Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDL-S, MNDCL-S, FFL**

Introduction

This hearing dealt with an application filed by the landlord pursuant the *Residential Tenancy Act* (the "*Act*") for:

- A monetary order for damages caused by the tenant, their guests to the unit, site or property and authorization to withhold a security deposit pursuant to sections 67 and 38;
- An order to be compensated for a monetary loss or other money owed and authorization to withhold a security deposit pursuant to sections 67 and 38; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open throughout the hearing which commenced at 1:30 p.m. and ended at 2:15 p.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord attended the hearing, represented by her agent/property manager, DW ("landlord"). The landlord was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord testified that on December 23, 2021, he sent the tenant the Notice of Dispute Resolution Hearing package via registered mail to the forwarding address given to him by the tenant the previous day. The forwarding address is a post office box number and the tracking number for the mailing is recorded on the cover page of this decision. Based on the foregoing, the Notice of Dispute Resolution Hearing is deemed served on the tenant on December 28, 2021, five days after it was sent via registered mail in accordance with sections 89 and 90 of the *Act*.

The landlord testified that a copy of the move out inspection report was included in the original Notice of Dispute Resolution Proceedings package sent to the tenant and that additional evidence was sent to the tenant by email on July 8, 2022. Included in the evidence package are multiple emails sent between the parties with the tenant using the

email address to which the landlord sent his evidence. I am satisfied the evidence was sufficiently served in accordance with section 71 of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to a monetary order?
Can the landlord retain all or part of the tenant's security deposit?
Can the landlord recover the filing fee?

Preliminary Issue

The landlord provided a copy of the tenancy agreement which names a different property management company and a different property manager as landlord. The landlord confirmed the person attending as the owner of the property for today's hearing is the owner of the rental unit and is the proper party to be named as the landlord for this hearing. The tenant named on the tenancy agreement differs from the name on today's application before me, however the landlord testified that the name shown on the tenancy agreement is a shortened version of the tenant's full surname. The name of the tenant is the party named on the application for dispute resolution. Accordingly, based on the landlord's undisputed testimony, I find that the parties named on the application for dispute resolution are correct.

Background and Evidence

The rental unit is an entire house, built in 1989. The landlord purchased the house in 1994 and has owned it since then. The tenancy began on March 1, 2009 and ended when the landlord served the tenant with a 2 month notice to end tenancy for landlord's use. The tenancy was to end on October 31, 2021; however, the parties negotiated an extension to change the move out date to December 1, 2021. Despite this, the tenant overheld his tenancy until December 7, 2021. The landlord does not seek to recover the 7 days rent for the tenant's overholding.

No condition inspection report was conducted with the tenant by the previous property manager. The current property manager does not have an explanation for this. At the commencement of the tenancy, the landlord collected an $800.00 security deposit which the landlord wants to apply to the damages claim before me. A condition inspection report was done with the tenant at the end of the tenancy and a copy of it was provided as evidence for this hearing. The condition inspection was done with the tenant present on December 7, 2021, and the tenant signed the document with the property manager. Above the signatures, the landlord noted the following:

Additional Comments

General cleaning required. Carpets needs to be steam cleaned. Window blinds installed by [tenant], paid for by the $393 owed for use and occupancy only. Separate discussion regarding the security deposit. PODS are temporarily stored on the driveway. To be removed within the next two days.

Final Comments
Thank you for being our tenant. [tenant] will be sending invoices and we will be processing your security deposit within 15 days.

The landlord seeks the following items:

- Cleaning costs, $1400

The landlord alleges the unit needed a thorough cleaning at the end of the tenancy which includes steam cleaning. The landlord provided photos of the unit to corroborate this claim where he testified the whole house was left unclean.

- Patch and paint, $1000

At the end of the tenancy, the walls needed patching and painting. The quote from the contractor was $1,000.00, although more than that was spent.

- Replace broken doors, $300

The door to the second bedroom was damaged from being kicked. The latch was also broken.
In the second bathroom, the door was damaged from being kicked.

- Replace broken glass from sliding window door. $1,000

In the family room, there is a missing pane of glass where the sliding glass door should be. The tenant verbally admitted to the landlord breaking it while mowing the lawn. The landlord provided photos of the window frame where the glass ought to be as evidence.

- Airfare fee for October. $183.88

The landlord was originally going to return to live in the rental unit on October 31st. She had to cancel the flight which cost $183.88. The landlord testified that the airline did not provide her with a credit for this amount although she cancelled it long before the flight. A copy of the itinerary was provided as evidence by the landlord.

Analysis

The landlord testified he received the tenant's forwarding address, a po box, on December 22, 2021. Curiously, the landlord filed an application for dispute resolution

and provided the po box as an address for the tenant on December 18, 2021, some 4 days prior. Based on the impossibility of supplying the tenant's address on an application for dispute resolution before knowing it, I determine the tenant's forwarding address was supplied to the landlord on December 18th, eleven days after the tenancy ended, on December 7th.

Section 38(1) of the *Act* states that within 15 days after the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution against it. Pursuant to section 38(6), if the landlord does not comply with section 38(1), the landlord may not make a claim against the security deposit and must pay the tenant double to amount of the security deposit.

The landlord's requirement to do a condition inspection report at the beginning of a tenancy with the tenant is closely tied to the return of the security deposit.

The landlord, through her property manager at the time, did not conduct a condition inspection report with the tenant at the commencement of the tenancy. Pursuant to section 23 of the Residential Tenancy *Act*, it is the landlord's responsibility to do so.

Section 24(2) of the *Act* states that the right of a landlord to claim against the security deposit for damage to the 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.

The landlord's right to claim against the security deposit was extinguished when the landlord did not do a condition inspection report with the tenant at the commencement of the tenancy. Pursuant to section 38(6), the landlord was thus required to return the tenant's full security deposit since the landlord's right to claim against it was extinguished by section 24(2). As the landlord did not return the tenant's security deposit within 15 days of the end of the tenancy and the date the landlord received the tenant's forwarding address in writing, the landlord must pay the tenant double the amount of the security deposit. For this hearing, I start with the premise that the tenant's security deposit of $800.00 be doubled to $1,600.00 and should be returned to him.

I note here that the condition inspection report done upon move out does not comply with section 20 of the regulations. Notably, section 20(2) of the regulations states:
In addition to the information referred to in subsection (1), a condition inspection report completed under section 35 of the *Act* [condition inspection: end of tenancy] must contain the following items in a manner that makes them clearly distinguishable from other information in the report:

(a)a statement itemizing any damage to the rental unit or residential property for which the tenant is responsible;

(b)if agreed upon by the landlord and tenant,

(i)the amount to be deducted from the tenant's security deposit or pet damage deposit,

(ii)the tenant's signature indicating agreement with the deduction, and

(iii)the date on which the tenant signed.

I have examined the condition inspection report upon move out and note that it does not comply with the provisions of section 20 of the regulations. As such, I cannot give much weight to it, since it is missing many of the elements required for me to compare the condition of the rental unit at the commencement of the tenancy to the condition at the end of the tenancy.

- Suite Cleaning claim

  Section 37(2)(a) 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.

  This notion is further elaborated in Residential Tenancy Branch Policy Guideline PG-1 which states:
  the tenant must maintain "reasonable health, cleanliness and sanitary standards" throughout the rental unit or site, and property or park. The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard. 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). (emphasis added)

The tenant's legal obligation is "reasonably clean" and this standard is less than "perfectly clean" or "impeccably clean" or "thoroughly clean" or "move-in ready". Oftentimes a landlord wishes to turn the rental unit over to a new tenant when it is at this higher level of cleanliness; however, it is not the outgoing tenant's responsibility to leave it that clean. I have reviewed the photos taken by the landlord to prove the cleaning claim and I find that the tenant left the rental unit in a reasonably clean condition at the end of the tenancy, considering the length of the tenancy exceeded 12 years. This portion of the landlord's claim is dismissed.

- Patch and paint, $1000

Residential Tenancy Branch Policy guideline PG-1 provides the following guidance:
Nail Holes:

1. Most tenants will put up pictures in their unit. The landlord may set rules as to how this can be done e.g. no adhesive hangers or only picture hook nails may be used. If the tenant follows the landlord's reasonable instructions for hanging and removing pictures/mirrors/wall hangings/ceiling hooks, it is not considered damage and he or she is not responsible for filling the holes or the cost of filling the holes.
2. The tenant must pay for repairing walls where there are an excessive number of nail holes, or large nails, or screws or tape have been used and left wall damage.
3. The tenant is responsible for all deliberate or negligent damage to the walls.

PAINTING:
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.

I do not find the marks on the walls caused by pictures/mirrors/wall hangings/ceiling hooks to be damage beyond reasonable wear and tear. Moreover, a reasonable interval for interior painting of a rental unit is 4 years, according to PG-40 [Useful life of building elements]. After a tenancy exceeding 12 years, I find the rental unit needed painting regardless of the allegation of deliberate or negligent damage to the walls. Consequently, I dismiss the landlord's claim for patching and painting.

- Replace broken doors and broken glass from sliding window door

Section 21 of the regulations states:

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.

The tenant did not attend the hearing to dispute the landlord's testimony. I accept the landlord's undisputed testimony that there was no damage to the door in the second bedroom which is now visibly damaged. The same can be said for the bathroom door which has similar gashes to the bottom of the door. I find it reasonable that the landlord paid **$300.00** to have the damage repaired or replaced and I award the landlord that amount.

Likewise, based on the undisputed testimony of the landlord, I am satisfied the tenant broke to glass in the sliding glass door while mowing the lawn. I have viewed the photo of the missing glass and I concur with the landlord's testimony that it cost **$1,000.00** to make the repairs. I award the landlord that amount pursuant to section 67 of the *Act*.

- Airfare fee for October. $183.88

In the landlord's chronological statement, provided as evidence, the landlord notes "*We negotiated and agreed to the Tenant's request to extend the move out date to December 1st."*

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. I find that the landlord, in good faith, negotiated the final move out date with the tenant. The landlord testified that she cancelled the flight scheduled for October 31st well before 45 minutes prior to flight. I do not find the landlord has successfully established a damage or loss resulting from this tenancy, given the fact that she negotiated the move out date to be November 30th rather than October 31st. Further, the booking confirmation document supplied as evidence by the landlord states that cancellations can be made up to 45 minutes before departure. While the landlord testified she was not given credit from the airline for her cancelled flight, I do not find it the tenant's responsibility to reimburse her. This ought to be followed up with the airline, not compensated for by the tenant, especially since the

landlord herself negotiated the later move-out date with the tenant herself. Consequently, I dismiss this portion of the landlord's claim.

The landlord's claim was successful in part of her application. As such, I find the landlord is entitled to 50% of the filing fee, or $50.00 pursuant to section 72 of the *Act*.

Item	**Amount**
Tenant's security deposit (doubled)	($1,600.00)
Broken doors in 2nd bedroom and bathroom	$300.00
Replace broken sliding glass	$1,000.00
Filing fee	$50.00
Total	**($250.00)**

Conclusion

I award the tenant a monetary order in the amount of $250.00.

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: July 25, 2022

Residential Tenancy Branch