Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNDCL-S, FFL

Introduction

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

- a monetary order pursuant to ss. 67 and 38 to pay for repairs caused by the tenant during the tenancy by claiming against the deposit
- a monetary order pursuant to ss. 67 and 38 compensating for loss or other money owed by claiming against the deposit; and
- return of the filing fee pursuant to s. 72.

S.L. appeared as the Landlord and was joined by K.J., who both assisted and translated for the Landlord. N.M. appeared as the Tenant.

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.

This matter had been scheduled for hearing on September 8, 2022 but was adjourned to January 13, 2023 due to issues of service following the Tenants' providing a forwarding address in which they had only resided for a brief period following the end of the tenancy.

At the reconvened hearing, the parties advise that they served their application materials on the other side. Both parties acknowledge receipt of the other's application materials without objection. Based on the mutual acknowledgments of the parties without objection, I find that pursuant to s. 71(2) of the *Act* that the parties were sufficiently served with the other's application materials.

Issues to be Decided

1) Is the Landlord entitled to claim against the security deposit?
2) Is the Landlord entitled to compensation for damage to the rental unit?
3) Is the Landlord entitled to compensation for other money owed?
4) Is the Landlord entitled to the return of her 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 sometime in May 2020, though the tenancy agreement lists the beginning of the tenancy as June 1, 2020.
- The tenants vacated the rental unit on January 14, 2022.
- Rent of $3,800.00 was due on the first of each month.
- The tenants paid a security deposit of $1,900.00 to the Landlord.

As alluded to above, I was provided with a copy of the written tenancy agreement by the Landlord. The Landlord's evidence also includes a copy of the written move-in and move-out condition inspection report, which indicates the move-in inspection was conducted on May 16, 2020 and the move-out inspection being conducted on January 14, 2022.

The Landlord, in her evidence, provides a monetary order worksheet outlining the following claims:

- Broken Handle/Stain/Tape/etc. $270.00
- Broken Electric Cooktop $1,909.95
- Heatdish Heater $358.37
- Cleaning Fridge/Stove $110.00

The Landlord testified that the master bedroom door handle was broken by the Tenants during the course of the tenancy and that there was some trim repair needed. Photographs of the damage were provided by the Landlord. The Landlord further testifies that the cost for these repairs was $270.00, which was paid in cash to a repair

person, a receipt for which dated January 16, 2022 was put into the evidence by the Landlord.

The Tenant acknowledges that the door handle broke, but argued that this was regular wear and tear. The Tenant testified that the door handle came loose approximately two months prior to the end of the tenancy but did not report the issue due to being busy. The Tenant further argued that there were scratches and screws in the walls and trim at the beginning of the tenancy. The move-in condition inspection report indicates the stated of the rental unit to be in good condition.

The Landlord also seeks the cost of replacing an electric cooktop, which she says was damaged by the tenants. The Landlord's evidence includes a photograph of the damage, which is a chip in the glass along the edge over the countertop. The Landlord says the cost of replacing the cooktop is $1,909.95, though acknowledges that the cooktop has not been replaced to date and that it does function. I am further advised by the Landlord that the cooktop is 4 or 5 years old.

The Tenant acknowledges they did break the glass cooktop but argued it was through normal usage and that it was functional. The Tenant further argued that the glass could be repaired without need to replace the entire cooktop. The tenants' evidence includes estimates on the replacing the glass between $487.83 and $532.72, though neither appear to include installation costs.

The Landlord also seeks the costs of replacing two portable heaters that she says were taken by the tenants. I am told that there were some heating issues in the rental unit in the winter and that she purchased four portable heaters for the tenants to use while the heating system was repaired. After the issue was addressed, she says that two of the heaters were returned while the other two were not. The Landlord says the costs of these heaters was $159.99 for each heater. The Landlord's evidence includes a screenshot of the advertisement for the heaters.

The Tenant acknowledges that the heaters were taken, but says that this was due to a mistake by the movers who packed them away at the end of the tenancy. The Tenant further argued that the Landlord did not want to take all the heaters and insisted that they keep two at the rental unit after the heating system was repaired despite the tenants saying they were no longer needed.

The Landlord also seeks $110.00 for cleaning costs, saying the rental unit was not sufficiently cleaned. The Landlord has provided in her evidence a receipt dated January 16, 2022 in the amount claimed. The Tenant testified that he hired a cleaner to go through the rental unit when they ended the tenancy but acknowledges the cleaner did a terrible job. The Tenant accepts the amount claimed by the Landlord for cleaning.

The move-out inspection is not signed by the Tenant. I am advised by the parties that the Tenant was present during the move-out inspection but that an argument took place with respect to the cooktop such that the Tenant refused to sign the condition inspection report.

Both parties confirm that the tenants provided their forwarding address on January 14, 2022.

The parties advise that the Tenants authorized the Landlord to retain $1,200.00 for rent for the partial month of January 2022. The Landlord confirmed that she retains the balance, being $700.00.

Analysis

The Landlord advances monetary claims against the security deposit.

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(1) of the *Act*. 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.

Upon review of the information on file and in consideration of Rule 2.6 of the Rules of Procedure, I find that the Landlord filed her application on January 25, 2022. As this is within the 15-day time limit, I find that the doubling provision under s. 38(6) does not apply.

I have turned my mind to the question of extinguishment. With respect to the extinguishment of the Landlord's right to the security deposit, Policy Guideline #17,

which provides guidance with respect to deposits and set offs, is clear that even where a landlord has lost the right to claim against the security deposit for damage to the rental unit they may still claim against the deposit for other monies owing. As that is what the Landlord has done here, it does not matter if the Landlord's right to the security deposit was extinguished. I find that the question of extinguishment is not relevant with respect to the application of s. 38(1) or 38(6) under the present circumstances.

I note that s. 36(1) of the *Act*, which pertains the extinguishment of a tenant's right to the deposit, is only triggered if the tenant does not participate in the move-out inspection. There is no dispute that the Tenant did participate in both inspections, only having refused to sign the move-out condition inspection report. I find that the Tenant's failure to sign to the report, though misguided and in contravention of s. 35(4) of the *Act*, does not trigger s. 36(1). I make this finding considering the use of the general term "participate" within s. 36(1) of the *Act* and the protective purpose of the *Act*.

Looking at the 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."

Dealing first with the cleaning costs, I accept the undisputed evidence of the parties that the rental unit was left in an unclean state at the end of the tenancy in contravention of

s. 37(2) of the *Act*. I find this breach resulted in a loss of the Landlord in the amount of $110.00 as evidenced in the receipt provided. This loss could not have been mitigated under the circumstances. I grant this portion of the Landlord's claim.

Looking next at the cost of replacing the electric heaters, I have difficulty granting this portion of the claim. I accept that the Tenants took two heaters at the end of the tenancy, though I also accept the Tenant's testimony that this was through inadvertence as the movers packed it away. Despite this, the heaters were not, strictly speaking, part of the tenancy. These are not listed within the tenancy agreement, nor could they be considered major appliances for which a tenant would generally be responsible, such as a fridge, stove, or dishwasher. They were temporarily given to the Tenants while heating issues were repaired by the Landlord. I further accept that the Landlord insisted that the Tenants keep the two heaters, which in effect imposed a sort of bailment on the Tenants, despite their not wanting the heaters any longer. I find that the Landlord left the space heaters at the rental unit, after they were no longer needed, at her own risk and that it falls outside the landlord-tenant relationship. I do not allow this portion of the claim as it is outside the jurisdiction of the *Act*.

Even if I am wrong on this point, I find that the Landlord's quantification, being screenshots of an advertisement for the heaters, to be entirely speculative as to the cost. The Landlord must demonstrate the claim by showing the actual loss, not the speculative cost based on an advertisement. As such, I would further note that the Landlord has failed to prove this portion of the claim in any event by failing to adequately quantify the loss.

The Landlord also seeks the costs of miscellaneous repairs at the rental unit. Section 37(2) is clear that reasonable wear and tear are not the Tenant's responsibility. Looking first at the doorknob, I accept the Tenant's testimony that the doorknob broke through normal use and that its damage constitutes reasonable wear and tear. Accordingly, I do not grant this portion of the claim.

The Landlord also seeks costs associated with damage to the walls and trim. The Landlord provides photographs of screw holes within the wall and paint pulled from the trim by tape. Neither of these were noted in the move-in condition inspection report. I find both are not reasonable wear and tear taking into consideration made in Policy Guideline #1 with respect to this type of damage. Accordingly, I find that the Tenants breached s. 37(2) of the *Act*, which resulted in damage of $80.00 as per the invoice provided by the Landlord. This could not have been mitigated under the circumstances.

The invoice also details clean-up of tape in the window frames and stain. At the hearing, the Landlord made no substantive submissions on this point, nor does the documentary evidence make this portion clear either. As there was little to no evidence on this point, I find that the Landlord has failed to prove this aspect of the claim. It is dismissed without leave to reapply.

Finally, the Landlord seeks the cost of replacing an electric cooktop. The Tenant admits to causing the damage, though says it was through normal usage. On the evidence before me, it is appears more likely than not that the damage was from impact along the edge of the glass, which is not normal usage. I find that the damage constitutes a breach of s. 37(2) of the *Act* by the Tenants.

The primary issue is whether the Landlord has proven all aspects of her claim. Both parties advise that the cooktop is functional. Indeed, the Landlord says that it has yet to be replaced. The four-part test under s. 67 of the *Act* is clear that the Landlord is required to mitigate her damages, which in this case would be to find the least costly option. The Tenants provide evidence of the cost for the replacement glass top, though it does not include installation costs. Perhaps replacement is more economical, however I have not been provided evidence on this point. Further, the Landlord has not considered the age of the appliance in the replacement cost, as there would undoubtedly be depreciation in its value given its age as per the guidance in Policy Guideline #40. All this is to say that I find the Landlord has failed to both adequately quantify her claim as no costs have been incurred and mitigated her damages in the claim advanced. The Landlord has failed to prove this portion of the claim, it is therefore dismissed.

Tabulating the various claims, I find that the Landlord has proven a monetary claim of $190.00 ($110.00 cleaning costs + $80.00 wall/trim repair).

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.

Given that $1,200.00 was retained by the Landlord as per the parties consent, I order that the balance of $510.00 be returned to the Tenants ($700.00 - $190.00).

Conclusion

The Landlord has proven a monetary claim under s. 67 of the *Act* of $190.00. All other aspects of the Landlord's claims are dismissed without leave to reapply.

The Landlord was largely unsuccessful in her claim. Accordingly, I find she is not entitled to the return of her filing fee. The 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 return the balance of the security deposit, being $510.00, to the Tenants ($1,900.00 (security deposit) - $1,200.00 (January Rent) - $190.00 (Landlord's Monetary Award)).

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 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: January 25, 2023

Residential Tenancy Branch