Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNRL-S, 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. 38 and 67 seeking compensation for unpaid rent by claiming against the deposit;
- 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.

J.V. appeared as the Landlord. S.N. appeared as the Tenant and was joined by P.N., who assisted the Tenant and made submissions on her behalf.

The parties affirmed to tell the truth during the 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.

Issue(s) to be Decided

1) Is the Landlord entitled to claim against the security deposit?
2) Is the Landlord entitled to monetary compensation for unpaid rent?
3) Is the Landlord entitled to monetary compensation for damage to the rental unit?
4) Is the Landlord entitled to monetary compensation for other loss?
5) Is the Landlord entitled to his filing fee?

Evidence and Analysis

The parties were given an opportunity to present evidence and make submissions. I have reviewed all included written and oral evidence provided to me by the parties and I have considered all applicable sections of the *Act*. However, only the evidence and issues relevant to the claims in dispute will be referenced in this decision.

The parties confirm that there is no written tenancy agreement. The Tenant advises that her tenancy began in November 2018. The Landlord advises that he purchased the property in January 2021 such that he is uncertain on when the tenancy began but confirms that the Tenant was residing in the rental unit when the property was purchased. The parties confirmed that the Tenant paid a security deposit of $425.00.

According to the Tenant, she says she was to pay rent of $850.00 on the last day of each month. The Landlord says that since he purchased the property, the Tenant had been paying monthly rent of $950.00.

Both parties confirm the Tenant vacated the rental unit on August 31, 2022.

Is the Landlord Entitled to Claim 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.

In this instance, the parties advise that the forwarding address was provided by the Tenant on August 31, 2022. Review of the information on file shows the Landlord filed his application on September 10, 2022. Accordingly, I find that he filed within the 15 days permitted by s. 38(1) of the *Act*.

I have turned my mind to the question of extinguishment. By way of some explanation, a landlord cannot claim against the security deposit for damage to the rental unit if their right to do so was extinguished under ss. 24 or 36 of the *Act*. However, Policy Guideline #17, which provides guidance on security deposits and set offs, explains that even where a landlord's right to claim against the security deposit for damage to the rental unit is extinguished, they still retain the right to claim against the security deposit

for other monetary claims. As the Landlord in this case has claimed against the security deposit for unpaid rent and other compensation, I find that the question of extinguishment is irrelevant when it comes to the application of the 15-day deadline imposed by s. 38(1) of the *Act*.

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.

Claim for Unpaid Rent

The Landlord claims $100.00 in unpaid rent from August 2022. As told to me by the Landlord, the Tenant paid $850.00 on that occasion rather than the $950.00 which she had been paying since he purchased the property in January 2021.

The Tenant confirms that she did pay $850.00 to the Landlord in August 2022, though argued that this is what rent should have been throughout her tenancy. According to the Tenant, upon purchasing the property the Landlord made a demand that the Tenant pay an additional $100.00 otherwise he would evict her.

The Landlord denies the allegation that he made a demand for additional rent when he purchased the property and explained that as there was no written tenancy agreement, when he took ownership of the property he went to speak with the Tenant and the former landlord to confirm the relevant details of the tenancy. He says that $950.00 was communicated to him and that the Tenant paid this amount throughout her tenancy, without issue or complaint, until August 2022.

The Tenant's evidence includes rent receipts for January 1, 2021 and February 1, 2021, both of which appear to be signed by the Landlord. The receipt from January 1, 2021 shows that $850.00 was received and the receipt for February 1, 2021 shows $950.00 was received.

Part 3 of the *Act* sets out when and how rent can be increased. A tenant must be given at least three months written notice and the increase cannot exceed the amount permitted under the regulations. It goes without saying that increasing rent of $850.00 to $950.00 exceeds the amount permitted by the Regulation. Section 43(1)(c) of the *Act* permits an increase where a tenant agrees to the new amount, though the Tenant's agreement must be in writing.

As supported by the Tenant's receipts, I accept that the Tenant did pay $850.00 in rent in January 2021, which increased to $950.00 for February 2021. In my view, this supports that the Tenant was originally paying $850.00 in rent. Though I accept the Tenant paid rent of $950.00 from February 2021 to July 2022, I find that the increased amount was due to an increase imposed in contravention of the *Act*.

Accordingly, I find that the Tenant did not act in breach of the tenancy agreement as the rent increase from January 2021 was unlawful. The Landlord's claim for unpaid rent is dismissed without leave to reapply.

Claim for Damages to the Rental Unit

The Landlord's claim for damages to the rental unit is $4,211.10 and is summarized in a monetary order worksheet, which states the following:

#1	HOME DEPOT ESTIMATE 1 & 2	BULBS, TOILET SEAT COVER, LIGHT FIXTURE, SHOWER FAUCET AND CUPBOARD PEGS	426.30 $
#2	AROOP PAINTING & CONSTRUCTION LTD.	PAINTING TOUCHUP INCLUDING MUDDING, SANDING AND TOUCHUP OF ONLY DAMGE	600 $
#3	MAINLINE VIDEO INSPECTION LTD.	storm drain inspection and cleaning	700 $
#4	MOLLY MAID QUOTE (150/HR FOR 2-3 HOURS)	CLEANING SERVICES	450 $
#5	AMAZON.CA	Frigidaire 240338313 Dairy Door, Unit	90.46 $
#6	AMAZON.CA	2 X Frigidaire 240337103 Crisper Pan	294.34 $
#7	PENDING	Frigidaire BULB LENS LIGHT COVER	150 $
#8	ESTIMATED UTILITIES	OVERUSE UTILITIES AND UNREPORTED TOILET WATER LEAKING AND SINK	1500 $

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."

The Tenant advises no move-in condition had been conducted when the tenancy began. The Landlord, having taken ownership of the property in January 2021, was otherwise unaware of the state of the rental unit when the tenancy began. I am provided with a copy of the move-out condition inspection report, which shows it was conducted on August 31, 2022.

Before looking at the Landlord's claims individually, I note the lack of a move-in condition inspection report under these circumstances is particularly relevant. The Landlord, having purchased the property mid-way through the tenancy, has no idea of the state of the rental unit when the tenancy began. The Tenant provided blanket denials that she is responsible for any of the damage claimed by the Landlord and that it pre-existed her tenancy.

The Landlord says the rental unit was new such that there would have been no damage prior to the Tenant. The Tenant refutes this, saying that the rental unit had been occupied by someone before her. The Landlord is unable to confirm if the rental unit was occupied prior to the tenancy since he purchased the residential property in January 2021. I accept the Tenant's evidence that the rental unit had previously been occupied.

Firstly, the Landlord lists light bulb replacements and includes receipts for the same. The Landlord says the Tenant is responsible for these as they were missing at the end of the tenancy. The Tenant acknowledges some of the bulbs went out, though says that her previous landlord replaced these. Policy Guideline #1 suggests that a landlord is responsible for ensuring light bulbs are working at the beginning of the tenancy and that a tenant is responsible for replacing light bulbs during their tenancy.

I find that the Landlord has failed to establish that the light bulbs constitute damage beyond reasonable wear and tear. The guidance provided by Policy Guideline #1 on the question of light bulbs is inconsistent with s. 37(2) of the *Act* as it does not account for normal wear and tear. The same logic would not apply to any other item within the

rental unit, such as a fridge that expired after years of regular use. Accordingly, I dismiss this portion of the Landlord's claim without leave to reapply.

The Landlord's evidence makes mention of recessed lighting that needed replacement. At the hearing, the Landlord made no mention of this portion of the claim. I find that the Landlord has failed to present evidence in support of this claim and failed to establish that the Tenant caused any damage to the recessed lighting. This portion of the claim is dismissed without leave to reapply.

The Landlord also seeks the cost of a toilet seat cover that was broken. The Landlord's evidence shows the seat cover partially detached from the toilet and a receipt for the purchase of a new seat at $51.47. The Tenant's assistant argued the seat was not broken and could be easily repaired. In this instance, there is little dispute that the toilet seat was loose and photographs provided support the same. I find that this was likely caused by the Tenant during the tenancy, which began in 2018, such that the Landlord has established the Tenant breached s. 37(2) of the *Act*. I am unpersuaded by the Tenant's argument that the seat could be simply repaired. She had opportunity to do so prior to the end of the tenancy. She did not. I further do not believe mitigation is relevant here as I accept the seat was broken. I am satisfied the Landlord has demonstrated a loss of $51.47 as evidenced in the receipt and shall receive compensation for this amount.

The Landlord also seeks the cost for a shower faucet and replacing cupboard pegs. However, at the hearing, the Landlord provided no explanation why this was being claimed or how the Tenant was responsible for the damage. I find that the Landlord has failed to establish the Tenant breached the *Act* with respect to the shower faucet and replacing cupboard pegs. These portions of the claim are dismissed without leave to reapply.

The Landlord seeks $600.00 for painting and wall repair. The Landlords evidence includes photographs of the walls and an invoice dated September 24, 2022 for painting services totalling $562.80. The Tenant's evidence includes photographs from October 2018 showing some scuffs and damage to the walls.

To be clear, a tenant is not generally responsible for repainting a rental unit at the end of the tenancy unless they have caused damage. Policy Guideline #1 is clear that some holes and scuffs are to be expected through normal use of the rental unit and that a landlord is responsible for painting the interior of a rental unit at reasonable intervals.

Review of the photographs provided by the Landlord shows the scuffs and holes to be of a minor nature and are consisted with the general bumps and scrapes one would expect after a tenancy that lasted for four years. I find that the Landlord has failed to establish the wall damage exceeded reasonable wear and tear such that the Tenant would be responsible for the repairs. I dismiss this portion of the claim without leave to reapply.

The Landlord also seeks the cost for plastic parts for the interior of the fridge which he says the Tenant broke during the tenancy. The Tenant denies she damaged the fridge. I have no move in inspection report to confirm the state of the fridge at the beginning of the tenancy. I find that the Landlord has failed to establish that the Tenant damaged the fridge. As such, I dismiss this portion of the claim without leave to reapply.

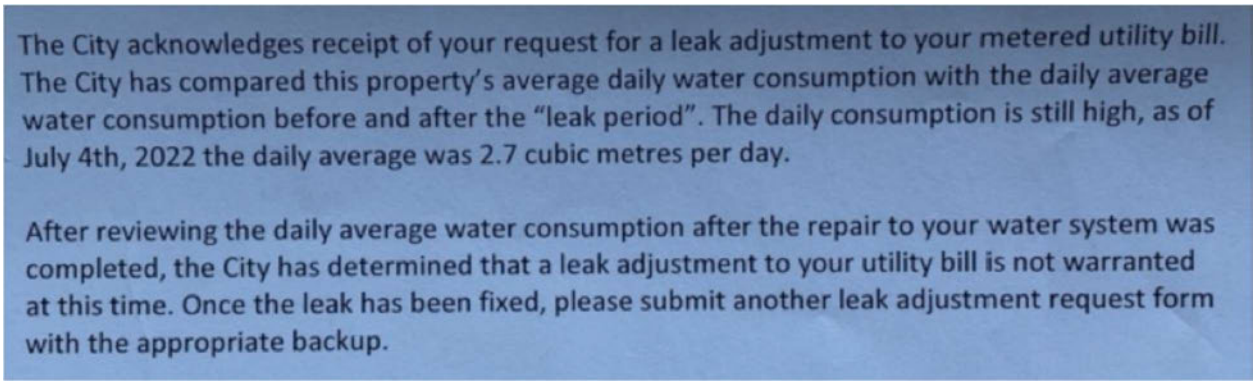
The Landlord also seeks the cost for cleaning services to the rental unit. I am provided with a quote totalling $450.00 for two to three hours of cleaning work, but I am told by the Landlord that he cleaned the rental unit himself. Leaving aside whether the rental unit was left in an unclean state, I find that the Landlord has failed to adequately quantify this portion of the claim. It is merely speculative to say the cost is $450.00, particularly when the actual loss was likely much less since the Landlord undertook the work himself. As the Landlord has failed to adequately quantify this portion of his claim, I dismiss it without leave to reapply.

The Landlord also seeks the costs of cleaning out a storm drain. The Landlord tells me that the Tenant was putting household garbage down the storm drain and that when it was cleaned out hair and other debris was found. The Tenant denies putting items down the storm drain and says that the drain in question was adjacent to a neighbouring rental unit’s entrance and that that rental unit’s occupants had plants near to the drain. The Landlord says he has a video of the Tenant putting garbage down the drain. No such video has been provided to me. I am told the Landlord provides a still frame of the video as proof of the Tenant’s putting garbage down the drain. No such photograph was provided to me.

I am unable to make a finding that the Tenant was responsible for the blockage of the storm drain. It is just as likely this was caused by the neighbour’s plants or simply by the normal passage of time. The cause of the blockage is unclear based on the evidence before me. As the Landlord has failed to prove the Tenant breached the *Act* and is responsible for the blockage, it is dismissed without leave to reapply.

Finally, the Landlord seeks $1,500.00 in excess utility usage from January 2021 to August 2022. The Landlord says that the Tenant was neglectful in reporting a water leak that damaged a cabinet. I am told by the Landlord that excess use of water totaled 24 litres a day that was only stopped after the water leak under the sink and in the toilet was repaired. The Tenant says that the Landlord had hired someone to come take a look at the sink and did undertake repairs such that the Landlord was aware of the issue.

The Landlord's evidence includes a letter from the municipality dated August 10, 2022 stating the following:



The City acknowledges receipt of your request for a leak adjustment to your metered utility bill. The City has compared this property's average daily water consumption with the daily average water consumption before and after the "leak period". The daily consumption is still high, as of July 4th, 2022 the daily average was 2.7 cubic metres per day.

After reviewing the daily average water consumption after the repair to your water system was completed, the City has determined that a leak adjustment to your utility bill is not warranted at this time. Once the leak has been fixed, please submit another leak adjustment request form with the appropriate backup.

Leaving aside the argument that the Tenant was neglectful in reporting the leak, the letter from the municipality suggests that the excess use of water is not necessarily attributable to a slow leak as consumption was still high after the leak was fixed. The residential property has at least two rental units. As I am told by the parties, the main portion is also occupied by the Landlord and his family. It is just as likely the excess use is attributable to the number of occupants at the property.

The Landlord's evidence also includes a utility statement from the municipality. However, there is no subsequent or previous statements, just the one showing usage in that invoice period. It is unclear to me if water usage was high at all.

I find that the Landlord has failed to establish that there has been any loss with respect to the water usage and failed to establish that the Tenant was responsible. This portion of the claim is dismissed without leave to reapply.

In total, the Landlord has demonstrated a monetary claim for damages to the rental unit totalling $51.47.

Claim for Other Monetary Loss

The Landlord seeks $3,000.00 in aggravated damages and explains the rationale within his application as follows:

Applicant's dispute description

Requesting aggravated damages for following reasons: 1. Excessive use of laundry outside 1/day week agreement of Saturdays causing increased utilities cost. 2. Discarding household debris in storm drain despite garbage bins 6 feet away. 3. Continued harassment, voyerism by encroaching private sundeck space and video recording of inside residence of landlord guests and children and continued intimidation asking compensation else threatened with frivolously and abuse of process RTB complaints.

Policy Guideline #16 provides the following guidance with respect to aggravated damages claims:

> "Aggravated damages" are for intangible damage or loss. Aggravated damages may be awarded in situations where the wronged party cannot be fully compensated by an award for damage or loss with respect to property, money or services. Aggravated damages may be awarded in situations where significant damage or loss has been caused either deliberately or through negligence. Aggravated damages are rarely awarded and must specifically be asked for in the application.

Looking to points one and two from the Landlord's application, these are directly related to the water use claim and storm drain claim. As stated above, I dismiss both claims as the Landlord failed to demonstrate the Tenant was responsible. Accordingly, I find that they cannot form the basis of an aggravated damages claim.

The Landlord accuses the Tenant of voyeurism on the basis that she came to his portion of the property and took video inside the window. The Tenant denies this, saying that she did go to the deck but had done so throughout the tenancy to pay rent or otherwise communicate with the Landlord. I am provided with a still frame image of a women, whom I assume is the Tenant, walking on a deck with a phone in one hand and a piece of paper in the other.

I find that the Landlord has failed to show in his evidence that the Tenant had done anything untoward. I accept that she likely did go to the deck to speak with the Landlord or to pay her rent. Further, there is no evidence to support an award of aggravated damages, which are awarded rarely and only in sufficiently serious cases. Given this, I dismiss the Landlord's aggravated damages claim without leave to reapply.

Summary

The Landlord has demonstrated a total monetary claim of $51.47. All other portions of the claim are dismissed without leave to reapply.

As the Landlord was largely unsuccessful, I do not grant him his filing fee. The claim under s. 72 of the *Act* is dismissed without leave to reapply.

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.

In this instance, the Tenant's right to the deposit has not been extinguished. Though I am told the Tenant refused to sign the move-out inspection report, arguably triggering s. 36(1) of the *Act*, I find that this is irrelevant. The original landlord failed to conduct a move-in inspection such that the Landlord's right to claim against the security deposit was extinguished under s. 24(2) of the *Act*. As Policy Guideline #17 advises with respect to extinguishment, the party who breached their obligation first bears the loss. In this instance, I find it was the Landlord, who by proxy inherited the original landlord's failure to undertake a move-in inspection.

Accordingly, I direct that the Landlord retain $51.47 from the Tenant's security deposit and return the balance, being $373.53, to the Tenant.

Conclusion

The Landlord has demonstrated a monetary claim of $51.47. Under s. 72(2) of the *Act*, I direct that the Landlord retain this from the security deposit. All other portions of the Landlord's monetary claims are dismissed without leave to reapply.

As the Landlord was largely unsuccessful, his claim for the return of his filing fee under s. 72(1) of the *Act* is dismissed without leave to reapply.

Pursuant to s. 38 and 67 of the *Act*, I order the balance of the security deposit, being **$373.53**, be returned to the Tenant.

It is the Tenant's responsibility to serve the monetary order on the Landlord. If the Landlord does not comply with the monetary order, it may be filed by the Tenant 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: May 03, 2023

Residential Tenancy Branch