Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNDL-S, FFL

Introduction

On May 12, 2022, the Landlords made an Application for Dispute Resolution seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the "*Act*"), seeking to apply the security deposit towards that debt pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On May 26, 2022, this Application was originally set down to be heard on January 24, 2023, at 1:30 PM. This Application was subsequently adjourned, for reasons set forth in the Interim Decision dated January 25, 2023. This Application was then set down for a final, reconvened hearing on May 15, 2023, at 9:30 AM.

Landlord A.M. attended the final, reconvened hearing. The Tenant attended the final, reconvened hearing as well, with R.S. attending as an advocate for the Tenant. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited, and they were reminded to refrain from doing so. As well, all parties in attendance provided a solemn affirmation.

At the original hearing, there was a concern about service of the Landlords' Condition Inspection Report, and the Landlords were Ordered in the Interim Decision to re-serve an identical copy of this report where the Tenant must be deemed to have received this document not less than 14 days before the reconvened hearing. Landlord A.M. advised that this report was served to the Tenant by registered mail on April 19, 2023, and R.S. confirmed that the Tenant received this. As such, all of the Landlords' evidence will be accepted and considered when rendering this Decision.

As well, there were concerns regarding the Tenant's digital evidence, so the Tenant was Ordered to re-serve an identical copy of the two videos to the Landlords where the Landlords must be deemed to have received this digital evidence not less than 14 days before the reconvened hearing. The Tenant advised that these videos were put onto a USB and served by registered mail, but he was not sure when this was done. A.M. confirmed that a package from the Tenant was received more than 14 days before the reconvened hearing; however, there was no USD containing any videos included in this package. Without any evidence supporting that these videos were sent to the Landlords, I have excluded this digital evidence and it will not be considered when rendering this Decision. However, all of the Tenant's documentary evidence will be accepted and considered when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Are the Landlords entitled to a Monetary Order for Compensation?
- Are the Landlords entitled to apply the security deposit towards this debt?
- Are the Landlords entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

At the original hearing, all parties agreed that Tenant lived in the rental unit prior to the most current tenancy starting on March 1, 2021. The tenancy ended when the Tenant gave up vacant possession of the rental unit on May 1, 2022. Rent was established at an amount of $3,900.00 per month and was due on the first day of each month. A security deposit of $1,950.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence for consideration.

A.M. advised that a move-in inspection report was conducted with the Tenant on March 1, 2021, and he referenced a copy of the report submitted as documentary evidence where it was signed by both parties. He stated that this was delivered to the Tenant within a week of move-in.

The Tenant advised that he was working on March 1, 2021, so this was not possible. He stated that a move-in inspection report was never completed either. He testified that the

Landlords' agent would always show up late at night, and that he signed the tenancy agreement with her on February 1, 2021. He confirmed that the signature and initials on the addendum was not his.

A.M. responded that as the Tenant wanted to stay in the rental unit for longer, so the new tenancy agreement was signed. He is unsure why the Tenant stated that he did not sign the tenancy agreement and the move-in inspection report as the Tenant's signatures are all the same.

A.M. then advised that his agent showed up to the rental unit on May 1, 2022, to conduct the move-out inspection report with the Tenant, as agreed upon. He acknowledged that there was no notice of final opportunity to conduct the inspection, and he stated that the Tenant would not sign the move-out inspection report.

The Tenant agreed that he met this agent on May 1, 2022, but this person did not have a copy of the report with her. However, she did film a video of the condition of the rental unit. As well, he stated that the Landlord did not provide a copy of this move-out inspection report at the end of the tenancy in accordance with Section 18 of the *Residential Tenancy Regulations* (the "*Regulations*").

At the final, reconvened hearing, R.S. advised that the Tenant provided his forwarding address in writing on April 19, 2022, and A.M. confirmed that this was received.

A.M. advised that he was seeking compensation in the amount of **$5,880.00** for the cost to repair damage and scratches to the baseboards, walls, and trim, and to paint these items. As well, he indicated that the floors and doors were scratched. He referenced some pictures submitted as documentary evidence to corroborate this damage, and he stated that the rental unit was brand new in "possibly" 2019. As well, he cited the quotation submitted as documentary evidence to substantiate the cost of the damages being sought.

He testified that his agent was originally supposed to meet the Tenant for the move-out inspection at 12:00 PM on May 1, 2022, but the Tenant needed more time, so they agreed to meet between 4:00 and 5:00 PM. He stated that the agent showed up around this time and the Tenant was not cooperative, but a move-out inspection was done anyways. He testified that the agent wrote the Tenant's forwarding address in writing on this report.

With respect to the quotation that was submitted, he stated that he did not submit the receipt for what he actually paid to have the damages fixed because he "thought" that this quotation would be "sufficient". He testified that he allegedly paid $6,120.00 on May 27, 2022, to repair all the damages, but again, this invoice was never submitted. He acknowledged that this quotation does not reference any quote for the repair of flooring, and he stated that he hired another company to fix this. Regarding the four pictures submitted as documentary evidence to support his claims for fairly extensive damages

throughout the rental unit, he claimed that he was “not aware” that he needed to submit evidence “room by room”.

R.S. advised that the Tenant agreed to meet the Landlords’ agent on May 1, 2022, and that they eventually did meet, but the agent did not have the move-in inspection report with her. She confirmed that the rental unit was brand new at the start of the tenancy, but there were some patches on the walls as it was not completely finished. She stated that there was no evidence from the Landlords of writing on the walls, or patches. She suggested that the Landlords likely damaged the rental unit in an attempt to file a claim against the Tenant. As well, she indicated that the Landlords sold the rental unit already.

The Tenant acknowledged that he was responsible for scratching of the floor.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 23 of the *Act* states that the Landlords and Tenant must inspect the condition of the rental unit together on the day the Tenant is entitled to possession of the rental unit or on another mutually agreed upon day.

Section 35 of the *Act* states that the Landlords and Tenant must inspect the condition of the rental unit together before a new tenant begins to occupy the rental unit, after the day the Tenant ceases to occupy the rental unit, or on another mutually agreed upon day. As well, the Landlords must offer at least two opportunities for the Tenant to attend the move-out inspection.

Section 21 of the *Residential Tenancy Regulation* (the “*Regulation*”) outlines that the condition inspection report is evidence of the state of repair and condition of the rental unit on the date of the inspection, unless either the Landlords or the Tenant have a preponderance of evidence to the contrary.

Sections 24(2) and 36(2) of the *Act* state that the right of the Landlords to claim against a security deposit or pet damage deposit is extinguished if the Landlords do not complete the condition inspection reports in accordance with the *Act*.

Section 32 of the *Act* requires that the Landlords provide and maintain a rental unit that complies with the health, housing and safety standards required by law and must make it suitable for occupation. As well, the Tenant must repair any damage to the rental unit that is caused by their negligence.

Section 67 of the *Act* allows a Monetary Order to be awarded for damage or loss when a party does not comply with the *Act*.

I find it important to note that when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. Given the contradictory testimony and positions of the parties, I may also turn to a determination of credibility. I have considered the parties' testimonies, their content and demeanour, as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy.

With respect to the inspection reports, while A.M. claimed that a move-in inspection report was conducted by both parties on March 1, 2021, I find it important to note that in the bottom left-hand corner of the first page of the Condition Inspection Report, that was submitted as documentary evidence by the Landlords, it states "#RTB-27 (2022/04)." I note that this would be the date that this form was made available to the public. Therefore, logic would dictate that this form could not have been used and completed on March 1, 2021.

Moreover, I note that A.M. testified that his agent wrote the Tenant's forwarding address at the bottom of the Condition Inspection Report. However, this address is clearly typed out, so the agent could not have written this in when the move-out inspection was conducted on May 1, 2022. As such, the only logical conclusion is that this was done at some later point in time, and supports the Tenant's submission that the Landlords' agent did not have this document with her on May 1, 2022.

Finally, I note that it appears as if A.M.'s signature appears at the bottom of the Condition Inspection Report in both the move-in and move-out sections of this report, and this signature looks to be similar to his signature on the tenancy agreement. However, as the undisputed evidence is that the Landlords had their agent conduct these inspections, it is not clear then how A.M.'s signature would have been signed on the Condition Inspection Report at the time the reports were conducted.

Taking into consideration these impossibilities and inconsistencies, I find it more likely than not that neither a move-in nor a move out condition inspection report was conducted with the Tenant, as purported by A.M. Furthermore, as it appears, in my view, that A.M. has been obviously untruthful when supposedly providing solemnly affirmed testimony, I find that this causes me to doubt his credibility on the whole. As I am satisfied that neither a move-in inspection report nor a move-out inspection report was conducted, I find that the Landlords did not comply with the requirements of the *Act* in completing these reports. As such, I find that the Landlords have extinguished the right to claim against the deposit.

Section 38(1) of the *Act* requires the Landlords, within 15 days of the end of the tenancy or the date on which the Landlords receive the Tenant's forwarding address in writing,

to either return the deposit in full or file an Application for Dispute Resolution seeking an Order allowing the Landlords to retain the deposit. If the Landlords fail to comply with Section 38(1), then the Landlords may not make a claim against the deposit, and the Landlords must pay double the deposit to the Tenant, pursuant to Section 38(6) of the *Act*.

Based on the consistent and undisputed evidence before me, a forwarding address in writing was provided to the Landlords prior to the tenancy ending, and the Landlords filed to claim against the deposit on May 12, 2022. While the Landlords made this Application within 15 days of the tenancy ending, given that the Landlords extinguished their right to claim against the deposit, they could have still made this Application to claim for the recovery of damages, but they would have been required to return the deposit in full within 15 days of the tenancy ending. As the Landlords have extinguished the right to claim against the deposit, I find that the doubling provisions do apply to the security deposit in this instance. Consequently, I grant the Tenant a monetary award in the amount of **$3,900.00**.

With respect to the Landlords' claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

As noted above, the purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. When establishing if monetary compensation is warranted, it is up to the party claiming compensation to provide evidence to establish that compensation is owed. In essence, to determine whether compensation is due, the following four-part test is applied:

- Did the Tenant fail to comply with the *Act*, regulation, or tenancy agreement?
- Did the loss or damage result from this non-compliance?
- Did the Landlords prove the amount of or value of the damage or loss?
- Did the Landlords act reasonably to minimize that damage or loss?

With respect to the Landlords' claim for compensation in the amount of $5,880.00, I note that the Landlords have provided very little documentary evidence to support A.M.'s claims of extensive damage to the rental unit. Given my aforementioned doubts about A.M.'s credibility, I find it more likely than not that this lack of evidence supports a reasonable conclusion that these four pictures were the extent of the damage caused by the Tenant.

Moreover, I note that the quotation that he did reference made no mention of the repair of damaged flooring. As well, the Landlords did not submit an invoice for the amount of

repairs that they allegedly did pay for. Had the Landlords actually paid $6,120.00 to repair the rental unit, it makes little sense why they would not think to submit this receipt to prove that this payment was legitimately made. Based on my doubts from A.M.'s dubious and unreliable testimony, I dismiss the Landlords' claims for compensation in its entirety.

However, given that the Tenant acknowledged that he scratched the flooring, I do find it appropriate to award the Landlords compensation to remedy this matter. As the Landlords did not submit any evidence to support the cost of this repair, I find it appropriate to award the Landlords **$300.00**, which in my estimation would be commensurate with the cost to rectify this damage.

As the Landlords were partially successful in this claim, I find that the Landlords are entitled to recover $25.00 of the $100.00 filing fee paid for this Application.

Pursuant to Sections 38, 67, and 72 of the *Act*, I grant the Tenant a Monetary Order as follows:

Calculation of Monetary Award Payable by the Landlords to the Tenant

Doubling of security deposit	$3,900.00
Repair of flooring damage	-$300.00
Filing fee	-$25.00
TOTAL MONETARY AWARD	**$3,575.00**

Conclusion

The Tenant is provided with a Monetary Order in the amount of **$3,575.00** in the above terms, and the Landlords must be served with **this Order** as soon as possible. Should the Landlords fail to comply with this Order, this Order 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 *Residential Tenancy Act*.

Dated: June 14, 2023

Residential Tenancy Branch