



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord May 26, 2022 (the “Application”). The Landlord applied as follows:

- For compensation for damage to the rental unit
- To keep the security deposit

The Landlord and Tenant appeared at the hearing. I explained the hearing process to the parties. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I confirmed service of the hearing package and evidence, and no issues arose.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all evidence provided. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Landlord entitled to compensation for damage to the rental unit?
2. Is the Landlord entitled to keep the security deposit?

Background and Evidence

In the Application, the Landlord sought \$414.40 to replace the damaged garburator in the rental unit. The Landlord sought to keep the security deposit towards this amount. The Landlord submitted a Monetary Order Worksheet for \$801.08, all in relation to the garburator. The Landlord did not seek any other amounts in the Application.

At the hearing, it came to light that the Landlord had returned some of the security deposit to the Tenant but not all. It also came to light that the Landlord told the Tenant they were keeping some of the security deposit for cleaning costs and the \$100.00 RTB filing fee, neither of which were applied for in the Application. The Tenant testified that they agreed verbally to the Landlord keeping some of the security deposit for cleaning costs but they were now changing their position and not agreeing to this. The Tenant did not agree to the Landlord keeping \$100.00 of the security deposit for the filing fee. I can only consider what is in the Application, which is whether the Landlord is entitled to \$414.40 to replace the damaged garburator and if so, can the Landlord keep this from the security deposit amount still held by the Landlord. I cannot consider claims not included in the Application.

A written tenancy agreement was submitted, and the parties agreed it is accurate. The tenancy started April 04, 2021 and was for a fixed term ending March 31, 2022, then became month-to-month. Rent was \$1,800.00 per month due on the first day of each month. A \$900.00 security deposit was paid.

The parties agreed the Tenant vacated the rental unit April 30, 2022.

The parties agreed the Tenant provided their forwarding address to the Landlord on the Condition Inspection Report (the "CIR") on April 30, 2022.

The Landlord testified that they did not have an outstanding Monetary Order against the Tenant at the end of the tenancy and the Tenant did not agree in writing to the Landlord keeping the security deposit.

The parties agreed they did a move-in inspection together.

The Landlord testified that the parties completed the CIR at move-in together but did not sign the CIR at move-in. The Landlord testified that they emailed a copy of the CIR to

the Tenant within one week of the move-in inspection. The Tenant was not sure about these points or could not remember these points.

The parties agreed on the following. They did a move-out inspection together, completed the CIR and signed the CIR. The Landlord gave the Tenant a copy of the CIR June 10, 2022, by email.

The parties agreed \$173.42 of the security deposit was already returned to the Tenant.

The Landlord seeks compensation for damage to the garburator and submitted that it was the Tenants who damaged the garburator by misuse. The Landlord testified that there were all sort of things in the garburator at the end of the tenancy and it was clogged. The Landlord testified that the garburator did not work and could not be fixed. The Landlord testified that the garburator was over five years old at the end of the tenancy. The Landlord testified that it would cost \$801.08 to replace the garburator with an equivalent model but that they would replace the garburator with a cheaper/lesser model if the Tenant paid the entire \$414.40 that this would cost.

The Tenant testified that they did not use the garburator and only realized it was not working when they were checking the rental unit before moving out. The Tenant testified that they told the Landlord the garburator was not working. The Tenant testified that the garburator was pretty old and past its useful life.

Both parties submitted evidence which I have reviewed and will refer to below as necessary.

Analysis

Security deposit

Under sections 24 and 36 of the *Act*, landlords and tenants can extinguish their rights in relation to the security deposit if they do not comply with the *Act* and *Residential Tenancy Regulation* (the “*Regulations*”). Further, section 38 of the *Act* sets out specific requirements for dealing with a security deposit at the end of a tenancy.

Based on the testimony of both parties, I find the Tenant participated in the move-in and move-out inspections and therefore did not extinguish their rights in relation to the security deposit pursuant to sections 24 or 36 of the *Act*.

Sections 24 and 36 of the *Act* state as follows in relation to the Landlord's obligations at the start and end of the tenancy:

24 (2) The right of a landlord to claim against a security deposit...for damage to residential property is extinguished if the landlord

- (a) does not comply with section 23 (3) [2 opportunities for inspection],
- (b) having complied with section 23 (3), does not participate on either occasion, or
- (c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.**

36 (2) Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit...for damage to residential property is extinguished if the landlord

- (a) does not comply with section 35 (2) [2 opportunities for inspection],
- (b) having complied with section 35 (2), does not participate on either occasion, or
- (c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.**

Section 18 of the *Regulations* states:

18 (1) The landlord **must** give the tenant a copy of the **signed** condition inspection report

- (a) of an inspection made under section 23 of the Act, promptly and in any event within 7 days after the condition inspection is completed, and
- (b) of an inspection made under section 35 of the Act, promptly and in any event **within 15 days after the later of**

- (i) the date the condition inspection is completed, and**
- (ii) the date the landlord receives the tenant's forwarding address in writing...**

Based on the testimony of the Landlord and CIR in evidence, I find the Landlord failed to comply with the *Act* and *Regulations* in two ways. First, the Landlord did not sign the move-in CIR which is required. Second, the tenancy ended April 30, 2022, when the Tenant moved out. There is no issue that the Landlord received the Tenant's forwarding address in writing April 30, 2022, on the CIR. Therefore, the Landlord had until May 15, 2022, to provide a copy of the move-out CIR to the Tenant. There is no issue that the Landlord did not do this until June 10, 2022. In the circumstances, the Landlord extinguished their right to claim against the security deposit for damage to the rental unit and had to either return the security deposit, or claim against it for something other than damage to the rental unit, in accordance with section 38(1) of the *Act*.

Pursuant to section 38(1) of the *Act*, the Landlord had 15 days from the later of the end of the tenancy or the date the Landlord received the Tenant's forwarding address in writing to repay the security deposit or file a claim with the RTB against it for something other than damage to the rental unit. Here, the Landlord had 15 days from April 30, 2022. The Landlord only returned \$173.42 of the security deposit. The Landlord claimed against the security deposit May 26, 2022, after the deadline for doing so. Further, the Landlord only claimed against the security deposit for damage to the rental unit which the Landlord was no longer permitted to do as explained above. I find the Landlord failed to comply with section 38(1) of the *Act*.

There are exceptions to section 38(1) of the *Act* set out in sections 38(2) to (4) of the *Act*; however, given the Landlord's testimony and my findings above, none of the exceptions apply.

Pursuant to section 38(6) of the *Act*, the Landlord must return double the security deposit to the Tenant as well as interest on the original amount of the security deposit. Further, RTB Policy Guideline sets out what amount should be doubled and returned when some of a security deposit has been returned prior to the hearing and states:

The following examples illustrate the different ways in which a security deposit may be doubled when an amount has previously been deducted from the deposit:

- Example A: A tenant paid \$400 as a security deposit. At the end of the tenancy, the landlord **held back** \$125 without the tenant's written permission and without an order from the Residential Tenancy Branch. The tenant applied for a monetary order and a hearing was held.

The arbitrator doubles the amount paid as a security deposit ($\$400 \times 2 = \800), then deducts the amount already returned to the tenant, to determine the amount of the monetary order. In this example, the amount of the monetary order is \$525.00 ($\$800 - \$275 = \525).

Here, the \$900.00 security deposit is doubled to be \$1,800.00. The \$173.42 already returned to the Tenant is deducted from this which equals \$1,626.58. Further, interest owing on \$900.00 is added (\$2.16) to equal \$1,628.74. The Landlord owes the Tenant **\$1,628.74**.

The Landlord is still entitled to claim for compensation pursuant to section 67 of the *Act* and I consider this now.

Compensation

Section 7 of the *Act* states:

7 (1) If a...tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying...tenant must compensate the [landlord] for damage or loss that results.

(2) A landlord...who claims compensation for damage or loss that results from the [tenant's] non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Pursuant to rule 6.6 of the Rules, it is the Landlord as applicant who has the onus to prove the claim. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

The move-in CIR shows the garburator was good on move-in and therefore I find the garburator worked at the start of the tenancy. There is no issue that the garburator was no longer working near the end of the tenancy. I find it more likely than not that the Tenants damaged the garburator because there is no other reasonable explanation for why it was working at the start of the tenancy and not working near the end of the tenancy. I am not satisfied based on the evidence provided that the Tenants did not use the garburator because I do not find the Tenants have submitted sufficiently compelling evidence of this. I find the Tenants breached section 37 of the *Act*.

I accept that the Landlord must replace the garburator due to the damage. I accept that the garburator was around five years old at the end of the tenancy as stated by the Landlord because I find the Landlord is in the best position to know this and I did not have concerns about the reliability or credibility of the Landlord's testimony in this regard.

The Landlord has provided documentation showing the cost of replacing the garburator as \$753.25. The Landlord explained at the hearing that they are seeking the lower amount of \$414.40 for a cheaper garburator than the original garburator, asking that the Tenant cover the entire cost. I find this to be a reasonable position and award the Landlord the **\$414.40** sought.

Summary

The Landlord failed to comply with the *Act* and *Regulations* in relation to the security deposit and therefore must pay the Tenant double the security deposit and interest on the original amount being \$1,628.74 in total.

The Tenant owes the Landlord \$414.40 for the damaged garburator.

The Landlord can keep the \$414.40 owed to them from the \$1,628.74 they owe to the Tenant. The Tenant is issued a Monetary Order for \$1,214.34.

I note that the Landlord cannot keep \$100.00 for the RTB filing fee from the security deposit because the Landlord was required to apply to recover the filing fee if they wished to do so and they did not apply to recover the filing fee.

I also note that the Landlord cannot keep an amount from the security deposit for cleaning because the Tenant did not agree to this in writing and changed their mind about this at the hearing. The Landlord was required to include a request for the cleaning fee in the Application and did not do so.

Conclusion

The Tenant is issued a Monetary Order for \$1,214.34. This Order must be served on the Landlord. If the Landlord fails to comply with this Order, it may be filed in 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 *Act*.

Dated: February 15, 2023

Residential Tenancy Branch