



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

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DECISION

Dispute Codes MNDL, FFL

Introduction

This hearing dealt with the Landlord's application under the Residential Tenancy Act (the "Act") for:

- a Monetary Order of \$5,000.00 as compensation for damage to the rental unit caused by the Tenant, the Tenant's pets, or the Tenant's guests pursuant to sections 32 and 67; and
- authorization to recover the filing fee for this application from the Tenant pursuant to section 72.

The Landlord and the Tenant attended this hearing. They were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The Landlord was assisted in this hearing by her son, GK, who made submissions on the Landlord's behalf and acted as an interpreter. The Tenant called a witness, JB, to testify during the hearing.

All attendees at the hearing were advised that the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure") prohibit unauthorized recordings of dispute resolution hearings.

Preliminary Matter – Service of Dispute Resolution Documents

GK confirmed the Landlord served the Tenant with the notice of dispute resolution proceeding package and supporting documentary evidence (collectively, the "NDRP Package") by registered mail on December 31, 2022. The Landlord submitted a Canada Post registered mail receipt with a tracking number in support. That Canada Post tracking number is referenced in the cover page of this decision. Tracking records show that the package was delivered on January 5, 2022. The Tenant stated that she received some but not all of the Landlord's evidence. GK testified that all documents submitted to the Residential Tenancy Branch were included in the NDRP Package sent to the Tenant. I accept GK's testimony and find on a balance of probabilities that the Tenant has been served with the NDRP Package in accordance with sections 88 and 89 of the Act on January 5, 2022.

The Tenant acknowledged she did not serve the Landlord with her documentary evidence uploaded to the Residential Tenancy Branch. I find the Tenant did not serve

the Landlord with her documentary evidence in accordance with the Act or the Rules of Procedure. As such, I exclude the Tenant's documentary evidence from consideration for the purpose of this application.

Issues to be Decided

1. Is the Landlord entitled to compensation for damage to the rental unit?
2. Is the Landlord entitled to recover the filing fee?
3. Did the Landlord retain the Tenant's security deposit?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony presented, only the details of the respective submissions and arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of this application and my findings are set out below.

This tenancy commenced on May 13, 2019 and ended on December 1, 2021. Rent was initially \$4,000.00 per month. The tenancy was renewed in a subsequent agreement and rent was reduced to \$3,750.00 per month.

The Landlord submitted copies of the parties' tenancy agreements signed May 13, 2019 and February 6, 2021 into evidence. The tenancy agreements list both the Tenant and another individual JB as tenants, although neither of the agreements are signed by JB. The Tenant confirmed that a \$2,000.00 security deposit was paid to the Landlord.

The parties disagree as to whether the Landlord still holds the security deposit in trust for the Tenant. GK initially stated that the security deposit was used for damages and unpaid rent, then stated that the security deposit was returned to the Tenant's partner, JB.

GK testified the Landlord discovered the Tenant was running a halfway house in the rental unit and subleasing the rental unit. GK testified there were too many occupants and the city was involved.

GK testified that when the tenancy ended, the Tenant left behind "extensive" damage to drywall and doors, including holes, scraps, and drawings on the walls. The Landlord submitted photographs of the rental unit said to be taken in December 2021. GK testified the rental unit was "perfectly normal" before. The Landlord submitted a

\$5,000.00 repair estimate from a drywalling company dated December 10, 2021 (the "Estimate").

GK testified that the Landlord did not repair the damages. GK testified the Landlord discovered water damage in the rental unit after filing this application and determined the rental unit to be unrentable.

GK testified the Landlord did an initial walkthrough with the Tenant at the start of the tenancy. The Landlord submitted a condition inspection report (the "Inspection Report") that was signed by the Landlord but not signed by the Tenant. GK testified a move-out inspection was done in December 2021 without the Tenant. GK testified the Tenant was not willing to meet or answer the Landlord's calls.

The Tenant testified they had informed the Landlord they would be subleasing the rental unit to help alleviate the homelessness and opioid crisis. The Tenant testified the city eventually got involved due to a complaint. The Tenant testified she received a two month notice to end tenancy from the Landlord and kept the last month's rent as compensation. The Tenant testified they then left the rental unit. The Tenant testified that there were water damage issues during the tenancy. The Tenant denied that the rental unit is unrentable. The Tenant testified she saw the rental unit is being rented.

The Tenant acknowledged that some things were left behind at the end of the tenancy. The Tenant testified she told the Landlord to keep \$500.00 of the security deposit for painting, to fix the drywall, and replace a couple doors for \$35.00 each. The Tenant denied that there was extensive damage to the drywall. The Tenant testified she requested the remainder of the deposit back from the Landlord.

The Tenant testified when they originally moved into the rental unit, it was a "mess" due to garbage and furniture all over. The Tenant denied that there was any walkthrough report done. The Tenant denied that the Landlord had asked the Tenant to do a walkthrough report. The Tenant testified she would have gladly done a report but the Landlord never asked.

During the hearing, the Tenant called JB to testify as a witness. JB testified that the Landlord did not return the \$2,000.00 security deposit to him. JB testified he had asked GK for the security deposit and was told GK would get back to him, but GK never did.

The Tenant testified she provided the Landlord with her forwarding address in writing on December 2, 2021.

Analysis

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

Section 32(2) of the Act states that 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.

Section 32(3) of the Act further states that a tenant 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.

Section 67 of the Act states:

Director's orders: compensation for damage or loss

67 Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Residential Tenancy Policy Guideline 16. Compensation for Damage or Loss ("Policy Guideline 16") states as follows:

C. COMPENSATION

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:

- 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.

In this case, I find that the Inspection Report submitted by the Landlord, which was not signed by the Tenant, provides very few details about the conditions of the rental unit at the start of the tenancy. The Inspection Report describes most areas at the beginning of the tenancy with nothing more than a code "G", which I understand to stand for "Good". The only comments about the rental unit at the beginning of the tenancy were that the entry walls and trim were "intact", the entry ceilings were "good", the entry closets were "present", and the entry lighting fixtures/ceiling fan/bulbs were "present".

Furthermore, I accept the Tenant's evidence that the Landlord did not complete this Inspection Report together with the Tenant. I note JB and the Tenant both testified that the rental unit was a mess at the start of the tenancy. I conclude that the Inspection Report has low probative value as evidence regarding the conditions of the rental unit at the start of the tenancy.

The Landlord has not submitted any photographs or videos of the rental unit taken before the Tenant moved in. Based on the foregoing, I find the Landlord has provided insufficient evidence to demonstrate the conditions of the rental unit at the start of the tenancy.

Nevertheless, I find the Tenant acknowledged in her testimony that some damage had occurred during the tenancy, namely to the drywall and doors.

I have also reviewed the photographs of the rental unit taken after the Tenant left. I find that the photographs show damage such as writing and a few holes on the walls, a discolored wall, broken or cracked wooden door frames and baseboards, as well as garbage left in a barn area on the property.

However, I am not satisfied that the \$5,000.00 being claimed by the Landlord is reasonable in the circumstances. I find the Estimate submitted by the Landlord does not provide sufficient details about the work that would be covered. The Estimate states that "Dry wall and paint walling kitchen, living room, 4bedrooms" would be \$5,000.00 and "Possible clean up as well as garbage removal" would be "\$1,000.00, although the total at the bottom is also \$5,000.00. I find that the Estimate does not explain, for example, whether the quote is for repairing and patching drywall or replacing them entirely.

Based on the foregoing, and in particular due to the lack of evidence available about the conditions of the rental unit at the start of the tenancy, I find the Landlord has not proven the amount of damages or loss suffered is as claimed.

Based on the photographs submitted by the Landlord and the Tenant's acknowledgement of damages, I fix the Landlord's compensation award for damage to the rental unit at \$900.00.

Pursuant to section 67 of the Act, I order the Tenant to pay the Landlord \$900.00 as compensation for damage to the rental unit.

2. Is the Landlord entitled to recover the filing fee?

The Landlord has been partially successful in this application. I grant the Landlord recovery of the filing fee under section 72(1) of the Act.

3. Did the Landlord retain the Tenant's security deposit?

In this case, I find GK's testimony regarding the return of the Tenant's security deposit to be inconsistent and not supported by any extrinsic evidence or records. I find that GK initially claimed the security deposit was applied towards damages and unpaid rent, but later claimed that it was returned to JB. As such, I do not find GK's testimony on this issue to be credible. I accept JB and the Tenant's testimony that the Landlord did not return the Tenant's security deposit. I also accept the Tenant's evidence that the security deposit was carried over from the parties' first tenancy agreement to their second tenancy agreement, as noted on page 3 of the second agreement.

Based on GK's testimony, I find the Landlord did a walkthrough with the Tenant at the start of the tenancy but did not comply with section 23(5) of the Act, which requires both the landlord and tenant to sign the report and the landlord to give the tenant a copy of that signed report. I find that the Landlord did not provide the Tenant with a copy of the report signed by both parties, and as such, the Landlord's right to claim against the Tenant's security deposit for damage to the rental unit is extinguished under section 24(2)(c) of the Act.

Furthermore, under section 38 of the Act, if a landlord does not repay the tenant's security deposit or make an application for dispute resolution within 15 days after the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing, the landlord must pay double the amount of the security deposit to the tenant.

In this case, I find there is insufficient evidence regarding whether the Tenant had provided her forwarding address to the Landlord in writing using an accepted method of service under section 88 of the Act. The Tenant has not submitted any documents as proof of service. As such, I decline to order the Landlord to return double the security deposit to the Tenant.

Pursuant to section 72(2)(b) of the Act, I order that the Landlord is authorized to retain \$1,000.00 of the security deposit held by the Landlord in full satisfaction of the amounts awarded on this application.

The Monetary Order granted to the Tenant for the return of the balance of the security deposit is calculated as follows:

Item	Amount
Security Deposit	\$2,000.00
Less Compensation Awarded to Landlord	- \$900.00
Less Filing Fee Awarded to Landlord	- \$100.00
Total Monetary Order for Tenant	\$1,000.00

Conclusion

The Landlord is authorized to retain \$1,000.00 of the Tenant's security deposit in full satisfaction of the sum awarded in this application.

I order the Landlord to return the balance of the security deposit, or \$1,000.00, to the Tenant. Pursuant to sections 62(3) and 65(1)(c)(i) of the Act, I grant the Tenant a Monetary Order in the amount of **\$1,000.00**. The Landlord must be served with 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.

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 26, 2022

Residential Tenancy Branch