Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Tenant: FFT MNSD
Landlord: FFL MNDL-S

Introduction

This hearing was reconvened from an adjourned hearing originally scheduled for January 31, 2022

This hearing dealt with cross-applications by the parties pursuant to the *Residential Tenancy Act* (the "Act") for Orders as follows:

The landlord requested:

- a monetary order for money owed or compensation for damage or loss pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant requested:

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

LB and JL represented the landlord in this hearing, while the tenant attended with their advocate, GR. Both parties were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Both parties were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing by the attending parties. Both parties confirmed that they understood.

Both parties confirmed receipt of each other's applications for dispute resolution hearing package ("Applications") and evidence. In accordance with sections 88 and 89 of the *Act*, I find that both the landlord and tenant were duly served with the Applications and evidentiary materials.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for losses or damage?

Is the tenant entitled to the return of their security deposit?

Are either of the parties entitled to recover the costs of their filing fees for their applications?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applications and my findings around it are set out below.

This fixed-term tenancy began on June 1, 2019, and continued on a month-to-month basis until the tenancy ended on June 30, 2021. Monthly rent was set at $1,200.00, payable on the first of the month. The landlord had collected a security deposit in the amount of $600.00, which they still hold.

The tenant provided their forwarding address on the last date of the tenancy. The tenant is requesting return of their security deposit, plus recovery of the filing fee.

The landlord filed an application for monetary compensation on July 15, 0221 for losses associated with the tenant's failure to return the rental unit in undamaged condition.

Item	**Amount**
Painting materials	$189.65
Repainting & drywall repair	472.50
Total Monetary Order Requested	**$600.00**

The landlord testified that the actual losses and cost to repair the wall was over $600.00, but the landlord is seeking only $600.00. The landlord testified that the unit was in good condition, and last repainted before the move-in date, which was the usual practice. The landlord provided photos, invoice and receipt, as well as the move-in and move-out inspection reports to support their claims. The landlord notes that the move-in

condition report notes that the apartment paint was noted as “good” upon move-in, and “poor” upon move-out.

The landlord testified that the tenant’s hoarding had damaged the walls. The landlord testified that they had attended the rental unit many times, and observed that the tenant had many appliances, and that the rental unit was in disrepair due to the damage caused by the tenant.

The landlord testified that the tenant caused considerable damage to the drywall and the paint, which required repairs and re-painting.

The tenant’s advocate noted that the building was built in 1985, and questioned when the landlord last repainted and performed repairs. The tenant’s advocate also questioned why pictures of the rental unit at the beginning of the tenancy were not submitted for comparison. The landlord responded that pictures were not necessary as the condition of the rental unit was noted on the move-in inspection report. The tenant’s advocate argued that the age of the walls and paint must be taken in consideration to account for wear and tear, and that the landlord failed to provide evidence of the actual age and useful life for the walls and the paint. The advocate testified that they had previously attended the rental unit, and observed that the walls did not appear freshly painted. The tenant’s advocate questioned why the landlord did not keep proper maintenance record, and produce these for the hearing.

The tenant’s advocate argued that the landlord did not perform regular maintenance in the suite, and noted that many of the items in the rental unit were in disrepair such as non-functioning outlets. The tenant’s advocate also noted that even if the tenant was found to be responsible, the tenant did live in the rental unit for twenty-give months, which should be reflected in any calculations for losses.

The landlord responded that the tenant had blown the fuses themselves with their multiple appliances, and that maintenance was difficult during the tenancy due to the cluttered state of the rental unit.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage or loss, and that it stemmed directly from a violation of the

agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove, on a balance of probabilities, that the tenant had caused damage and losses in the amounts claimed by the landlord.

Section 37(2)(a) of the *Act* stipulates 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.

RTB Policy Guideline #1 states that "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."

Both parties confirmed that both move-in and move-out inspections were completed. Sections 23 and 35 of the *Act* require the landlord to perform both move-in and move-out inspections, and fill out condition inspection reports for both occasions. The consequence of not abiding by these sections of the *Act* is that "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", as noted in sections 24(2) and 36(2) of the *Act*. Although the landlord did comply with the *Act* by completing and providing the tenant with both move-in and move-out reports, the tenant disputes the landlord's claims as they believe that the landlord did not perform regular maintenance and repairs, and that the damage was attributed to wear and tear.

I have reviewed the landlord's monetary claim for damages, and have taken in consideration the weight of the evidentiary materials submitted by the landlord, as well as the sworn testimony of both parties. In addition to the move-in and move-out inspection reports, the landlord submitted photos of the damage to the walls, as well as receipts and an invoice for repairs. The tenant argued that the rental unit was old, and not as well-maintained as portrayed by the landlord.

I have noted the tenant's arguments that the landlord did not provide maintenance logs, nor did they provide photos of the rental unit before the tenant moved in. I have also noted the landlord's position that the inspection reports were sufficient to support the condition of the rental unit, and the damage referenced in their claims.

Despite the fact that photos were provided by the landlord, the *Act* does not require that the landlord take photos of the rental unit. The Act, however, does require that the landlord provide an opportunity for the tenant to attend both move-in and move-out inspections, and provide them with the reports. The purpose of the move-in and move-out inspection, and the corresponding reports, is to provide both parties with the opportunity to clearly identify and address previous damage and discrepancies so one can determine what damage took place during the tenancy. The provision of photos for a dispute resolution proceeding may strengthen or invalidate these arguments.

In this case, I find that the landlord complied with sections 23 and 35 of the *Act*. Despite the tenant's position that the damage can be attributed to wear and tear, I find that the photos provided show notable and significant damage that would have been noted by either party at the move-in inspection.

Section 21 of Residential Tenancy Regulation states the following about the evidentiary weight of a condition inspection report:

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.

In light of the evidence before me, which includes the move-in and move-out inspection reports as well as the photos, I am satisfied that the landlord had provided sufficient evidence to support that the walls were significantly damaged sometime during the tenancy. I must now assess how much of this damage is attributed to wear and tear.

As noted in *Residential Tenancy Policy Guideline* #40 *"when applied to damage(s) caused by a tenant, the tenant's guests or the tenant's pets, the arbitrator may consider the useful life of a building element and the age of the item. Landlords should provide evidence showing the age of the item at the time of replacement and the cost of the replacement building item. That evidence may be in the form of work orders, invoices or other documentary evidence.*

If the arbitrator finds that a landlord makes repairs to a rental unit due to damage caused by the tenant, the arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant's responsibility for the cost or replacement."

As per the Policy Guideline, the useful life of interior paint is four years, while the useful life of drywall is 20. I note that the age of the building far exceeds 20 years, with the tenant residing there for at least two years. Despite the landlord's testimony that the rental unit was maintained and painted at regular intervals, the landlord did not provide documentary evidence to support this, whether this is reflected in invoices, logs, or work orders. As noted above, and in Policy Guideline #40, the onus is on the landlord to support the age and maintenance of an item, especially when the item has exceeded its useful life. Although I am satisfied that the walls were damaged during this tenancy, I am unable to ascertain how much of this damage can be attributed to wear and tear, and the general age of the item rather than the neglectful or intentional actions of the tenant. Although the landlord described the tenant as a hoarder, I do not find this statement to be supported in evidence. I am not satisfied that the landlord proved, on balance of probabilities, that the tenant had caused damage and losses in the amounts claimed by the landlord. The landlord's application for repairs is therefore dismissed without leave to reapply.

The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. As the landlord was not successful with their claim, I find that the landlord is not entitled to recover the $100.00 filing fee paid for this application. The landlord must bear the cost of this filing fee.

The tenant filed an application for the return of their security deposit. Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must return the tenant's security deposit plus applicable interest and must pay the tenant a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address. Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security or pet damage deposit if "at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant."

As the landlord filed their application within the required time limit, the tenant's application for compensation under section 38 of the *Act* is dismissed without leave to reapply. As the landlord still holds the tenant's deposit of $600.00, and as the landlord's application was dismissed, I order that the landlord return to the tenant their deposit in full.

As there was no contravention of the Act by the landlord in holding the tenant's security deposit, I dismiss the tenant's application to recover the filing fee without leave to reapply.

Conclusion

The landlord's entire application is dismissed without leave to reapply.

I issue a Monetary Order in the tenant's favour which allows for the return of the tenant's security deposit in full.

The tenant is provided with this Order and the landlord must be served with a copy of 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 tenant's application to recover the filling fee is dismissed without leave to reapply.

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 20, 2022

Residential Tenancy Branch