Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNDCL-S, FFL

Introduction

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

- a monetary order pursuant to s. 67 compensating for damage caused to the rental unit by the Tenants;
- a monetary order pursuant to s. 67 compensating for loss or other money owed; and
- return of the security deposit pursuant to s. 72.

The Landlord advances its monetary orders by claiming against the security deposit and pet damage deposit.

D.D. appeared as agent for the Landlord. The Tenants did not appear, nor did someone appear on their behalf.

Pursuant to Rule 7.1 of the Rules of Procedure, the hearing began as scheduled in the Notice of Dispute Resolution. As the Tenants did not attend, the hearing was conducted in their absence as permitted by Rule 7.3 of the Rules of Procedure.

The Landlord's agent 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 Landlord's agent confirmed that he was not recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The Landlord's agent testified that the Notice of Dispute Resolution and the Landlord's evidence sent on February 11, 2022 via registered mail to the forwarding address for both Tenants. I find that the Landlord's application and evidence was served on both Tenants in accordance with s. 89 of the *Act*. Pursuant to s. 90 of the *Act*, I deem that the Tenants received the Landlord's application materials on February 16, 2022.

Issues to be Decided

1) Is the Landlord entitled to claim against the deposits?
2) Is the Landlord entitled to a monetary order for damages to the rental unit?
3) Is the Landlord entitled to a monetary order compensating for loss or other money owed?
4) Is the Landlord entitled to the return of its 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 Landlord's agent confirmed the following details with respect to the tenancy:

- The Tenants took occupancy of the rental unit on June 1, 2020.
- The Landlord obtained vacant possession of the rental unit on June 30, 2021.
- Rent of $1,575.00 was due on the first day of each month.
- The Tenants paid a security deposit of $787.50 and a pet damage deposit of $787.50.

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

The Landlord's agent advised that the move-in inspection was conducted as too was a move-out inspection. The Landlord's evidence includes a copy of the condition inspection report, which shows the Tenants provided their forwarding address on June 30, 2021. The Landlord's agent confirmed this at the hearing and further advised that one of the tenants provided an updated forwarding address on February 8, 2022.

The Landlord's evidence includes a monetary order worksheet showing the following amounts claimed:

- Stovetop repair - $773.00

- Cleaning Cost - $183.75
- Unpaid Electric Bill - $62.99

The condition inspection report is signed by the parties, states that the Tenants agreed that the move-in and move-out portion of the report were accurate, and states the following writing into the report:

> Deduction $175 for cleaning and painting, + deduction for glass top -> estimate will be provided by appliance tech and added to move out inspection.

The Landlord's agent testified that the Tenants damaged a glass stovetop during the tenancy. Photographs of the damage were put into evidence by the Landlord. The Landlord's agent further testified that the Tenants had admitted that they caused the damage. The invoice dated October 20, 2021 for the stovetop repair was put into evidence showing the cost of the repair at $773.00.

The Landlord's agent further testified that the rental unit was not sufficiently cleaned by the Tenants at the end of the tenancy. An invoice for cleaning the rental unit was put into evidence showing the cost of cleaning and touch painting at $216.25. The Landlord's agent testified that the $183.75 claimed is the cleaning fee plus taxes.

Finally, the Landlord claims the cost of an unpaid electricity bill in the amount of $62.99. The tenancy agreement indicates that the Tenants were responsible for paying for the electricity. A copy of a utility bill dated September 3, 2021 was put into evidence showing an amount owing of $62.99. The Landlord's evidence also includes a cheque showing the Landlord paid this amount.

The Landlord's agent confirmed that none of the security deposit or pet damage deposit has been returned to the Tenants.

Analysis

The Landlord advances monetary claims against the security deposit.

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. 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.

Section 38(4)(a) of the *Act* permits a landlord to retain an amount from the security deposit or pet damage deposit if at the end of the tenancy the tenant agrees in writing that the landlord retain that amount. In this instance and based on the notes within the inspection report, I find that the Tenant consented to the $175.00 cleaning fee. Based on the Tenants' consent on this amount, I find that the Landlord may retain this portion of its claim, totalling $183.75, being the fee plus taxes.

The second portion within the inspection report lists that the Tenants acknowledge the cost of repairing the stovetop, though there is no specific amount. The wording of s. 38(4) is clear that a tenant may consent to "an amount" to be retained by the landlord. As no amount was listed within the report, I find that the Tenant did not consent to this second portion as under s. 38(4).

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.

I accept the undisputed evidence from the Landlord's agent that the Tenants damaged the stovetop, which was acknowledged by the Tenants in the condition inspection report. I find that the Tenants breached their obligation under s. 37(2) with respect to the

stovetop. The Landlord's evidence includes a receipt showing the cost of repairing the stovetop cost $773.00. I find that the Landlord suffered a loss of $773.00 for the repair of the stovetop that could not have been mitigated under the circumstances. Accordingly, I find that the Landlord is entitled to $773.00 for the stovetop repair.

Looking next at the utility bill, the tenancy agreement clearly specifies that the Tenants were responsible for paying the electric utility bill. The Landlord's evidence clearly demonstrates it paid $62.99 to pay an outstanding amount that was not paid by the Tenants at the end of the tenancy. I find that the Tenants breached the tenancy agreement to pay for electricity, which cost the Landlord $62.99. The Landlord could not have mitigated its damages under the circumstances. I find that the Landlord is entitled to $62.99 for the cost of paying out the electrical utility bill.

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.

    …
3. Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit:
    - if the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant's forwarding address is received in writing;
    - if the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act;
    - if the landlord has filed a claim against the deposit that is found to be frivolous or an abuse of the dispute resolution process;
    - if the landlord has obtained the tenant's written agreement to deduct from the security deposit for damage to the rental unit after the landlord's right

to obtain such agreement has been extinguished under the Act; • whether or not the landlord may have a valid monetary claim.

4. In determining the amount of the deposit that will be doubled, the following are excluded from the calculation:
    - any arbitrator's monetary order outstanding at the end of the tenancy;
    - any amount the tenant has agreed, in writing, the landlord may retain from the deposit for monies owing for other than damage to the rental unit (see example B below);
    - if the landlord's right to deduct from the security deposit for damage to the rental unit has not been extinguished, any amount the tenant has agreed in writing the landlord may retain for such damage.

    …
    Example B: A tenant paid $400 as a security deposit. During the tenancy, the parties agreed that the landlord use $100 from the security deposit towards the payment of rent one month. The landlord did not return any amount. The tenant applied for a monetary order and a hearing was held.

    The arbitrator doubles the amount that remained after the reduction of the security deposit during the tenancy. In this example, the amount of the monetary order is $600.00 ($400 - $100= $300; $300 x 2 = $600).

Policy Guideline #17 is clear that where a landlord claims against the security deposit, the balance is to be returned regardless of whether the tenant has applied seeking its return. Further, consideration of whether the Landlord is entitled to claim against the security deposit requires consideration of whether that right is extinguished under ss. 24 and 36 of the *Act* due to a failure by one of the parties to comply with the condition inspection report process or under s. 38(1) of the *Act* the landlord has failed to file within the 15-day time limit.

In this instance, the Landlord's agent confirmed that the forwarding address was provided on June 30, 2021, though one of the Tenant's provided an updated forwarding address on February 8, 2022. Review of the information on file shows that the Landlord filed its application with the Residential Tenancy Branch on February 2, 2022. There is no indication that the Tenants waived their right to claim for double the deposit under s. 38(6).

I find that the Landlord failed to file its application claiming against the security deposit within the 15-day window imposed by s. 38(1) of the *Act*. I do not find that the updated forwarding address is relevant as the Landlord confirmed receiving the forwarding address on June 30, 2021. Rather than file in 15-days, the Landlord took 7 months to file its application. As the Landlord failed to file in time, I find that s. 38(6) of the *Act* is triggered such that the Tenants are entitled to double the return of the deposits.

Taking the amounts ordered above, I find that the Tenants are entitled to the return of the following:

	$787.50 (Security deposit)
+	$787.50 (Pet damage deposit)
	$1,575.00
-	$183.75 (Cleaning cost consented to by the Tenants)
	$1,391.25
x	2 (Doubled as per s. 38(6))
	$2,782.50
	$773.00 (Stovetop repair)
-	$62.99 (Electrical Utility Bill)
	$1,946.51 (Amount to be returned to the Tenants)

Conclusion

The Landlord has established monetary claims totaling $1,019.74 ($183.75 + $773.00 + $62.99).

The Landlord failed to claim against the security deposit within 15-days of June 30, 2021 such that the doubling provision under s. 38(6) is triggered.

The Landlord was unsuccessful in its application. I find that it is not entitled to the return of the security deposit. Its application under s. 72 is dismissed without leave to reapply.

Taking into account the various set-offs, I order that the Landlord pay **$1,946.51** to the Tenants.

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 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: September 22, 2022

Residential Tenancy Branch