Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, MNDL-S, MNDCL-S, FFL

Introduction

The Landlord filed an Application for Dispute Resolution on February 15, 2022 seeking compensation for damages to the rental unit, unpaid rent, and other money owed. Additionally, they seek reimbursement of the Application filing fee. The Landlord filed an amendment to their Application on September 6, 2022. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the "*Act*") on October 4, 2022.

Both parties attended the conference call hearing. I explained the process and both parties had the opportunity to ask questions and present oral testimony during the hearing. Each party confirmed they received the prepared documentary evidence of the other in advance; on this basis the hearing proceeded as scheduled.

Issues to be Decided

Is the Landlord entitled to compensation for damages to the rental unit, unpaid rent, and/or other money owed, pursuant to s. 67 of the *Act*?

Is the Landlord entitled to reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

Background and Evidence

The parties spoke to the basic terms of the tenancy agreement in the hearing, and the Landlord provided a copy of the amendment to that agreement. The tenancy started in 2014, with the rent amount at $1,400, and the Tenant paid a security deposit of $700 which the Landlord continues to hold. The rent increased over the length of the tenancy; in the end, the Tenant paid $1,514 per month.

In the addendum, the Landlord highlighted the need for carpets to be "professionally cleaned and a receipt given to the landlord upon ending [the] tenancy agreement" and "Any cleaning not done at the end of the tenancy will result in a $25.00/hr. charge. Any garbage, furniture, etc. that needs to be removed will result in a $25.00.hr. charge."

The tenancy ended on January 31, 2022. The Landlord had previously tried to end the tenancy due to alleged infractions by the Tenant of the keeping of pets and other reasons.

The Landlord in their evidence provided a copy of the letter they sent to the Tenant on January 8, 2022 pre-empting the end of the tenancy with instructions to the Tenant on cleaning the rental unit. This was a detailed list of 11 items, and the Landlord included a Residential Tenancy Policy Guideline entitled "1. Landlord & Tenant – Responsibility for Residential Premises". The Landlord advised they would attend at the rental unit on January 31, 2022 "to go through the condition report."

On the final day of the tenancy, the parties met for a joint inspection of the rental unit. The Tenant left at one point during this meeting due to its mood. An acquaintance of the Tenant remained in the meeting and completed the meeting with the Landlord on their behalf.

In the evidence, the Landlord provided a copy of the completed Condition Inspection Report, listing all of their observations at the end of the tenancy. The summary in section Z states:

> There is extensive damage to the walls in the basement. All blinds need to be replaced & curtains. Carpets were not professionally cleaned at the end of the tenancy. Lawnmower & extension cord missing.

The Landlord included an additional page listing 9 specific points. At the bottom of that sheet, the Landlord noted “The security deposit of $700 will not cover all the work that needs to be completed.”

In the evidence for this hearing, the Landlord included images of the damage to the wall and baseboard, placement of a litter box on the carpet in the bedroom (on top of a towel in the image), a broken bathroom light fixture, damage and “buckling” to specific areas of carpet, and damage to the blinds. There are also images of specific areas of patching to basement and bedroom walls, and discrete areas where the Landlord shows the Tenant used paint that did not match to the original. There was also garbage not removed, and areas left unclean.

The Landlord initially made a claim for:

- $700: for walls “in poor condition”, replacement of blinds, kitchen floor damage; carpet rip/odour in bedroom; broken light fixture; incomplete cleaning; carpets not professionally cleaned; unwashed curtains; garbage left behind; missing lawnmower and extension cord
- $1,500: loss of rent for March 2022 because of the condition of the walls in the basement, including 2 bedrooms and a “rec room”. In the hearing the Landlord clarified the correct month for which they are claiming is February 2022.

In the evidence the Landlord provided a receipt for the purchase of blinds on February 2, 2022, totalling $578.65. There was a form labelled “quotation/proposal”, totalling $1,200 for painting to “2 bedroom walls, rec room wall base boards, door trims.” As well, they included an invoice dated February 14, 2022 for removal of old carpet, and installation of new carpet, in the 2 bedrooms, totalling $1,006.43. These invoices total $2,785.08.

The Landlord amended their claim, by adding:

- $100 for carpet cleaning,
- receipts for an extension cord ($27.97), and lawnmower ($120.93)
- 5 hrs of cleaning at $25/hr, totalling $125
- garbage removal, totalling $25.

In a written response, the Tenant cited the Landlord’s overall lack of maintenance to the property over the course of seven years of the tenancy. This is pertinent to the Landlord’s claim for repainting in the rental unit, and the Tenant pointed to specific

photos provided by the Landlord showing damage, as “reasonable maintenance” after 7 years of a tenancy, where “the landlord would reasonably be expected to touch-up and paint.” The Tenant hired a painter to repair and fill all flaws in the basement walls, preparing those walls for painting. The paint that was left in the rental unit by the Landlord no longer matched, being from the start of the rental over 7 years prior, so the Tenant did not continue painting where they were not required to do so.

With the Landlord claiming one month’s rent for loss of income because of the painting, the Tenant noted they had prepared the basement walls for painting. The Landlord could have finished the job, not requiring two months to complete before March 2022 as the Landlord noted in their Application. In the hearing, the Tenant noted the walls were prepared for painting “for quite some time”; specifically, this was after their own family member moved out in December 2020.

The Tenant made further points in their written submission:

- The carpet stretching was due to poor installation, and a snag is not unreasonable after a 7-year tenancy.
- The blinds were not the correct size for the windows, causing them to bend. These were “inexpensive box store blinds that after a seven year tenancy the landlord would reasonably would be required to replace.”
- They acknowledged certain items were left behind outside; however, they were frozen to the ground and they had no follow-up chance to later remove them for disposal.
- The “old second-hand lawnmower” was disposed of by the Landlord when it no longer worked. Also they never had the extension cord that was left in a different area.
- The Landlord provided no proof that the carpets were cleaned. Additionally, it appears that the carpets were removed and replaced with alternate flooring.
- The Tenant presented the Landlord’s own receipt for 6 hours of cleaning in the Tenant’s own evidence. (The Landlord did not present this in their own evidence.) The Tenant noted the date of January 30, and they were still present in the rental unit, helping with this additional cleaning before the end of the tenancy.

In their written response, the Tenant acknowledged and agreed to the cost of $125 for extra cleaning in the rental unit and $25 for the removal of garbage left outside.

The Tenant addressed specifically the issue of the lawnmower in the hearing to say it was not operating. They bought their own electric cord, and used their own electric lawnmower. The Landlord responded to this to say the Tenant's family member's acquaintance attempted to repair the Landlord's own lawnmower, but left it disassembled after that, making it garbage.

A witness accompanying the Tenant in the hearing noted the condition of the rental unit, in their opinion, was in good shape after 7 years, and they would rent it out in that condition if they were the Landlord of that rental unit.

Analysis

The *Act* s. 37(2) requires a tenant, when vacating a rental unit to leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and give the landlord all the keys and other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

To be successful in a claim for compensation for damage or loss the Applicant has the burden to provide enough evidence to establish the following four points:

- That a damage or loss exists;
- That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
- The value of the damage or loss; **and**
- Steps taken, if any, to mitigate the damage or loss.

Overall, the Landlord did not clearly present a line-by-line claim for costs. They filed an amendment to their initial Application 7 months later, though the Landlord did not provide a calculation of their final claimed amount. They initially claimed for the entirety of the security deposit without accounting for the overlap with receipts they provided. There was a discrepancy between the receipts they presented totalling $2,785.08; however, they did not specify this piece of their claim in its entirety, and instead claimed the entirety of the security deposit amount for $700 total. For this reason, I find the value of the damage or loss to the Landlord is not clearly presented; therefore, there is no blanket award of the security deposit amount to the Landlord.

On this initial piece, the Landlord did not indicate whether painting was actually completed, and the actual cost for that work. Their initial claim refers to a

“quotation/proposal”; however, the Landlord did not amend to claim an actual amount for painting and did not account for the actual cost thereof, which I would expect was completed within 7 months after the end of the tenancy. This is not an effort at mitigating the expense to them, and I find the Tenant credible in their description that they had prepared the basement walls for painting which is not accounted for. I dismiss the claim for $1,200 without leave to reapply, as presented in the evidence here, without evidence of work actually completed.

Additionally, the Landlord did not provide proof that there was a positive duty for the Tenant to complete painting within the rental unit. The Residential Tenancy Branch Policy Guideline #40 refers to a useful life cycle of interior paint as 4 years, and I find the paint that was in place in the basement was well past that life cycle. There was no obligation on the Tenant to complete painting, neither from the tenancy agreement addendum, nor the January 8 list of expectations to the Tenant, nor the policy guideline the Landlord provided to the Tenant.

In line with this, I find the Landlord is not entitled to the full month of rent for the month of February. The Landlord throughout claimed March 2022 that was incorrect, and this was not corrected in their amended Application 7 months later. As well, this does not acknowledge the preparation work that was in place by the Tenant for quite some time (on which I find the Tenant credible). This is not an effort at mitigation by the Landlord, and I dismiss this piece of their Application, without leave to reapply.

On carpeting, I find it disingenuous on the Landlord’s part to claim for both cleaning, and then carpet replacement. The Landlord did not present a receipt for carpet cleaning; therefore, with the carpet being replaced, I am not satisfied the carpet cleaning actually took place. I find the wear and tear to the carpet in the rental unit was what would naturally occur in any event over the course of the tenancy, minus evidence showing the carpet was new in the rental unit at the start of the tenancy. The Tenant explained individual pieces shown by the Landlord adequately, reflecting the age of the carpet that was in place. As well, I find the Tenant attentive to the carpet condition during the tenancy where the evidence shows they placed towels and cardboard under the pet litter box. I dismiss the $1,006.43 portion of the Landlord’s claim for these reasons, without leave to reapply.

For the blinds, I accept the Tenant’s description that the blinds in place were ill-fitted to the window size. The Landlord’s photos show consistent bending for each slat in the blinds, consistent with the outer edge becoming bent simply through the normal day-to-day use of the blinds. The images provided by the Landlord show the blinds overlap

and slats are interweaving, making the set-up prone to bending. I grant no compensation for this piece of the Landlord's claim where I find the evidence shows reasonable wear and tear, combined with the incorrect size of the blinds as they were in the windows.

I find the Tenant credible on the existence of a second-hand lawnmower in place at the rental unit. This broke down at some point, and I find it more likely than not that the Landlord was aware of that breakdown. There was no description of when or why that lawnmower broke down; however, there similarly was no evidence that the mower was new at the start of the tenancy. Given that the lawn maintenance was part of the addendum (line 1, imposing a charge to the Tenant when not completed) I find the Landlord should ensure for a working lawnmower to the Tenant to complete that task. There is no reference to the life cycle of the lawnmower that was available for the Tenant to use, and I accept the Tenant's version of events that had them purchase their own lawnmower to complete this task as set out in the addendum, to avoid the imposition of a further charge to them if not completed. I grant no award to the Landlord for the lawnmower, nor the cord they should provide to a tenant for completion of that yard maintenance task in the agreement.

In sum, I find the Tenant credible on their point about the tension that was in place with the Landlord toward the end of this tenancy. Given the rapid and imprecise fashion in which the Landlord completed the initial Application, and no clarity on things after 7 months, I find it more likely than not the Landlord attempted to impose expenses on the Tenant as a form of penalty. These were items that the parties could have rectified easily through clear communication and negotiation. Because the Landlord did not undertake that exercise with the Tenant in a reasonable timeline means they failed to mitigate expenses to the parties involved.

I find the Landlord has established a claim of $150. This is based on a review of the available evidence and the parties' testimony, and primarily the Tenant's concession on the final bit of cleaning needed after they moved out from the rental unit.

Because the Landlord was for the most part unsuccessful in their claim, I find they are not eligible for reimbursement of the Application filing fee. I dismiss this piece of their Application, without leave to reapply.

The *Act* s. 72(2) gives an arbitrator the authority to make a deduction from the security deposit and/or pet damage deposit held by a landlord. The Landlord here has established a claim of $150. After setting off the security deposit $700, there is a

balance of $550. I am authorizing the Landlord to keep the amount of $150 and award the balance of $550 to the Tenant with a Monetary Order to them.

Conclusion

Pursuant to s. 38 of the *Act*, I grant the Tenant a Monetary Order in the amount of $550 for the return of the security deposit balance to them. I provide this Monetary Order in the above terms and the Tenant must serve the Monetary Order to the Landlord as soon as possible. Should the Landlord fail to comply with the Monetary Order, the Tenant may file it in the Small Claims Division of the Provincial Court where it will be 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 s. 9.1(1) of the *Act*.

Dated: October 21, 2022

Residential Tenancy Branch