Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL

Introduction

The Landlord seeks the following orders under the *Residential Tenancy Act* (the "*Act*"):

- A monetary order pursuant to ss. 38 and 67 for damages caused by the tenants during the tenancy and a request to claim those damages against the security deposit; and
- Return of her filing fee pursuant to s. 72.

P.S. appeared as the Landlord. L.S. appeared as the Tenant.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The parties confirmed that they were not recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

A.M., a named respondent, appeared near to the end of the hearing. A.M. was not affirmed and provided no evidence as L.S. had provided submissions on behalf of the respondents.

The Landlord advised having served the Notice of Dispute Resolution and her evidence on the Tenant by way of registered mail sent on January 15, 2022. The Landlord provided tracking receipts as proof of service. The Tenant acknowledged receipt of the Landlord's application materials. I find that the Landlord served her application materials on the Tenant in accordance with s. 89 of the *Act*.

Preliminary Issue – Tenants' Evidence

The Tenant advised that the response evidence was provided to the Residential Tenancy Branch and testified to her understanding that it would be accessible by the Landlord. The Landlord denied receipt of any evidence from the tenants.

Rule 3.15 of the Rules of Procedure requires respondents to serve the evidence upon which they intend to rely on each of the named applicants. The evidence must be received at least 7 days prior to the hearing. Rule 3.16 of the Rules of Procedure requires a respondent to be prepared to demonstrate service of their evidence.

In the present circumstances, the tenants operated under a misapprehension of their obligation to physically serve their evidence on the Landlord. Essentially, the tenants admit to not following the Rules of Procedure or the service provisions of the *Act*. As the evidence was not served, I find that it would be procedurally unfair to the Landlord to consider the tenants' evidence as she did not have an opportunity to review it prior to the hearing.

Accordingly, the documentary evidence provided by the tenants shall not be admitted into evidence and will not be considered by me. The Tenant was free to make oral submissions.

Issues to be Decided

1) Is the Landlord entitled to claim for damages against the security deposit? If so, in what amount?
2) Is the Landlord entitled to the return of her filing fee?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this decision.

The parties confirmed the following details with respect to the tenancy:

- The tenants took occupancy of the rental unit on August 15, 2019.
- The Landlord obtained vacant possession of the rental unit on December 18, 2021.

- Rent of $2,100.00 was due on the first day of each month.
- The Landlord holds a security deposit of $1,050.00 in trust for the tenants.

A copy of the tenancy agreement was put into evidence by the Landlord.

The Landlord's evidence includes a condition inspection report in the Residential Tenancy Branch's standard form. The Landlord advised that a move-in condition inspection was conducted on August 15, 2019 and the written move-out condition inspection was conducted on December 21, 2021. The Landlord further confirmed that the tenants were given a paper copy of the condition inspection report. The Tenant did not deny any of Landlord's evidence in this regard.

The forwarding address was included in the move-out inspection report on December 21, 2021.

The Landlord claims $1,062.00 in damages in her application. Her evidence includes a monetary order worksheet itemizing the claim. The Landlord's monetary order worksheet includes a claim of $45.00 for oven cleaning, though the Landlord advised at the hearing that she was not seeking this amount.

The largest portion of the Landlord's claim is the cost for sod replacement. The Landlord says that the tenants stored a canoe on a set of sawhorses in a section of the yard. The Landlord testified that the lawn in that portion of the yard died. The Landlord obtained an estimate at repairing the yard from a landscaping company. The estimate put into evidence is dated December 24, 2021 and lists the cost at $630.00. The Landlord confirmed that she has not paid for the sod replacement and was waiting the outcome of the hearing.

The Tenant argues that the yard was far from an ideal condition on move-in, though acknowledges that the section where they stored their canoe had dead grass. She emphasized that they moved out in December and that grass never looks good at that time of year. Further, the Tenant argued that area of grass is in a shaded portion of the yard and is prone to die off. The Tenant advised that the grass was reseeded prior to moving out. She says that she attended the property to visit a friend in May or June 2022 and saw that the grass had come back.

The Landlord says that the grass is still patchy and argues that whether the grass came back in the summer or not is not relevant as the tenants had an obligation to return the

property in original condition when the tenancy ended, which she argues was not the case. Photographs were put into evidence by the Landlord showing the affected area of the yard.

The Landlord also seeks the cost of cleaning windows at the property. The Landlord says that the Tenants put blue tape on the windows and that she retained a cleaner to come in to clean the windows at a cost of $78.75. The Landlord's evidence includes an invoice dated December 23, 2021 and photos of the affected windows. The Tenant did not make submissions with respect to the Landlord's claim for window cleaning.

Further claim is made by the Landlord with respect to cleaning the carpet. The Landlord says that carpets were not clean and that she retained a carpet cleaner to come in to clean the carpets at a cost of $189.00. The Landlord's evidence includes photographs of the dirty carpets and an invoice for the amount listed dated January 4, 2022.

The Tenant argues that they had cleaned the carpets after vacating. She says that her co-tenant spent several hours cleaning the carpet using a carpet cleaning rental.

The Landlord also claims that the cost of replacing sawhorses at a cost of $120.00, which is an estimate based on the cost of supplies at a building supply store. She says that the sawhorses were used by the tenants to store their canoe. She further says that the sawhorses were hers and that the tenants used them without her authorization. The issue was raised with the tenants after the end of the tenancy by way of email, a copy of which was put into evidence by the Landlord. She says that the tenants dropped off a set of sawhorses that they had used after the email had been sent. The Landlord argued that the sawhorse replacements provided by the tenants were of inferior quality.

The email put into evidence dated December 23, 2021 indicates that the tenants had disposed of the Landlord's sawhorses as they became "heavily rotted". At the hearing, the Tenant argued that the sawhorses were not purchased by the Landlord.

The Landlords evidence also includes receipts for light bulbs ($18.08, $19.72, and $11.34). The Landlord testified that the light bulbs needed replacing and that a heat register needed replaced as it was broken.

The Tenant argued that they were good tenants and returned the property in a clean state. The Tenant further argued that the Landlord did not take regular wear and tear into account with respect to the amounts claimed.

The Tenant confirmed that none of the security deposit had been returned. This was not disputed by the Landlord.

Analysis

The Landlord claims for damages against the security deposit.

Policy Guideline #17 states the following with respect to the retention or the return of the security deposit through dispute resolution:

1. The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the *Act*, on:
    - a landlord's application to retain all or part of the security deposit; or
    - a tenant's application for the return of the deposit.

    Unless the tenant's right to the return of the deposit has been extinguished under the *Act*. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for dispute resolution for its return.

Section 38(1) of the *Act* sets out that a landlord must within 15-days of the tenancy ending or receiving the Tenant's forwarding address, whichever is later, either repay a tenant their security deposit or make a claim against the security deposit with the Residential Tenancy Branch. A landlord may not claim against the security deposit if the application is made outside of the 15-day window established by s. 38. Under s. 38(6) of the *Act*, when a landlord fails to either repay or claim against the security deposit within the 15-day window, the landlord may not claim against the security deposit and must pay the tenant double their deposit.

Presently, I find that the formal move-out and move-in inspection report requirements under ss. 23 and 35 have been met such that neither party's right to the security deposit has been extinguished.

It is undisputed that the tenants provided the Landlord with their forwarding address in the move-out inspection report, which I am told by the Landlord was completed on December 21, 2021. Based on this undisputed evidence, I find that the Landlord had until January 5, 2022 to file an application claiming against the security deposit. Upon

review of the information on file and in consideration of Rule 2.6 of the Rules of Procedure, I find that the Landlord's application was filed on December 31, 2021. Accordingly, the doubling provision of s. 38(6) of the *Act* does not apply.

Under s. 67 of the *Act*, the Director may order that a party compensate the other if damage or loss result from that party's failure to comply with the *Act*, the regulations, or the tenancy agreement. Policy Guideline #16 sets out that to establish a monetary claim, the arbitrator must determine whether:

1. A party to the tenancy agreement has failed to comply with the *Act*, the regulations, or the tenancy agreement.
2. Loss or damage has resulted from this non-compliance.
3. The party who suffered the damage or loss can prove the amount of or value of the damage or loss.
4. The party who suffered the damage or loss mitigated their damages.

The applicant seeking a monetary award bears the burden of proving their claim.

Section 37(2) of the *Act* imposes an obligation on tenants to leave the rental unit in a reasonably clean and undamaged state, except for reasonable wear and tear, and to give the landlord all keys in their possession giving access to the rental unit or the residential property. Policy Guideline 1 defines reasonable wear and tear as the "natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion."

Dealing first with the issue of the grass, the Landlord provides an estimate for the cost of repairing the lawn at $630.00. The Landlord confirmed no work was done to repair the lawn. Without considering the other aspects of the four-part test, I find that the estimate for the repairs provided by the Landlord is entirely speculative as the cost has not, in fact, been incurred.

Further, I have reviewed the pictures provided by the Landlord and there does appear to be a spot on the yard that has died back. However, the dead spot extends beyond the canoe and there are also areas beneath the canoe where the grass appears to be alive. The photograph shows that area in question is adjacent to a structure and tree, which would mean it is shaded from two directions. The tenancy ended in December. All these elements support the Tenant's submissions that the area in question is prone to damage, particularly through the winter months. I find that the Landlord has failed to

establish that the Tenants damaged the yard as it is just as likely that the section of the grass deteriorated through natural forces.

The Landlord's claim with respect to the lawn is dismissed without leave to reapply.

Dealing next with the carpet cleaning, I have reviewed the photographs provided by the Landlord. It appears that some areas are not clean, including a clear outline of where a mattress appears to have previously sat. The lines in the carpet would suggest that the tenants did attempt to clean the carpets. However, it does not appear that they did a good job. I find that the Landlord has established that the tenants breached their obligation under s. 37 to return the carpets in a clean state. The Landlord provides evidence that the cost of cleaning the carpets was $189.00. I find that the Landlord has suffered a loss in the amount of $189.00 due to the tenants' failure to clean the carpets and shall receive an order for this amount.

Looking at the cost of cleaning the windows, the Landlord's evidence shows glue residue left on the windows at the end of the tenancy. This point was not directly disputed by the Tenant. I find that the Landlord has established that the tenants failed to properly clean the windows in breach of their obligation to do so under s. 37. The Landlord provides a receipt in the amount of $78.75 which she says was the cost for cleaning the windows. I find that the Landlord has suffered a financial loss in the amount of $78.75 due to the tenants' failure to clean the windows and shall receive an order for this amount.

The Landlord seeks $120.00 for replacing a set of sawhorses. The Landlord says that the Tenants used the sawhorses without her consent. I do not accept the Landlord's argument. The tenancy began in 2019 and the Landlord's evidence is that the sawhorses were used very early into the tenancy. In other words, the Landlord left the sawhorses at the rental unit and had seen that they were used by the tenants throughout the tenancy. Had the tenants use of the sawhorses by the tenants been in issue, I would expect that the topic be discussed prior to the end of the tenancy.

Another issue with the Landlord's claim for the sawhorses is that it confuses replacement cost of the items versus their market value. Policy Guideline #16 is clear that the purpose of compensation is to put the person who suffered the loss in the same position as if the damage or loss had not occurred. Replacement cost represents a form of betterment as an old item is replaced with a new one. Indeed, Policy Guideline #40 provides guidance on the expected lifespan of certain items, which may be considered

when damages are assessed. This is done to ensure that the compensation is equivalent to the value of the items that were actually damaged.

The Landlord provided no evidence on the age of the sawhorses, though the tenants evidence mentions that the sawhorses had rotted away. It seems likely that the sawhorses were past the point of their useful life. Even if the tenants can be said to have caused the damage, I find that it is irrelevant as the sawhorses were effectively worthless. To the extent that any loss did occur, this has been more than compensated by the tenants providing the Landlord with a set of sawhorses. I find that the Landlord failed to demonstrate she suffered any financial loss with respect to this aspect of her claim.

The Landlord also seeks the cost of replacing lightbulbs. Policy Guideline #1 is clear that tenants are responsible for replacing light bulbs in the rental unit during the tenancy. The condition inspection report notes that there are 6 burnt out lightbulbs. However, the Landlord's evidence shows receipts for 8 light bulbs. Section 21 of the Regulations provides that a condition inspection report is evidence of the state of repair and condition of the rental unit when the inspection occurred. As the condition inspection report only lists 6 bulbs were in issue, I find that the Landlord has established a claim for those two amounts, which based on the receipts is an amount that totals $22.68.

I find that the Landlord has established her monetary claim with respect to the following amounts:

Item	**Amount**
Carpet Cleaning	$189.00
Window Cleaning	$78.75
Light Bulbs	$22.68
Total	$290.43

I direct that the Landlord retain this amount from the security deposit of $1,050.00 and return the balance to the tenants, with the balance being $759.57 ($1,050.00 - $290.43).

Conclusion

The Landlord has established a claim for damages in the amount of $290.43 and may retain that amount from the security deposit. The balance of the security deposit in the amount of $759.57 is to be returned to the tenants.

The Landlord was largely unsuccessful in her application. I find that she is not entitled to the return of her filing fee. Her claims under s. 72 is dismissed without leave to reapply.

I grant a monetary order in favour of the tenants in the amount of **$759.57**.

It is the tenants' obligation to serve the monetary order on the Landlord. If the Landlord does not comply with the monetary order, it may be filed by the tenants with 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 *Residential Tenancy Act*.

Dated: August 10, 2022

Residential Tenancy Branch