Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NKS ENTERPRISES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution that was filed by the Landlord under the *Residential Tenancy Act* (the Act), on November 10, 2021, seeking:

- Compensation for the cost of repairing damage to the rental unit caused by the Tenant, their pets, or their guests;
- Retention of the security deposit and or pet damage deposit; and
- Recovery of the filing fee

The hearing was originally convened by telephone conference call on May 26, 2022, at 1:30 P.M. and was subsequently adjourned due to issues relating to the service of evidence. An interim decision was made on June 13, 2022, and the reconvened hearing was set for October 14, 2022, at 1:30 P.M. A copy of the interim decision and the Notice of Hearing was sent to each party by the Residential Tenancy Branch (the Branch).

The hearing was reconvened by telephone conference call on October 14, 2022, at 1:30 P.M. and was attended by the agent for the Landlord K.S. (the Agent), the Tenant, and the Tenant's witness (the Witness). All testimony provided was affirmed. The participants were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The participants were advised that pursuant to rule 6.10 of the Residential Tenancy Branch Rules of Procedure (the Rules of Procedure), interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The participants were asked to refrain from speaking over me and one another and to hold their questions and responses until it was their opportunity to speak. The participants were also advised that personal

recordings of the proceeding were prohibited under the Rules of Procedure, and confirmed that they were not recording the proceedings.

Although service of documentary evidence was a contested issue at the first hearing, at the reconvened hearing the parties agreed that all evidence had been properly exchanged and could therefore be considered by me. Although I have reviewed all evidence and testimony before me that was accepted for consideration in accordance with the Act and the Rules of Procedure, I refer only to the relevant and determinative facts, evidence, and issues in this decision.

At the request of the parties, a copy of the decision and any orders issued in their favor will be emailed to them at the e-mail addresses provided in the Application and confirmed at the hearing.

Issue(s) to be Decided

Is the Landlord entitled to compensation for the cost of cleaning and repairs?

Is the Landlord entitled to recovery of the filing fee?

Is the Landlord entitled to withhold any deposits held in trust?

Background and Evidence

The parties agreed that the tenancy ended at 12:30 P.M. on November 1, 2020, after the Tenant gave verbal notice on approximately October 5, 2020, to end the tenancy on October 31, 2020, and that the Landlord still holds a $550.00 security deposit and a $150.00 key fob deposit in trust. When asked, the Agent acknowledged that the key fob was the Tenants only means of access to the property and the rental unit. The Tenant stated that they did not send the Landlord their forwarding address in writing until three weeks prior to the one-year deadline, stating that they only spoke with the Landlord over the phone regarding the return of their deposit and only had their e-mail and phone number, not their mailing address. The Tenant appeared confused about when their forwarding address was sent/delivered to the Landlord, initially stating that the registered mail was delivered on May 4, 2021, then stating “no, sorry, sorry, wait”, before failing to provide additional information about service of the forwarding address on the Landlord.

Although the Agent acknowledged receipt of the Tenant's forwarding address, they stated that the letter is dated and postmarked October 29, 2021, and provided me with the registered mail tracking number, which I have recorded on the cover page of this decision.

The parties agreed that a move-in condition inspection and report were properly completed and that a copy of the report was provided to the Tenant in compliance with the Act and regulations. A copy of the move-in condition inspection report was also provided for my review and consideration. Although the parties agreed that the Tenant did not participate in a move-out condition inspection at the end of the tenancy, they disagreed about why. The Agent stated that they made repeated requests to schedule a move-out condition inspection with the Tenant by phone and text message and that the Tenant initially agreed to do a move out condition inspection at 10:00 A.M. on October 30, 2020. The Agent stated that when they went to the rental unit at 10:00 AM on October 30, 2020, as requested by the Tenant, they were advised that the Tenant was not done moving out and the Tenant requested that they returned the next day. The Agent stated that when they returned the following day, the same thing happened as the Tenant was still not ready and stated that the Tenant refused entry. The Agent stated that on October 31, 2020, they therefore left a note for the Tenant stating that they still needed to do a move-out inspection.

The Agent stated that when they went to the rental unit at 12:00 P.M. on November 1, 2020, the Tenant advised them that they would need to stay in the rental unit as they had not yet found a new place. The Agent stated that they told the Tenant that would not be possible, as there was a new tenant moving into the rental unit at 2:00 P.M. The Agent stated that they asked the Tenant to complete the move-out condition inspection and report with them, but the Tenant refused. The Agent stated that the Tenant simply advised them that they could keep something from the security deposit for cleaning, left the keys on the counter, and walked out. The Agent stated that the move-out condition inspection and report were therefore not completed.

The Tenant stated that although they agreed to give the keys to the rental unit back to the Agent at 12:00 P.M. on November 1, 2020, the Agent did not bring a form to the inspection and the Tenant thought that the inspection would simply be them looking around the rental unit. The Tenant denied failing to participate in the move-out condition inspection and stated that the Agent was in a rush to get them to leave. The Tenant also denied any knowledge that someone would be moving into the rental unit that same day.

The Agent stated that after the Tenant vacated, they were left with only 1.5 hours to clean the rental unit and remove garbage left behind by the Tenant, before the new tenants moved in. The Agent also stated that the mattress had been stained with blood and food, resulting in the need for them to have the mattress cleaned. The Agent therefore sought $190.00 in cleaning costs from the Tenant on behalf of the Landlord as they argued that the Tenant did not leave the rental unit reasonably clean at the end of the tenancy as required. The Agent submitted a handwritten receipt for rush cleaning of the rental unit and mattress on November 1, 2020, at a cost of $190.00. Although the Tenant acknowledged that the rental unit was not cleaned to perfection, as they had not had time to clean, they stated that they could have stayed longer to clean the rental unit, but the Landlord was in a rush to get them out. Although the Tenant acknowledged that the mattress had what they described as “four little food stains” on it, they denied the Agent’s allegation that these stains were blood, or the Agent’s position that the mattress required cleaning. They also stated that they have rented their whole life, and have a habit of returning rental units in good condition.

The Agent stated that the Tenant broke a crisper drawer and blinds during the tenancy. The Agent stated that the rental unit was brand new at the start of the tenancy and that as the Tenant was the very first occupant, therefore this damage must have been caused by the Tenant or their guests. The Agent submitted a receipt for the cost of the crisper, which they ordered online at a cost of $245.37, and a receipt for the cost of blind repairs in the amount of $115.00. The Tenant denied that they or their guests broke the crisper and stated that the Landlord did not need to pay someone to repair the blinds as there was only one nail attaching the blinds and the Agent needed only to get up on a ladder and push the nail back in. The Tenant also questioned the legitimacy of the receipts provided, stating that it is quite the coincidence that the claim amounts add up to the exact amount of the deposits held by the Landlord, and argued that the crisper receipt is only proof that the crisper was ordered, not delivered, as the Agent could have cancelled the order.

The Witness stated that the Tenant called them to help move and that they helped the Tenant move out along with one other person. The Witness stated that they were there approximately 30 minutes past the move out time of 12:00, and were asked by the Agent to hurry up. The Witness stated that they recall the Agent mentioning something about the curtains, and that the Tenant said that they would fix them but needed time. The Witness alleged that the Agent must have made a mess after the Tenant vacated the rental unit, as it was clean and undamaged when the Tenant vacated, and stated that while they were there helping the Tenant move, the Agent never mentioned that the

rental unit was unclean. The Witness stated that they and the Tenant were left waiting in the lobby for approximately 30-60 minutes for the Agent to return the deposits, and were eventually told that the Agent had left and would be in touch with the Tenant regarding the return of their deposits.

Both parties had an opportunity to ask the Witness questions. In response to the questions asked, the Witness indicated that the rental unit was clean at the end of the tenancy, stated that they do not know what happened to the rental unit after they left, that they do not recall the Agent bringing any paperwork, and that after the rental unit was vacated, the Tenant just returned the keys and waited in the lobby.

Documentary evidence including but not limited to the following were submitted by the Agent in support of their testimony:

- Photographs;
- The move-in condition inspection report;
- Receipts;
- A handwritten estimate for the cost of garbage removal;
- A monetary order worksheet;
- A copy of the tenancy agreement and addendum;
- A letter dated October 31, 2020, regarding a condition inspection;
- A screenshot from the Canada post tracking website for the registered mail package containing the Tenant's forwarding address; and
- A copy of the Tenant's letter dated October 29, 2021, requesting the return of their deposits, and providing their forwarding address.

The Tenant did not submit any documentary evidence in support of the above noted claims.

Analysis

Section 37(2) of the Act states that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. Although the Tenant and the Witness denied that the Tenant damaged the rental unit or failed to leave it reasonably clean at the end of the tenancy, they submitted no documentary evidence in support of their testimony. In contrast, the Agent submitted compelling documentary evidence that the rental unit was not left reasonably clean and undamaged at the end of the tenancy such as photographs of a stained mattress, a broken blind track, a broken fridge crisper, a dirty fridge and stovetop, and a water

damaged baseboard, as well as a completed move-in condition inspection report showing the condition of the rental unit at the start of the tenancy, and receipts for cleaning, blind repairs, and the purchase of a crisper drawer.

As a result, I therefore prefer the documentary evidence and testimony of the Agent with regards to the state of the rental unit at the end of the tenancy, over the unsupported testimony of the Tenant and the Witness. Additionally, I find the Witness' allegation that the Agent caused the damage and uncleanliness shown in the documentary evidence before me after the Tenant vacated, to be unsupported, wildly speculative, and overall implausible. As a result, I am satisfied that the Tenant breached section 37(2) of the Act by failing to leave the rental unit reasonably clean and undamaged at the end of the tenancy as required.

Section 7 of the Act states that if a landlord or tenant does not comply with the Act, the regulations, or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. It also states that the party who claims compensation must do whatever is reasonable to minimize the damage or loss. Despite the Tenant's position that they were unaware another occupant was moving into the rental unit the day they vacated, I nonetheless accept the Agent's affirmed testimony that they were.

Section 12(6) of the regulation states that the tenant must vacate the residential property by 1:00 P.M. on the day the tenancy ends, unless the landlord and tenant otherwise agree. At the hearing the parties were agreed that the tenancy was to end at 12:00 P.M. on November 1, 2022, and that the Tenant was to return the keys for the rental unit at that date and time. Although the Tenant argued at the hearing that they would have left the rental unit clean and would have repaired damage to the blind tracks had they been provided with more time to do so by the Landlord, I find that the Tenant was required to have repaired all damage and completed all cleaning by 12:00 P.M. on November 1, 2022, the date and time for the end of the Tenancy, and that the Agent was not obligated to provide the Tenant with additional time to do so. Given the short turn around time from the end of the tenancy to the time at which the new occupant was to take possession of the rental unit, and the state in which I find the rental unit was left by the Tenant at the end of the tenancy, I am satisfied that the Agent acted reasonably to mitigate the Landlord's loss, that they incurred the amounts sought in order to return the rental unit to a reasonable state of cleanliness and repair, and that the amounts sought for them to do so are reasonable.

Although the Tenant argued that the mattress did not need to be cleaned, I disagree. Regardless of whether the stains were blood or food, it is clear to me that the Tenant stained the mattress and as the mattress was provided to the new occupant as part of their tenancy agreement, I find it reasonable that the Agent had it cleaned. I also dismiss the Tenant's argument that the blind repair costs are not reasonable as the Agent could simply have repaired the blind track themselves. If the Tenant wanted control over the cost and manner of the blind repairs, the Tenant should have repaired them themselves or had them repaired at their own cost, prior to the end of the tenancy. Finally, I also dismiss the Tenant's argument that the Landlord should not be entitled to the cost for the crisper as only an order confirmation was submitted, not proof that the order was delivered. Regardless of whether the new crisper was ever delivered, I am satisfied that it was damaged by the Tenant, or their guests, and I find the order confirmation sufficient proof of the cost for replacing the crisper, whether it has been replaced yet or not.

As a result of the above, I therefore grant the Landlord compensation in the amount of $550.00 for the recovery of cleaning and repair costs. Pursuant to section 72(1) of the Act, I also grant the Landlord $100.00 for recovery of the filing fee as they were successful in their Application. Having made this finding, I will now turn to the matter of deposits.

Based on the affirmed testimony of the parties, the copy of the letter from the Tenant to the Landlord dated October 29, 2021, and the registered mail tracking information screenshot provided for my review and consideration by the Agent, I am satisfied that the Tenant sent their forwarding address in writing to the Landlord on October 29, 2021, when it was sent by registered mail. I am also satisfied that this registered mail was received by the Landlord or their agents on November 6, 2021, as shown in the tracking information.

Section 39 of the Act states that despite any other provision of the Act, if a tenant does not give a landlord a forwarding address in writing within one year after the end of the tenancy, the landlord may keep the security deposit or the pet damage deposit, or both, and the right of the tenant to the return of the security deposit or pet damage deposit is extinguished. Although the Act does not define what "give" means, taking a modern approach to statutory interpretation, and considering that there are other sections of the Act that provide language that things must be "received" within a specified period, I have taken the word "give" in section 39 to mean sent, rather than received. Based on the above, and as the parties agreed at the hearing that the tenancy ended on

November 1, 2020, I therefore find that the Tenant gave their forwarding address to the Landlord in writing within one-year of the end date of the tenancy when they sent it to the Landlord by registered mail on October 29, 2021.

I will now turn my mind to whether either party extinguished their rights in relation to the security deposit under sections 24 or 36 of the Act. Although the Agent stated that there was a pre-agreed time and date for the condition inspection, they did not submit any documentary or other supporting evidence to corroborate this testimony and the Tenant disagreed stating that they had only agreed to return the keys at 12:00 P.M. on November 1, 2022, not complete an inspection. As I find the testimony of the parties in relation to scheduling of the move-out condition inspection equally compelling, I have turned to the documentary evidence before me on behalf of the Landlord to determine if the Landlord has discharged the burden of proof incumbent upon them. As no documentary evidence was submitted by the Agent to support their testimony that there was a pre-agreed date and time for the condition inspection, I therefore find that the Landlord has failed to satisfy me on a balance of probabilities that they complied with section 35 of the Act with regards to scheduling and completion of the move-out condition inspection and report. As a result, I find that the Landlord extinguish their right to claim against the security deposit but only for damage to the rental unit, pursuant to section 36(2) of the Act.

As the parties agreed that the move-in condition inspection and report were completed and exchanged in compliance with the Act and regulations at the start of the tenancy, and the party who breaches the Act first with regards to condition inspections shall bear the loss in relation to extinguishment, I therefore find it unnecessary to determine whether the Tenant subsequently extinguished their right to the return of the security deposit by failing to participate in the move-out condition inspection. However, as I am satisfied that the Landlord's Application was filed within the timeline set out under section 38(1) of the Act, and the Application relates to things other than physical damage, such as cleaning costs, I find that the Landlord was still entitled to withhold the Tenant's security deposit pending the outcome of the Application, and that section 38(6) of the Act does not apply.

Pursuant to section 72(2)(b) of the Act, I therefore authorize the Landlord to retain the $550.00 security deposit in partial repayment of the above noted amounts owed. Although the Landlord charged a $150.00 key fob deposit, section 6 of the regulation states that the landlord must not charge a refundable deposit for a key or other access device if the key or access device is the tenant's sole means of accessing the

residential property. As the parties agreed at the hearing that the key fob for which the deposit was paid was the Tenant's sole means of access to the rental unit, I therefore find that the Landlord was not permitted to collect this deposit. I therefore order that the Landlord return the $50.00 portion remaining after deduction of all owed amounts, to the Tenant, and I provide the Tenant with a Monetary Order in the amount of $50.00 for this purpose, pursuant to sections 62(2), 62(3) and 67 of the Act.

Conclusion

The Landlord is entitled to retain the $550.00 security deposit and $100.00 of the $150.00 key fob deposit in recovery of the above owed amounts.

Pursuant to section 67 of the Act, I grant the Tenant a Monetary Order in the amount of **$50.00**. The Tenant is provided with this Order in the above terms and 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 has been rendered more than 30 days after the close of the proceedings, and I sincerely apologize for the delay. However, section 77(2) of the Act states that the director does not lose authority in a dispute resolution proceeding, nor is the validity of a decision affected if a decision is given after the 30-day period in subsection (1)(d). As a result, I find that neither the validity of this decision and the associated order, nor my authority to render them, are affected by the fact that this decision and the associated order were issued more than 30 days after the close of the proceedings.

This decision is made on authority delegated to me by the Director of the Branch under Section 9.1(1) of the Act.

Dated: November 21, 2022

Residential Tenancy Branch