Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNDL-S, MNDCL-S

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- authorization to retain a portion of the security deposit and the pet damage deposit (collectively, the "**Deposits**") in satisfaction of the monetary order requested pursuant to section 38;
- a monetary order for damage to the rental unit and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of $764 pursuant to section 67;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The landlord testified, and the tenant confirmed, that the landlord served the tenant with the notice of dispute resolution package and supporting documentary evidence. The tenant testified, and the landlord confirmed, that the tenant served the landlord with their documentary evidence. I find that all parties have been served with the required documents in accordance with the Act.

Issues to be Decided

Is the landlord entitled to:

1) a monetary order for $764;
2) recover the filing fee; and
3) retain a portion of the Deposits in satisfaction of the monetary orders made?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The tenant and the prior owner of the rental unit entered into a written tenancy agreement starting February 1, 2020. Monthly rent was $1,100. The tenant paid the prior owner a security deposit of $550 and a pet damage deposit of $550.

On October 15, 2020, the landlord assumed ownership of the residential property from the prior owner. He testified that the prior owner transferred the Deposits to him, which he continues to hold in trust for the tenant.

The residential property is a three-level single detached house. The rental unit is located in a portion of the basement. The landlord occupies the remaining portion of the basement and the other levels of the house.

The tenant testified that the prior owner of the rental did not conduct a move in condition inspection with her at the start of the tenancy. She testified that the prior owner built the house and the house was brand new when she moved in, however there were “minor deficiencies” with the unit.

The tenant testified that the landlord served her with a one month notice to end tenancy with an effective date of October 1, 2021. She did not state when she was served with it. The tenant immediately disputed the notice at the Residential Tenancy Branch (the “**RTB**”), and the application was set down for a hearing on November 29, 2021 to deal with the validity of the notice as well as other, unrelated, issues. However, on October 11, 2021, the tenant served the landlord written notice of her intention to vacate the rental unit on November 1, 2021. She vacated the rental unit on November 1, 2021.

The parties conducted a move out condition inspection report on November 1, 2021. The tenant testified that the landlord did not provide her with a copy of the move out report, except as part of his evidence in support of this application.

The hearing proceeded on November 29, 2021 (and dealt with issues raised by the tenant unrelated to the eviction). The presiding arbitrator found that the tenant’s application for the return of her security deposit was premature, as she did not provide the landlord with her forwarding address.

On February 20, 2022, she provided the landlord with her forwarding address in writing.

The landlord argued that the tenant failed to provide one months notice of her intention to end the tenancy, as required by the Act. As such he argued that he was unable to generate rental income from the rental unit on for November, 2021.

The landlord seeks $354 in compensation for lost income. He argued that he received notice of the tenant’s intention to end the tenancy 10 days late (i.e., he should have received notice of the tenancy ending on October 1, 2021, if the tenancy was to be ended on November 1, 2021). As such, he seeks to be compensated for 10 days’ rent,

representing one days' rent for each day the tenant was late in providing notice of her intention to end the tenancy.

The landlord testified that upon receipt of the tenant's notice, he posted the rental unit for rent online available for November 1, 2021 at a monthly rent $1400 or $1450. He testified he got between 150 and 200 applications. He testified that he then took down this posting and reposted it at a higher rate of $1600. He received between 30 and 40 applications. He testified that he showed the suite two or three times prior to the tenant vacating the rental, but none of these people ended up renting it. He testified that he re-rented the rental unit starting December 1, 2021.

The landlord stated that the tenant did not adequately clean the rental unit prior to leaving and that she caused damage to the rental unit.

Specifically, the landlord stated that the tenant:

1) Caused water damage to the baseboard directly beneath a water hookup for the tenant's washer/dryer stack, due her faulty installation of that washer;
2) Made a small hole in the hardwood floor;
3) Allowed her cat to rip up the weather seal around the entry door; and
4) Failed to remove the plants that she planted in the garden outside the rental unit.

The landlord seeks $410 in connection with these claims, as follows:

Description	Amount
Water damage to baseboard	$100
Hole in hardwood	$100
Damaged weather seal	$40
Plants left in Garden	$40
Cleaning	$130
Total	**$410**

The landlord testified that the amount claimed for the damage to the baseboards was based on his own estimate, and that the repairs have not yet been undertaken. He testified that he received a quote to replace the damaged piece of flooring, but the work had not yet been done. He did not provide a copy of this quote in evidence.

The landlord repaired the damaged weatherstripping himself. He testified it took him roughly one hour to repair plus the cost of materials which he estimated on being $7 or $8 dollars.

The landlord stated that the tenant failed to adequately clean the rental unit. He submitted multiple photos of the rental unit showing walls, shower tiles, and baseboards "not wiped clean". He also claimed that there was cat hair throughout the rental unit, and submitted photographs of items which had a small amount of cat hair on them. He

stated that the tenant failed to clean behind the refrigerator (which is on wheels) and the stove (which is not on wheels, but “is easy to pull out”). He stated that the rental unit was not “move in ready” when the tenant left.

The landlord testified that he had to re-mop and re-vacuum the entire rental unit to remove “lots of little scuffs”. He stated that he looked online and saw cleaning rates between $25 to $30 an hour, and he based his claim for monetary compensation on those amounts.

The tenant testified that she cleaned the rental unit “top to bottom”. She argued that the landlord’s expectation of cleanliness is greater than that of the average person. She stated that she cleaned underneath the fridge and stove two weeks before vacating, although she admitted that it was possible that after doing so additional dirt or debris could have fallen behind the stove or refrigerator.

The tenant denied that she had improperly installed or operated her washer/dry stack causing damage to the baseboard. She testified that her washer was not installed in front of the hookup nor was it connected to it.

The tenant also denied causing the hole in the hardwood. She testified that it was their at the start of the tenancy. She admitted that her cat scratched and damaged the weatherstripping, and she agreed to compensate the landlord $40 for the damage.

The tenant testified that the prior owner gave her permission to plant flowers in the garden, and as such she was not responsible for removing them. In any event, she thought it was unreasonable that the landlord would require her to rip up the garden when she left the rental unit.

Analysis

Residential Tenancy Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

> 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.

(the "**Four-Part Test**")

Rule of Procedure 6.6 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.

So, the landlord must prove it is more likely than not that the tenant breached the Act, that he suffered quantifiable loss as a result, and that he acted reasonably to minimize his loss.

1. November Rent

The landlord is correct in saying that the tenant must give at least one months notice prior to ending the tenancy. As such, by giving notice to vacate the rental unit on October 10, 2021, the soonest that ended could have ended the tenancy in accordance with the Act would have been December 1, 2021. Therefore, by vacating the rental unit on November 1, 2021, the tenant breached the Act.

However, the landlord has a responsibility to act reasonably to minimize his loss. In cases of incorrect notices to end tenancy, this means that a the landlord attempt to re-rent the rental unit as soon as reasonably possible. By posting the rental unit for rent prior to the end of the tenancy, I find that the landlord acted reasonably. However, by his own admission, he took down his first rental posting, thus squandering between 150 and 200 leads, and re-posted it at a higher rate. He received significantly lower response on this second posting. I do not find that the landlord acted reasonably to minimize his losses by taking down his first posting after receiving overwhelming interest. Had he followed up on these leads, I think it is more likely than not that he would have been able to rent the rental start November 1, 2021.

Accordingly, the landlord has failed to satisfy the fourth part of the Four-Part Test. As such I declined to order any compensation for this part of his application.

2. Cleaning

Section 37(2) of the Act states:

> **Leaving the rental unit at the end of a tenancy**
> 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

Based on the photographs submitted evidence, I find that the bulk of the rental unit was “reasonably clean”. I accept that there may have been minor smudges on some of the surface is in the rental unit, as well as some cat hair. However, I do not find that this constitutes an “unreasonable” level of cleanliness. It may be that the rental unit was not “move in ready”. However, that is not the standard tenants must meet when moving out of a rental unit.

However, based on the photos submitted into evidence, I find that the tenant had failed to adequately cleaned behind the stove and refrigerator. RTB Policy Guideline 1 states:

> If the refrigerator and stove are on rollers, the tenant is responsible for pulling them out and cleaning behind and underneath at the end of the tenancy. If the refrigerator and stove aren't on rollers, the tenant is only responsible for pulling them out and cleaning behind and underneath if the landlord tells them how to move the appliances without injuring themselves or damaging the floor. If the appliance is not on rollers and is difficult to move, the landlord is responsible for moving and cleaning behind and underneath it.

The refrigerator is on rollers, so it is the tenant’s responsibility to clean behind it. She has failed to adequately do this. The stove is not on rollers. There is no evidence before me that the landlord told the tenant how to move the stove. As such, I do not find that the tenant was responsible for cleaning behind it.

I find that $20 is an appropriate amount to compensate the landlord for cleaning behind the refrigerator.

3. Damage

Section 32 of the Act, in part, states:

> **Landlord and tenant obligations to repair and maintain**
> 32(1) A landlord must provide and maintain residential property in a state of decoration and repair that
> (a) complies with the health, safety and housing standards required by law, and
> (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.
> (2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

> (3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.
> (4) A tenant is not required to make repairs for reasonable wear and tear.

The prior owner did not conduct a move in condition inspection report at the start of the tenancy. As such, I have nothing to compare the state of the rental unit at the end of the tendency to. I accept, however, that the rental unit was new at the time of the tenant moved in. This does not mean that it was completely undamaged. It is not uncommon for new units to have minor deficiencies. I accepted the hole in the hardwood floor may have been one such deficiency.

The landlord bears the onus to show that the tenant was responsible for causing any damage it seeks compensation for. The landlord has not done this for the damage to the hardwood. Accordingly, I decline to order any compensation for this damage.

The landlord has failed to provide any documentary evidence to show that the tenant's washer/dryer stack was installed near where the damaged baseboards were, or that it was hooked into the intake pipe. As such, I do not find that the landlord has discharged its evidentiary burden. I dismiss this portion of its application as well.

RTB Policy Guideline 1 states:

> PROPERTY MAINTENANCE
> 1. The tenant must obtain the consent of the landlord prior to changing the landscaping on the residential property, including digging a garden, where no garden previously existed.
> 2. Unless there is an agreement to the contrary, where the tenant has changed the landscaping, he or she must return the garden to its original condition when they vacate.

The tenant testified that the prior owner permitted her to plant flowers in the garden. She did not testify that he agreed that the flowers could remain until the end of the tenancy. I do not find that the granting of permission to plant flowers in the garden automatically implies that they may remain there after the tenancy ends.

Accordingly, I find that the tenant was responsible for the removal of all items she planted in the garden. She failed to do this. As such, the landlord is entitled to compensation for removing the items. I found that $40 is an appropriate amount of compensation.

The tenant has consented to paying the replacement cost ($40) of the weatherstripping.

As such, I order the tenant to pay the landlord $100, calculated as follows:

Description	Amount
Damaged weather stripping	$40.00
Removal cost of plants left in garden	$40.00
Cleaning	$20.00
Total	**$100.00**

As the tenant has been mostly successful in this application, I decline to order that she reimbursed the landlord to filing fee.

Pursuant to section 72(2) of the Act, the landlord may deduct $100 from the Deposits in satisfaction of the monetary order made above. I ordered that the landlord returned the balance of the deposits ($1,000 dollars) to the tenant.

Conclusion

I order that the tenant pay the landlord $100 for the above stated reasons. The landlord may deduct $100 from the deposits in satisfaction of this amount.

I order the landlord to pay the tenant $1,000, representing the return of the Deposits.

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 15, 2022

Residential Tenancy Branch