who participated and who ended the condition inspection and why. The Agent stated that although the Tenants attended, they refused to participate and simply wanted money. The Agent stated that they and the property

manager therefore completed the move-out condition inspection and report and then left as the Tenants refused to sign it or return the keys and were yelling. The Tenants disagreed stating that they never refused to sign or participate and that it was the Agent who acted inappropriately and ended the move-out condition inspection.

The parties disputed whether the rental unit was damaged during the tenancy and whether items were stored in the attic by the Tenants and subsequently left behind when they vacated. As a result, the Landlord sought $5,726.70 in compensation for repairs to the ceiling and drywall and replacement of the flooring, interior doors, and blinds, and $196.75 in compensation for the cost to remove and dispose of the items in the attic. The Landlord also sought recovery of costs incurred to re-key the rental unit, mailbox, and entry doors, as the Agent stated that the Tenants did not return the keys. Although the Tenants agreed that they did not return the keys, they argued that they should not be responsible for this cost as the Landlord re-keyed too quickly and therefore did not leave them with a reasonable opportunity to return the keys. They also argued that there was no safety issue as a result of their failure to return the keys as entry doors to the building were regularly left open and that the Landlord was claiming for more keys than needed, as it is only a 10-unit building. Although the Agent stated that not all costs shown on the invoice were related to the rental unit, $699.32 were, and that the door listed as the “storeroom” is the side door, which shares a key with the front door.

Analysis

I am satisfied by text messages in the documentary evidence before me that the Landlord’s agent made numerous attempts to schedule a move-out condition inspection with the Tenants. I am also satisfied that the Landlord’s agent served the Tenants with a Notice of Final Opportunity to Schedule a Condition Inspection on November 5, 2021, as a copy of this form is in the documentary evidence before me, and the Tenants did not dispute the Agent’s testimony regarding service. They also agreed that a move-out condition inspection proceeded as scheduled on November 6, 2021, at 1:00 P.M. but disagreed about whether the Tenants fully participated. I am satisfied by a text message in the documentary evidence before me that the Tenants provided their forwarding address on November 8, 2021.

Although the Landlord’s Agent claimed that the Tenants had damaged the rental unit during the tenancy, and stored belongings in an attic space without authorization, for the following reasons I find that the Landlord or its agents have failed to satisfy me on a

balance of probabilities that this is the case. The Tenants denied storing belongings in the attic and although the Agent stated that they heard movement in the attic during the tenancy, they acknowledged that they never investigated the cause of the noise and that the attic space had not been inspected prior to the start of the tenancy. As a result, I find that I cannot be satisfied that the Tenants were the cause of the noise in the attic or that the possessions found in the attic after the end of the tenancy were not already there prior to the start of the tenancy. I therefore dismiss the Landlord's claim for costs associated with the removal and disposal of items from the attic, without leave to reapply.

Although the Landlord sought recovery of repair costs to drywall and the ceiling, and replacement costs of flooring, doors, and blinds, and submitted photographs allegedly taken of the rental unit at the end of the tenancy, the Tenants denied causing this damage and no documentary evidence from the Landlord was submitted for my consideration showing the condition of the rental unit at the start of the tenancy, such as photographs or a move-in condition inspection report. While the parties were agreed that a move-in condition inspection occurred, the Tenants denied receipt of a copy of the report, and although the Agent stated that one was likely provided to the Tenants by the previous agent for the Landlord, they could not be sure and had no corroboratory documentary or other evidence to show it was provided. Further to this, the Tenants stated that the carpets and doors were original to the building, and the Agent could not provide me with further details regarding their age.

Policy Guideline #40 provides the following useful life guidelines for the building elements listed below:

- Carpet – 10 years
- Drywall – 20 years
- Drapes/venetian blinds – 10 years
- Doors – 20 years

As there was no documentary evidence before me from the Landlord regarding the actual age of the above noted building elements or proof of their condition at the start of the tenancy, the Tenants testimony that they did not damage the rental unit during the course of the tenancy and given that the tenancy was almost 6 years in length, I find that I cannot be satisfied on a balance of probabilities that the Tenants caused the damage alleged by the Landlord, or that the above noted building elements are still within the above noted useful life periods. I therefore dismiss the Landlord's claim for

repair and/or replacement costs associated with the ceiling/drywall, carpets, blinds, and doors, without leave to reapply.

As the parties were agreed that the Landlord received an Order of Possession for the rental unit for October 31, 2021, that the Tenants remained in the rental unit until November 5, 2021, and that no rent was paid by the Tenants to the Landlord for November 2021, I therefore find that the Tenants owe per diem rent for overholding the rental unit for the period of November 1, 2021 – November 5, 2021, in the amount of $94.50 ($567.00/30 x 5), pursuant to section 57(3) of the *Act* and Policy Guideline #3, section B. Although the Landlord also sought rent for the remainder of November 2021, they did not provide evidence to show that they mitigated their loss in rent for the remainder of month, as per section 7 of the *Act* and Policy Guidelines #3 and #5. As a result, I dismiss the Landlord's claim for the remaining $472.50 in rent for November 2021, without leave to reapply.

Although the Tenants denied responsibility for the costs of re-keying the rental unit, exterior doors, and mailbox, they acknowledged that they did not return the keys. Section 37(2)(b) of the *Act* states that when a tenant vacates a rental unit, the tenant must 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. As a result, I therefore grant the Landlord's claim for $699.32 in locksmith costs. Although the Tenants argued that the $69.95 noted on the invoice for a storeroom should not be their responsibility, I disagree. Although the invoice states "Storeroom Function Knobset", it also states "Replaced on Side Door", and at the hearing the Agent stated that the side door is an exterior door that shares a key with the main entrance door. As a result, I am satisfied that the $69.95 shown on the invoice is actually for a side entrance door and I have therefore included the above cost in the $699.32 awarded.

Having made the above findings, I now turn to the matter of the security deposit and the pet damage deposit. Although the parties disputed whether a $300.00 security deposit and a $300.00 pet damage deposit were paid, at the hearing I was provided with a file number for a previous Application for Dispute Resolution regarding this tenancy, and in the decision for that matter the Arbitrator stated that the parties agreed that $600.00 in deposits were paid to the Landlord at the start of the tenancy. In that decision the Arbitrator also found that the Landlord had retained the $600.00 in deposits, which constituted a $33.00 overpayment based on the rent amount and awarded the Tenants $33.00 as a refund. As a result, I find that the matter of whether a security deposit and a pet damage deposit were paid by the Tenants and retained by the Landlord is res

judicata, meaning that it has already been decided and I therefore do not have the jurisdiction to redecide it. As a result, I am satisfied that the Landlord received $567.00 in deposits, and as they Agent provided no testimony or documentation that it has been returned or used for another lawful purpose under the *Act*, I therefore find that this amount is still held by the Landlord in trust.

Based on the testimony of the parties and the documentary evidence before me for consideration, I am satisfied that the tenancy ended on November 5, 2021, that the Tenants provided their forwarding address in writing on November 8, 2021, and that the Landlord filed their claim against the deposits on November 23, 2021. However, I am not satisfied that a copy of the move-in condition inspection report was provided to the Tenants in compliance with section 23(5) of the *Act* and section 18(1)(a) of the regulation as the Agent could not be sure that it was, and the Tenants denied receipt. I therefore find that the Landlord extinguished their right to claim against the deposits for damage under section 24(2)(c) of the *Act*. Policy Guideline #17 states that in cases where both the landlord's right to retain and the tenant's right to the return of the deposit have been extinguished, the party who breached their obligation first will bear the loss. As a result, I therefore find that I do not need to determine if the Tenant later extinguished their right to the return of the deposits by failing to participate in the move-out condition inspection, as the Landlord extinguished their right first at the start of the tenancy.

Based on the above, I find that the Landlord complied with section 38(1) of the *Act*, by filing against the security deposit on November 23, 2021, as the claim was for more than damage. However, Policy Guideline #31 states that a landlord may apply to an arbitrator to keep all or a portion of the deposit but only to pay for damage caused by a pet. As I have already found above that the Landlord extinguished their right to claim against the deposits for damage, and there is no evidence before me that sections 38(3) and 38(4) of the *Act* apply, I therefore find that the Landlord was required to return the Tenants' $283.50 pet damage deposit by November 23, 2021. As I have already found that the Landlord has not returned any portion of the pet damage deposit, I therefore find that the Landlord is considered to be holding $567.00 as a pet damage deposit, double its original amount, pursuant to section 38(6) of the *Act*.

As the Landlord was successful on at least some of their claims, I award them recovery of their $100.00 filing fee pursuant to section 72(1) of the *Act*. Pursuant to section 72(2)(b) of the *Act*, I authorize the Landlord to withhold the $850.50 in deposits currently held by them towards the amounts owed by the Tenant. As a result, and pursuant to

section 67 of the *Act*, and Policy Guideline #17, I therefore grant the Landlord a Monetary Order in the amount of $43.32 (the $893.82 owed to the Landlord by the Tenant, less the $850.50 in deposits retained by the Landlord), and I order the Tenants to pay this amount to the Landlord.

Conclusion

Pursuant to section 67 of the *Act*, I grant the Landlord a Monetary Order in the amount of **$43.32**. The Landlord is provided with this Order in the above terms and the Tenants must be served with this Order as soon as possible. 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 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 order, nor my authority to render them, are affected by the fact that this decision and the associated order were issued 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 25, 2022

Residential Tenancy Branch