Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL (Landlord)
MNSDB-DR, FFT (Tenants)

Introduction

This hearing was convened by way of conference call in response to cross Applications for Dispute Resolution filed by the parties.

The Landlord filed their application December 09, 2021 (the "Landlord's Application"). The Landlord applied as follows:

- For compensation for damage to the rental unit
- To keep the security and pet damage deposits
- For reimbursement for the filing fee

The Tenants filed their application February 07, 2022 (the "Tenants' Application"). The Tenants applied as follows:

- For return of the security and pet damage deposits
- For reimbursement for the filing fee

The Landlord appeared at the hearing with their spouse A.N. The Tenants appeared at the hearing. I explained the hearing process to the parties. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure (the "Rules"). The parties provided affirmed testimony.

The Tenants were going to call a witness at the hearing; however, it was determined the witness was not necessary because they could not speak to the specific damage at issue in this matter.

At the hearing, the Tenants advised they are seeking return of the security deposit and return of double the pet damage deposit.

Both parties submitted evidence prior to the hearing. I confirmed service of the hearing packages and evidence and no issues arose.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered the relevant evidence provided. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Landlord entitled to compensation for damage to the rental unit?

2. Is the Landlord entitled to keep the security and pet damage deposits?

3. Is the Landlord entitled to reimbursement for the filing fee?

4. Are the Tenants entitled to return of the security deposit and double the pet damage deposit?

5. Are the Tenants entitled to reimbursement for the filing fee?

Background and Evidence

A written tenancy agreement was submitted, and the parties agreed it is accurate. The tenancy started July 15, 2020, and was for a fixed term ending August 31, 2021. Rent was $2,775.00 due on or before the first day of each month. The Tenants paid a $1,387.50 security deposit and $1,387.50 pet damage deposit.

Tenants' Application

The parties agreed the Tenants gave the keys to the rental unit back November 28, 2021.

The parties agreed the Tenants provided the Landlord a forwarding address in writing December 01, 2021.

The parties agreed none of the Landlord's claims relate to damage caused by a pet. The Landlord testified that they contacted the RTB and were told to keep the security and pet damage deposits until the hearing.

The Landlord acknowledged they did not have an outstanding Monetary Order against the Tenants at the end of the tenancy.

The Landlord testified that the Tenants agreed on the Condition Inspection Report (the "CIR") that the Landlord could keep some of the deposits for cleaning. The Tenants confirmed they agreed on the CIR that the Landlord could keep up to $220.50 from the deposits for cleaning.

The CIR was submitted, and the parties agreed it is accurate in relation to the move-in inspection. The parties agreed the Tenants took a photo of the CIR for their records on the same day as the move-in inspection.

The Landlord testified that the parties did a move-out inspection. The Landlord testified that they wrote notes on the CIR but did not complete the part that notes the condition of each area of the rental unit. The Landlord testified that they provided the Tenants a copy of the CIR in person on the same day as the inspection.

The Tenants agreed a move-out inspection was completed. The Tenants agreed the Landlord wrote notes on the CIR but did not complete the part that notes the condition of each area of the rental unit. The Tenants agreed they were provided a copy of the CIR in person on the same day as the inspection.

Landlord's Application

The Landlord sought the following compensation:

- $202.13 for cleaning
- $472.50 for floor repair

The Tenants agreed to the Landlord keeping $202.13 for cleaning as noted on the CIR.

In relation to the floor repair, the Landlord sought compensation for water damage in the corner of the living room floor. The Landlord testified as follows. The renal unit was brand new at the start of the tenancy. The parties did a move-out inspection, and the

Landlord did not think there were any other issues than those noted on the CIR. The Landlord's spouse then attended the rental unit and noticed water damage to the floor in the corner of the living room. The water damage had not been noted on the CIR; however, the Landlord sent the Tenants a photo of the damage 15 minutes after the Tenants had left the rental unit. The damage was caused by water sitting on the floor and could only have been caused by the Tenants. Photos submitted show that the Tenants had a plant in the corner of the living room where the water damage occurred.

The Landlord submitted a photo of the water damage to the floor in the corner of the living room.

The Tenants testified as follows. They moved out of the rental unit November 23, 2021. A cleaner was in the rental unit November 25, 2021. The Landlord entered the rental unit November 28, 2021, before the Tenants arrived. The parties did a thorough move-out inspection and nobody noticed damage to the floor in the corner of the living room. The damage to the floor is not noted on the CIR. They do not know who or what caused the damage to the floor.

Analysis

Pursuant to rule 6.6 of the Rules, it is the applicant who has the onus to prove their claim. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts are as claimed.

Tenants' Application

Security and pet damage deposits

Pursuant to sections 24 and 36 of the *Act*, landlords and tenants can extinguish their rights in relation to security and pet damage deposits if they do not comply with the *Act* and *Residential Tenancy Regulation* (the "*Regulations*"). Further, section 38 of the *Act* sets out specific requirements for dealing with security and pet damage deposits at the end of a tenancy.

Based on the testimony of the parties and CIR, I find the Tenants participated in the move-in and move-out inspections and therefore did not extinguish their rights in relation to the security or pet damage deposits pursuant to sections 24 or 36 of the *Act*.

Based on the testimony of the parties and CIR, I find the Landlord complied with their obligations under the *Act* and *Regulations* regarding the move-in and move-out inspections and therefore did not extinguish their rights in relation to the security or pet damage deposits pursuant to sections 24 or 36 of the *Act*.

Based on the testimony of the parties, I find the tenancy ended November 28, 2021.

Based on the testimony of the parties, I accept that the Tenants provided the Landlord with their forwarding address December 01, 2021.

Pursuant to section 38(1) of the *Act*, the Landlord had 15 days from the later of the end of the tenancy or the date the Landlord received the Tenants' forwarding address in writing to repay the security and pet damage deposits or file a claim against them. Here, the Landlord had 15 days from December 01, 2021, to repay the security and pet damage deposits or file a claim against them. The Landlord's Application was filed December 09, 2021, within time.

I find the Landlord complied with section 38(1) of the *Act* in relation to the security deposit.

However, RTB Policy Guideline 31 addresses pet damage deposits and states:

> The 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.** The application must be made within the later of 15 days after the end of the tenancy or 15 days after the tenant has provided a forwarding address in writing. (emphasis added)

The parties agreed none of the Landlord's claims relate to damage caused by a pet and therefore the Landlord was not permitted to keep and claim against the pet damage deposit. The Landlord was required to return the pet damage deposit to the Tenants within 15 days of December 01, 2021. The Landlord did not return the pet damage deposit by December 16, 2021, and therefore failed to comply with section 38(1) of the *Act* in relation to the pet damage deposit. Given this, the Landlord must return double the pet damage deposit to the Tenants pursuant to section 38(6) of the *Act*. No interest is owed on the pet damage deposit because the interest owed has been 0% since 2009.

I note that it is not relevant in these proceedings what the Landlord was told by someone else in relation to holding the pet damage deposit. The Landlord was

expected to know their rights and obligations under the *Act*, *Regulations* and RTB Policy Guidelines. The RTB Policy Guidelines are clear about when a landlord can keep and claim against a pet damage deposit.

Landlord's Application

Compensation

Section 7 of the *Act* states:

> 7 (1) If a…tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying…tenant must compensate the [landlord] for damage or loss that results.
>
> (2) A landlord…who claims compensation for damage or loss that results from the [tenant's] non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

> 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.

Section 37 of the *Act* states:

> (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…

RTB Policy Guideline 01 addresses the meaning of “reasonable wear and tear” and states:

> …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 or Manufactured Home Park Tenancy Act (the Legislation).
>
> Reasonable wear and tear refers to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. An arbitrator may determine whether or not repairs or maintenance are required due to reasonable wear and tear or due to deliberate damage or neglect by the tenant. An arbitrator may also determine whether or not the condition of premises meets reasonable health, cleanliness and sanitary standards, which are not necessarily the standards of the arbitrator, the landlord or the tenant.

The Tenants agreed to the Landlord keeping $202.13 for cleaning and therefore the Landlord can keep this amount from the security deposit.

In relation to floor damage, I decline to award the Landlord compensation for this for three reasons.

First, I find it problematic that the Landlord did not note water damage to the floor on the CIR at move-out and I do find that this calls into question whether the Tenants caused damage to the floor.

Second, even if I accept that the Tenants caused damage to the floor that was present during the move-out inspection, I am not satisfied the damage was beyond reasonable wear and tear given the Landlord did not even notice it during the move-out inspection. I find the fact that the Landlord did not notice damage to the floor and did not note it on the CIR shows the insignificance of the damage. The photos submitted also show that the damage is barely noticeable and is not significant. The only damage is a bit of a

larger gap between a portion of two strips of flooring. The floor is not discolored or damaged in any other way.

Third, even if I accept that the Tenants caused damage to the floor and the damage is beyond reasonable wear and tear, I am not satisfied given the nature and extent of the damage that $472.50 is a reasonable amount or value of the damage or loss claimed. I find $472.50 to be excessive given how insignificant the damage is as shown in the photos submitted.

In the circumstances, I am not satisfied the Landlord has proven they are entitled to $472.50 in compensation for damage to the floor.

Summary

Neither party is awarded reimbursement for the filing fee because both parties were partially successful in their applications.

The Landlord must pay the Tenants $2,775.00 being double the pet damage deposit.

The Landlord can keep $202.13 of the security deposit. The Landlord must return the remaining $1,185.37 of the security deposit to the Tenants.

The Tenants are issued a Monetary Order for $3,960.37.

Conclusion

The Tenants are entitled to $3,960.37 and are issued a Monetary Order in this amount. This Order must be served on the Landlord. If the Landlord fails to comply with this Order, it 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 *Act*.

Dated: July 20, 2022

Residential Tenancy Branch