Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL

Introduction

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

- a monetary order pursuant to ss. 38 and 67 for compensation for damages to the rental unit by claiming against the security deposit; and
- return of its filing fee pursuant to s. 72.

C.M. appeared as the Landlord's agent. A.D. and J.F. appeared as the Tenants.

The parties 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. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The Landlord's agent advises that the Tenants were served the Landlord's application and evidence. The Tenants acknowledge receipt of the Landlord's application materials without objection. Based on the acknowledgment of receipt by the Tenants without objection, I find that pursuant to s. 71(2) of the *Act* that the Tenants were sufficiently served with the Landlord's application materials.

The tenants confirm not having served any evidence in response.

Issues to be Decided

1) Is the Landlord permitted to claim against the security deposit for damages to the rental unit?
2) Is the Landlord entitled to compensation for damages to the rental unit?
3) 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 parties confirmed the following details with respect to the tenancy:

- The Tenants moved into the rental unit on April 1, 2021.
- The Landlord obtained vacant possession of the rental unit on March 31, 2022.
- Rent of $1,650.00 was due on the first day of each month.
- The Tenants paid a security deposit of $825.00 to the Landlord.

The Landlord provides a copy of the tenancy agreement in its evidence. I am also provided with a "Standard Charges" form, which the agent testifies was provided to the Tenants at the outset of the tenancy. Review of the tenancy agreement shows that the Tenant's initialled beside clause 7, which states the following:

> The tenant acknowledges receipt, prior to signing this Agreement, of a copy of the landlord's Standard Charges setting out non-refundable fees and charges payable by the tenant for certain services or facilities that may be provided by the landlord outside the scope of this Agreement including, without limitation, the repair and cleaning of the residential unit at the end of the tenancy, if not completed by the tenant, the tenant hereby requests that the landlord provides such services or facilities and agrees to pay all fees and charges for such services and facilities provided. The tenant further acknowledges and agrees to pay all fees and charges specified in the landlord's Standard Charges and acknowledges and agrees that the specified fees and charges are either a genuine pre-estimate of the cost to the landlord to provide the specified items, services or facilities or an amount prescribed by the Act.

As part of its evidence, the Landlord includes a guarantor form signed by C.M., who is listed as a respondent in the Landlord's application though not being listed as a Tenant under the tenancy agreement.

I have been provided with a monetary order worksheet by the Landlord in which the following amounts are claimed:

Junk Removal	$192.15
Floor Replacement	$8,769.15

Standard Charges $1,430.00

At the outset of the hearing, the Landlord's agent advised that a new tenant took occupancy of the rental unit on April 1, 2022 such that the floors were neither repaired nor replaced by the Landlord. The agent advises that the Landlord is not advancing its claim with respect to the flooring.

The agent testified that the rental unit was left in an unclean state and that the Tenant's left certain items behind within the rental unit. I am told the Landlord retained the services of junk removal company to remove the items left behind. The Landlord's evidence includes photographs of the items left behind in the rental unit and a receipt dated March 31, 2022 for the junk removal totalling $192.15. The Tenants do not deny leaving items behind within the rental unit and acknowledge they are responsible for this portion of the Landlord's claim.

The agent testified that it took staff members for the Landlord 10 hours to clean the rental unit and that the rate charged for cleaning as per the Standard Charges form is $45.00 per hour. Thus, I am told the Landlord claims $450.00 for cleaning the rental unit. The Tenants do not deny leaving the rental unit in an unclean state.

Further claim is made respecting damage to the kitchen cabinets of $500.00. I have been provided no receipts showing how this amount was arrived at by the Landlord nor is it clear to me whether any repairs were undertaken with respect to the cabinets.

The Landlord makes additional claim for painting the rental unit at a cost of $750.00 as per the Standard Charges form. The agent testified that the rental unit had smoke damage and required repainting. No receipts provided showing the actual cost of the repairs.

The Landlord also seeks the cost of replacing a garage remote, a fob, and a key that was not returned by the Tenants, which I am told is set out in the standard charges as $75.00. The Tenants testified they returned the keys and never had a garage remote as they never rented a parking stall.

Finally, the Landlord's agent indicates the Landlord is seeking the cost of repairing broken blinds at a cost of $130.00. I have been provided no receipt evidencing this expense.

I am advised by the Landlord's agent that a move-in inspection was conducted with the Tenants but that the move-out condition was not. I have been provided with a copy of the condition inspection report by the Landlord. The Tenants acknowledge conducting the move-in inspection and receiving a copy of the report after the move-in was conducted. The Tenants, however, advise that A.D. was present at the move-out inspection and that J.F. was on the phone with her while it was being conducted. A.D. testified that she did not sign the move-out inspection as the property manager told her that she did not need to sign it. I am told by the Tenants that they did not receive a copy of the move-out inspection until it was served as the Landlord's evidence in this application.

The parties confirmed that the Tenants provided their forwarding address on April 5, 2022 and that the Landlord continues to retain the security deposit in full.

Analysis

The Landlord claims against the security deposit for damages to the rental unit.

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.

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. A landlord may not claim against the security deposit if the application is made outside of the 15-day window established by s. 38. 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.

In the present instance, there is no dispute the Tenants vacated the rental unit on March 31, 2022 and provided their forwarding address on April 5, 2022.

Before considering whether the application was filed on time, I pause to consider whether the Landlord's right to claim against the security deposit for damages to the rental unit was extinguished under the *Act*. As noted in Policy Guideline #17, regardless of whether the application was filed on time, if the right to claim against the security deposit was extinguished, the Landlord must return the deposit within the 15-day window or claim against it for something other than damage to the rental unit.

I have concerns with respect to the move-out inspection. I note that s. 35 of the *Act* requires that landlords and tenants conduct the move-out inspection together, the landlord prepare the written report, the parties sign it, and a copy given to the tenants. In this instance, the Tenants testified that A.D. participated in the move-out inspection and that J.F. was on the phone during the inspection. I have no reason to doubt the testimony of the Tenants in this regard and find that they did participate and were present, despite what is said within the move-out condition report.

I accept the Tenants undisputed testimony that they participated in the move-out inspection and were told not to sign the report as per the direction from the Landlord's property manager. I find that the Tenants' right to the security deposit was not extinguished under s. 36(1) of the *Act*.

Pursuant to s. 35(4) of the *Act*, a landlord is required to provide a copy of the move-out inspection report in accordance with the regulations, which sets that as being within 15-days of the later of the report being completed or receiving the forwarding address as per s. 18 of the Regulations. In this instance, I accept that the Tenants were not provided with a copy of the report until it was served in evidence as part of this application. Review of the Landlord's evidence shows their application materials were sent via registered mail on April 28, 2022.

I find that the Landlord failed to provide a copy of the condition inspection report to the Tenant's within 15-days of receiving the forwarding address on April 5, 2022. Accordingly, I find that the Landlord breached its obligation under the *Act* such that its right to claim against the security deposit of damage to the residential property was extinguished by s. 36(2) of the *Act*. As the Landlord's right to claim against the security deposit for damages to the rental unit was extinguished, the Landlord ought to have

returned it within 15-days of April 5, 2022. Having failed to do so, I find that the doubling provision under s. 38(6) of the *Act* has been triggered.

I also consider the Landlord's monetary claims. 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. Policy Guideline 1 defines reasonable wear and tear as the "natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion."

Looking first at the junk removal, I have little difficulty finding the Landlord has established a claim for $192.15 as supported by the receipt in evidence. The Tenants acknowledge leaving items behind and this is clearly demonstrated by the photographs provided by the Landlord. This constitutes a breach of s. 37 of the *Act* giving rise to the claim for damages, which was quantified as per the receipt.

The Landlord also seeks the cost of keys, remote and fob. The Tenants testified that they did return their keys and that they never had a remote for the garage. Review of the condition inspection report shows that the Tenants were given two keys and two FOBs when they moved-in but returned one key and one FOB when they moved out. However, I have significant concerns with respect to the veracity of the move-out inspection. The Tenants, specifically A.D., was deprived of the ability to sign off on the report or list her objections within it. It appears that portions of the move-out report were filed in after the inspection was conducted, specifically the additional charges section.

Given this, I find that the move-out condition inspection report is not credible, and I place no weight in what it states.

I accept the testimony of the Tenants that they never had a parking stall and never had garage access, a point confirmed by the tenancy agreement which is silent with respect to parking. The move-in portion of the report does not note a garage remote was ever provided. I further accept that the Tenants returned their keys at the end of the tenancy. I dismiss this portion of the Landlords claim outright.

The Landlord seeks the cost of blind repairs. I have been provided no receipt evidencing the amount claimed nor has any evidence been provided that the Tenants caused the damage. I find that the Landlord has both failed to establish the Tenants damaged the blinds and failed to quantify their claim. I dismiss this portion of the claim.

The Landlord also seeks the cost of cleaning the rental unit. I have reviewed the photographs provided by the Landlord, which shows the range, fridge, toilet, and cupboards in a state of uncleanliness. The Tenants did not dispute the veracity of the photographs. I find that the Tenants failed to return the rental unit in a reasonably clean state in contravention of their obligation to do so under s. 37 of the *Act*.

The Landlord says the cost to clean the rental unit is $450.00 based on 10 hours of work at the rate set out under the Standard Charges. I have been provided with no evidence to support that it took 10 hours to clean the rental unit. I have no statement from the Landlord's employees nor do I have their testimony evidencing how long it took to clean the rental unit. The Landlord's agent spoke to it taking 10 hours at the hearing, but he did not provide any basis upon which that estimate was made by reference to direct evidence as it does not appear he was at the rental unit to clean it when the tenancy ended. The Landlord bears the burden of quantifying its claim. In this instance, I am left with a bare assertion of the time it took without any supporting evidence. I find that the Landlord has failed to prove its claim for cleaning costs by quantifying it. Accordingly, this portion of the claim is also dismissed.

The Landlord seeks $500.00 for cabinet repair. I have been provided with no receipt to support this amount. I find that the Landlord has failed to quantify this portion of the claim and it is dismissed without leave to reapply.

Finally, I am told the rental unit required repainting due to smoke damage. The Landlord claims $750.00 as per the Standard Charges form. I have reviewed the Standard

Charges form and considered clause 7 of the tenancy agreement. By outward appearances, clause 7 and the Standard Charges form operate akin to a liquidated damages clause. Liquidated damage clauses operate as a pre-estimate of damages payable upon being triggered. However, the Standard Charges form provided to me states at the bottom that “ALL PRICES ARE SUBJECT TO CHANGE”. With respect to the paint charge, there is an asterisk beside the $750.00 showing this is a “minimum charge”.

In my view, wording included into the Standard Charges form invalidates its application as a liquidated damages clause. If the paint fee of $750.00 is a genuine pre-estimate of damages, it cannot both be a minimum fee and subject to change by the Landlord after the tenancy has been signed. In other words, it cannot be subject to change unilaterally by the Landlord. To be clear, liquidated damages clause operate by contractual principal the that the parties to the contract have agreed to pre-estimate damages in the event of a breach. Given this, one party cannot unilaterally change the pre-estimate. Accordingly, I place no weight in clause 7 or the $750.00 standard charge for painting the rental unit as set out in the Standard Charges form. I have been provided with no receipts to support any amount was paid by the Landlord for painting the rental unit. I find that the Landlord has failed to quantify its claim and dismiss this portion of the claim as well.

I find that the Landlord has demonstrated a monetary claim of $192.15.

Considering the doubling provision set out above, I order that the Landlord pay $1,457.85 to the Tenants (($825.00 x 2) – 192.15).

Conclusion

The Landlord’s right to claim against the security deposit was extinguished under s. 36(2) of the *Act*. The doubling provision of s. 38(6) of the *Act* was triggered.

The Landlord has demonstrated a monetary claim of $192.15. All other aspects of the monetary claim are dismissed without leave to reapply.

The Landlord was largely unsuccessful in its application. I find that it is not entitled to the return of its filing fee. Its claim under s. 72 of the *Act* is dismissed without leave to reapply.

Pursuant to ss. 38 and 67 of the *Act*, I order that the Landlord pay **$1,457.85** 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 by the Tenants 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: December 23, 2022

Residential Tenancy Branch