Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDL-S, FFL**

Introduction

This hearing dealt with an application by the landlord pursuant to the Residential Tenancy Act ("the Act") for orders as follows:

- For a monetary order for damage caused by the tenant to the rental unit
- For an order allowing the landlord to retain the damage deposit
- For reimbursement of the filing fee

Both parties attended the hearing, the landlord AVM appeared, and the tenant, JP appeared along with a witness MC. All parties were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

The parties confirmed they were not recording the hearing pursuant to Rule of Procedure 6.11. The parties were affirmed.

The tenant testified that she received the landlord's dispute notice and materials for the application and based on her testimony I find the tenant was duly served in accordance with sections 88 and 89 of the Act.

Preliminary Issue

The landlord stated that he did not receive the tenant's material by a method of service acceptable under the Act. The tenant stated that the only method she knew of to contact the landlord was by email. She did not have an address for service for the landlord and wasn't sure where the landlord was living as she had understood he might be moving into the rental unit. However, the dispute notice has the landlord's address for service clearly stated on the document. Therefore, I find that the tenant had the

information necessary to serve the landlord and failed to do so, therefore I will only consider her oral evidence and not any of the documentary evidence she provided in support.

Issue(s) to be Decided

1. Is the landlord entitled to a monetary order for compensation for damage caused by the tenant?
2. Is the landlord entitled to retain the damage deposit for compensation for damage?
3. Is the landlord entitled to recover the filing fee for this application?

Background and Evidence

The tenancy commenced initially on December 1, 2017. A new tenancy agreement was signed on December 1, 2018, for a one-year fixed term then month to month thereafter. Rent was $1,750.00 per month due on the first of the month. A security deposit of $875.00 and a pet deposit of $875.00 are still held in trust by the landlord. The tenant vacated the rental unit on March 12, 2022.

The landlord is claiming $3,657.45 for damage to the rental unit allegedly done by the tenant. The landlord wishes to retain the security deposit and pet deposit in partial satisfaction of the damages.

The landlord produced in evidence a monetary order worksheet itemizing the damage and the cost to repair:

1. Damage to the laminate floor (believed to be animal urine). The landlord is claiming for the cost of materials. He provided photos in evidence of the damage. $642.58
2. Quote from a company for labour removal and installation of the damaged laminate floor. The landlord and a friend did the work themselves, and the landlord did not compensate the friend for his assistance. $1,571.85
3. Damage to a closet door. The damage is shown in a video the landlord produced in evidence. The receipt for the damage was not produced in evidence. $104.00
4. BC Hydro bill for unpaid utilities January 5 to March 4, 2022. $51.73
5. BC Hydro bill for unpaid utilities March 5 to May 1, 2020. This was an older utilities bill. The landlord and tenant had an agreement that she would do some

work on a sink and faucet in the rental unit and would provide receipts for same and the landlord would cover the utilities. The tenant allegedly did not produce receipts. $60.43

6. BC Hydro bill for unpaid utilities January 4 to March 4, 2020. This was unpaid for the same reason as #5. $68.86
7. A quote from Home Depot for repairs of a towel bar in the master ensuite. Photos of the damage were produced in evidence. The landlord did not produce receipts. $35.98
8. A quote for cleaning services. The landlord stated this was a quote, however he performed the clean up work himself. $1,008.00
9. Damage on a door moulding that the landlord repaired himself. The landlord produced a photo of the damage in evidence. $150.00

The landlord also produced a move in condition inspection report signed by himself and the tenant. Other than a cursory check when the tenant was present for move out, no formal condition inspection after moving out was performed. The landlord did not fill out a condition inspection report and the parties agree that the tenant did not sign anything upon moving out. The landlord's evidence was that when the tenant was moving out, he looked around the rental unit with the tenant present. The landlord did not complete a move out condition inspection report (MOCIR) at that time. The landlord did not provide evidence of any further attempts to complete a MOCIR with the tenant. The landlord did not complete a condition inspection report on his own.

The tenant stated that she was approached by the landlord and asked to vacate the residence so it could be renovated and put up for sale. She received a Two Month Notice to End Tenancy from the landlord on February 12, 2022, and subsequently agreed to move out early on March 12, 2022. She stated that the landlord offered her two months rent and would return her damage deposit if she vacated the rental unit by March 12, 2022, which the tenant did. She did not do the cleaning and repairs as necessary because she understood the rental unit was going to be renovated. With respect to the two unpaid hydro bills, the tenant stated that she did provide receipts for the work that was done as per the agreement.

Analysis

Security and pet damage deposits

Pursuant to sections 24 and 36 of the Act, landlords and tenants can extinguish their rights in relation to security and pet damage deposits if they do not comply with the Act and Residential Tenancy Regulation (the "Regulation"). Further, section 38 of the Act

sets out specific requirements for dealing with security and pet damage deposits at the end of a tenancy.

Based on the undisputed testimony of the landlord about a move-in inspection and the MOCIR, I find the tenant did not extinguish their rights in relation to the security or pet damage deposits pursuant to section 24 of the Act.

Based on the undisputed testimony and documentary evidence about a move-in inspection and the MOCIR, I find the landlord has not extinguished their rights in relation to the security and pet damage deposits pursuant to section 24 of the Act.

Based on the undisputed testimony of the landlord, I find the tenant was not offered two opportunities, one on the RTB form, to do a move-out inspection and therefore did not extinguish their rights in relation to the security or pet damage deposits pursuant to section 36 of the Act.

I note that the landlord was in contact with the tenant by text as is clear from the evidence and therefore could have served a Notice of Final Opportunity on the RTB form on the tenant. Section 36(2) of the Act states:

> (2) Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord
> (a) does not comply with section 35 (2) [2 opportunities for inspection]…

I find the landlord extinguished their right to claim against the deposits for damage to the rental unit pursuant to section 36(2)(a) of the Act.

Based on the evidence of the parties I find the tenancy ended March 12, 2022.

The landlord filed their claim March 23, 2022, within 15 days of March 12, 2022 which is the date the tenant vacated the unit. The Landlord is permitted to file a claim against the security deposit for items other than damage to the rental unit and therefore complied with section 38(1) of the *Act* in relation to the security deposit.

In relation to the pet damage deposit, the landlord is only allowed to claim against the pet damage deposit for pet-related damage (see RTB Policy Guideline 31 page 2).

Given the landlord had extinguished their right to claim against the pet damage deposit for damage to the rental unit, the landlord had to return the pet damage deposit within 15 days of March 18, 2022. The landlord did not do so and therefore failed to comply with section 38(1) of the *Act.* Pursuant to section 38(6) of the *Act*, the landlord must pay the Tenant double the pet damage deposit being $1,750.00. No interest is owed on the pet damage deposit because the amount of interest owed has been 0% since 2009.

The landlord is currently considered to hold a pet deposit of $1,750.00 due to the operation of the Act and the requirement to double the amount taken. The landlord also currently holds a security deposit in the amount of $875.00. The landlord therefore currently holds $2,625.00 in trust for the tenant

The landlord was still entitled to claim for loss and damage, and I consider that now.

Compensation

Section 7 of the *Act* states:

> **7** (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.

RTB Policy Guideline 16 states in part:

> An arbitrator may only award monetary compensation as provided by the Act or the common law. In situations where there has been damage or loss with respect to property, money or services, the value is established by the evidence provided.

A factor that I will consider in assessing the damage to the rental unit is the fact that a MOCIR was not completed. I find that the landlord has not established that the damage to the laundry room door frame was caused by the tenant. The move in inspection report does not address the laundry door frame. I also find that the landlord has not established the damage to the towel rack in the master bathroom. There is nothing on

the move in inspection report regarding the condition of the master bathroom, only the main bathroom. Additionally, the photo in evidence does not establish that the towel rack is damaged.

I find the landlord has not established that the damage to the closet door was caused by the tenant. The landlord referred to a video. There is no video in evidence. Other than providing a picture of a similar door accompanied by a price, there is no evidence that the door was damaged by the tenant or that the landlord has repaired damage to a door.

The tenant admitted that the laminate floor was damaged although she stated it was due to a leak in the patio door. I find based on the move in report that the floors were in good condition when the tenant moved in. The photographic evidence shows damage to the floors. The tenant was silent on whether she addressed the door leak with the landlord when it was occurring. I find that that the landlord has established the damage to the laminate floor and that it was caused by the tenant.

The landlord has claimed for his own labour both for removal and reinstallation of the flooring and for cleaning. I have found the tenant caused the damage to the floor. Although there is not MOCIR completed upon the tenant vacating the premises I find that the pictures taken by the landlord were done immediately after the tenant vacated the suite and the condition depicted in the photos provided by the landlord was caused by the tenant.

I note that the flooring removal and installation quote is from qualified professionals, therefore I decline to award the landlord the entire amount and instead find that he is entitled to 50% of the amount claimed for all his labour. The claimed amount for installation labour is $1,571.85. The landlord is entitled to one half that amount, $785.92. I also award the landlord 50% of the amount of $1,008.00 claimed for cleaning or $504.00. The landlord established that the tenant has not maintained the unit in a reasonable state of cleanliness and sanitary standards as required by section 32 of the Act and the unit needed to be cleaned. However, again I find the quote is based on professional services that the landlord chose not to engage, and the amount claimed is therefore excessive.

The landlord has claimed compensation for three BC utilities bills. I find that the landlord is entitled to compensation for the period from January 5 to March 4, 2022, totalling $51.73, representing the utilities owed by the tenant for the period just prior to vacating the rental unit.

The other two utilities bills were disputed by the tenant as being paid in kind by repairs she did to a sink and faucet. The landlord disputes that she incurred the expenses as per their agreement, and merely provided him with repair quotes. I find that the tenant did incur the expenses and performed the work agreed to by the parties. The tenant's claim is corroborated by the fact that the landlord has not made a claim or otherwise provided evidence that the work was not done as required. Therefore, I find that the landlord has not established that he is entitled to compensation for the BC hydro bills for the periods March 5 to May 1, 2020, and January 4 to March 4, 2020.

The tenant stated that she and the landlord had an agreement that included the landlord refunding her entire damage deposit in exchange for the tenant ending the tenancy early. I can only consider the tenant's oral evidence in that regard, and I find that she has not established the existence of an agreement between her and the landlord that included refunding the entire damage deposit and I cannot determine whether that agreement, if it existed, was contingent upon the condition of the rental unit.

The landlord is entitled to compensation for the following:

Item Claimed	Amount Requested	Amount Awarded
Flooring materials	$642.58	$642.58
Flooring labour	$1,571.85	$785.92
BC Hydro	$51.73	$51.73
BC Hydro	$60.43	$0
BC Hydro	$68.86	$0
Closet door damage	$104.00	$0
Door frame moulding	$150.00	$0
Towel Rack	$35.98	$0
Cleaning	$1,008.00	$504.00
TOTAL	$3,657.45	$1,984.23

As I have found that the landlord is partially successful in his application, he entitled to recover the filing fee of $100.00 for this application.

The landlord is entitled to retain $2,084.23 of the deposits for compensation for damages and for recovery of the filing fee. The remaining amount must be returned to the tenant.

Conclusion

The landlord is entitled to compensation of $2,084.23 that can be deducted from the deposit of $2,625.00 currently held in trust.

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: November 30, 2022

Residential Tenancy Branch