Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Winchester Apartments
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S, FFL

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The landlord applied for:

- a monetary order for loss under the Act, the regulation or tenancy agreement, pursuant to section 67;
- an authorization to retain the security deposit (the deposit), under section 38, and
- an authorization to recover the filing fee for this application, under section 72.

Tenant IE (the tenant) and the respondent landlord attended the hearing. NO (the landlord) represented landlord Winchester Apartments and was assisted by agents KZ and MV. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing all the parties were clearly informed of the Rules of Procedure, including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11, which prohibits the recording of a dispute resolution hearing. All the parties confirmed they understood the Rules of Procedure.

Per section 95(3) of the Act, the parties may be fined up to $5,000.00 if they record this hearing: “A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than $5,000.00.”

As both parties were present service was confirmed. The parties each confirmed receipt of the application and evidence (the materials). Based on the testimonies I find that each party was served with the respective materials in accordance with section 89 of the Act.

Preliminary Issue – Named Landlord

The application indicates agent KO is the landlord.

The landlord submitted the form RTB 42T changing the named landlord to Winchester Apartments, as this is the named landlord in the tenancy agreement.

The tenant affirmed the landlord is Winchester Apartments.

Pursuant to section 64(3)(a) of the Act, I have amended the application to name the landlord Winchester Apartments.

Issues to be Decided

Is the landlord entitled to:

1. a monetary order for loss?
2. an authorization to retain the deposit?
3. an authorization to recover the filing fee?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is the landlord's obligation to present the evidence to substantiate the application.

Both parties agreed the tenancy started on September 01, 2015 and ended on January 31, 2022. Monthly rent when the tenancy ended was $1,259.00, due on the first day of the month. At the outset of the tenancy a deposit of $526.50 was collected and the landlord holds it in trust. The tenancy agreement was submitted into evidence.

The landlord confirmed receipt of the forwarding address via text message on January 31, 2022. The tenant does not remember when she texted the landlord her forwarding address.

The landlord submitted this application on February 12, 2022.

The tenant did not authorize the landlord to retain the deposit.

The landlord testified the tenant agreed to meet for the move out inspection on January 31, 2022 and decided not to attend. The landlord submitted copies of the text messages dated January 31, 2022:

> Tenant: I am going to get groceries. Can I meet u know in front of building to give u keys? (11:45)
> Landlord: No sorry as I am not around. I will be back in 2 hours. Will send u a text so that we can meet (11:42)
> Tenant: Ok (11:43)
> Tenant: I have out keys on counter in kitchen and put enter key in manager mailbox. Tenancy done. Please send cheque to [redacted for privacy], I don't wish to be contacted again. Thx so much (11:57)

The tenant stated she did not want to attend the move out inspection with NO and that the text messages submitted by the landlord are accurate.

The landlord conducted the move out inspection on January 31, 2022, as the tenant informed that she did not want to attend the move out inspection.

The landlord submitted into evidence the inspection report (the report), signed by both parties when the tenancy started and by the landlord only when the tenancy ended.

The landlord said she cleaned the 650 square feet, 1 bedroom rental unit for two hours, as the rental unit's bathroom, windows, blinds and baseboards were not clean. The landlord submitted an invoice dated February 04, 2022 for two hours of cleaning at $30.00 per hour.

The tenant affirmed the landlord verbally informed her she only needed to clean the refrigerator and the stove. The tenant cleaned the floor and windows, but parts of the rental unit were not clean. The landlord testified she did not inform the tenant that she only needed to clean the refrigerator and the stove.

The landlord stated she tried to clean the blinds, but she could not, as the blinds had coffee drips and were extremely dusty. The landlord hired a professional blind cleaner and paid $69.88 ($62.40 x 12% of taxes) to clean the blinds and $33.60 ($30.00 x 12% of taxes) to repair one slat (invoice submitted). One of the blinds had to be substituted, as the tenant damaged it. The landlord submitted the new blind invoice in the amount of $30.07. The landlord said the blinds were in good condition when the tenancy started. The landlord does not know when the blinds were installed.

The tenant affirmed the blinds were 7.5 years old when the tenancy ended, the tenant did not clean the blinds when the tenancy ended, one of the blinds had coffee drips and the blinds had regular wear and tear.

The report indicates the blinds in the living room had to be replaced when the tenancy ended.

The landlord testified the bathtub is from 1927 and it was reglazed in 2019. The tenant damaged it after it was reglazed and the landlord paid $498.75 to reglaze it again in February 2022. The invoice states: “strip and reglaze cast iron tub”. The landlord stated that the company that reglazed the bathtub in 2019 reglazed “close to 20 bathtubs” for the landlord and always did a good service.

The tenant said that she did not damage the bathtub and that the 2019 service was poorly done. The tenant emailed the landlord on August 18, 2020:

> Tenant: I had my bathtub re-enameled last year? whomever did it, did a very poor job. Its cracking and peeling off. It looks like they did not properly scrap off old enamel? I just want this noted cause I plan on moving in the fall (my kitchen is such a dump it gets me down). Thanks again.
> Landlord: Thank for your email and for your feedback. Should you decide to move in the fall. Please let us know in writing of when you would like to move out.

The tenant affirmed that the landlord did not respond to the email regarding the bathtub damages. The landlord does not know why she did not reply to the bathtub email.

The landlord submitted a monetary order worksheet dated May 06, 2022 indicating a claim in the amount of $787.94.

Analysis

Section 7 of the Act states:

> Liability for not complying with this Act or a tenancy agreement
> (1)If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

> (2)A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Residential Tenancy Branch (RTB) 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:
>
> - 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 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 the case is on the person making the claim.

Report and forwarding address

Based on the testimony offered by both parties and the text messages dated January 31, 2022, I find the tenant agreed to meet for the move out inspection and later decided not to attend. I also find the tenant texted and the landlord received the forwarding address on January 31, 2022.

I find the landlord submitted this application within the timeframe of section 38(1), as the landlord confirmed receipt of the forwarding address on January 31 and submitted this application on February 12, 2022.

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

RTB Policy Guideline 1 states:

> 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.

The landlord has the onus to prove the tenant failed the comply with the Act and the landlord suffered a loss regarding the cleaning of the rental unit.

The parties offered conflicting testimony about the landlord authorizing the tenant to clean only the refrigerator and the stove. As the tenant affirmed the landlord authorized her to only clean the refrigerator and the stove, the tenant has the onus of proof regarding this authorization.

The tenant did not provide documentary evidence to support her claim. The tenant did not call any witnesses. I find the tenant failed to prove, on a balance of probabilities, that the landlord authorized her to clean only the refrigerator and the stove.

Based on the undisputed testimony, I find the tenant failed to comply with section 37(2) of the Act by not cleaning the entire rental unit and the landlord suffered a loss.

Based on the landlord's convincing testimony and the invoice, I find the landlord paid $60.00 for two hours of cleaning.

Thus, I award the landlord $60.00.

<u>Windows coverings</u>

RTB Policy Guideline 1 states:

> INTERNAL WINDOW COVERINGS
> 1. If window coverings are provided at the beginning of the tenancy they must be clean and in a reasonable state of repair.
> 2. The landlord is not expected to clean the internal window coverings during the tenancy unless something unusual happens, like a water leak, which is not caused by the tenant.
> 3. The tenant is expected to leave the internal window coverings clean when he or she vacates. The tenant should check with the landlord before cleaning in case there are any special cleaning instructions. The tenant is not responsible for water stains due to inadequate windows.
> 4. The tenant may be liable for replacing internal window coverings, or paying for their depreciated value, when he or she has damaged the internal window coverings deliberately, or has misused them e.g. cigarette burns, not using the "pulls", claw marks, etc.

I accept the undisputed testimony that the tenant did not clean the windows coverings and that one of the blinds had coffee drips.

Based on the landlord's convincing testimony and the report, I find the blinds were in good condition when the tenancy started and one of the blinds had to be replaced when the tenancy ended.

Based on the testimony of the parties and the report, I find the tenant failed to comply with section 37(2) of the Act by not cleaning and repairing the damaged blinds and the landlord suffered a loss.

Based on the cleaning invoice and the new blind invoice, I find the landlord suffered a loss of $129.19 ($99.12 + $30.07).

RTB Policy Guideline 40 states:

> This guideline is a general guide for determining the useful life of building elements for considering applications for additional rent increases and determining damages which the director has the authority to determine under the Residential Tenancy Act and the Manufactured Home Park Tenancy Act. Useful life is the expected lifetime, or the acceptable period of use, of an item under normal circumstances.

Policy Guideline 40 states that the useful life of blinds is 10 years. As the blinds were 7.5 years old when the tenancy ended, I award the landlord 25% of the blinds replacement cost in the amount of $15.92 ($33.6 + 30.07 = 63.67 x 0.25) and 100% of the cleaning costs ($69.88).

As such, I award the landlord compensation in the amount of $85.80 for the blinds repair and cleaning.

Bathtub

Both parties agreed the bathtub was damaged when the tenancy ended.

Based on the tenant's convincing testimony and the email dated August 18, 2020, I find the tenant informed the landlord on August 18, 2020 that the bathtub was cracking and peeling off after the 2019 glazing service.

I accepted the landlord's uncontested testimony that the landlord did not address the tenant's concerns about the bathtub in August 2020.

Based on the tenant's convincing testimony and the August 18, 2020 email, I find the landlord failed to prove, on a balance of probabilities, that the tenant damaged the bathtub during the tenancy, as the tenant informed the landlord on August 18, 2020 that the bathtub was damaged and the landlord did not address the tenant's concerns.

As such, I dismiss the landlord's claim for compensation for bathtub damages.

Summary and filing fee

As the landlord was partially successful in her claim, I authorize her to recover the $100.00 filing fee.

In summary, the landlord is entitled to:

Expenses	**$**
Cleaning	60.00
Windows coverings	85.80
Filing fee	100.00
Total	**245.80**

Deposit

RTB Policy Guideline 17 states:

> The Residential Tenancy Act provides that where an arbitrator orders a party to pay any monetary amount or to bear all or any part of the cost of the application fee, the monetary amount or cost awarded to a landlord may be deducted from

> the security deposit held by the landlord and the monetary amount or cost awarded to a tenant may be deducted from any rent due to the landlord.

As such, the landlord is authorized to retain the amount of $245.80 from the $526.50 deposit to offset the monetary award for losses incurred due to the tenant's non-compliance with the Act. The landlord must return the balance of the deposit of $280.70.

Conclusion

Pursuant to sections 38, 67 and 72 of the Act, I authorize the landlord to retain $245.80 from the tenant's deposit in total satisfaction of losses incurred and grant the tenant a monetary award pursuant to section 38 of the Act in the amount of $280.70.

The tenant is provided with this order in the above terms and the landlord must be served with this order. 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: October 03, 2022

Residential Tenancy Branch