



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNDL, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Landlord under the *Residential Tenancy Act* (the “Act”) for a monetary order for damages, and an order to recover the cost of filing the application. The matter was set for a conference call.

The Landlord and the Tenant attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and Tenant were provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issues to be Decided

- Is the Landlord entitled to monetary order for damage?
- Is the Landlord entitled to recover the filing fee for this application?

Background and Evidence

While I have considered all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The tenancy agreement recorded that the tenancy began on May 1, 2020, and that the Tenant had paid a security deposit of \$600.00 at the outset of this tenancy. The Tenant submitted five pages of a six-page tenancy agreement into documentary evidence.

The Landlord testified that a written move-in/move-out inspection report was not completed for this tenancy. The Landlord testified that a verbal inspection or walk-through of the rental unit was conducted when the Tenant moved in and that the Tenant had refused to attend the same verbal inspection or walk-through of the rental unit at the end of the tenancy. The Landlord submitted that the Tenant had forfeited the right to the return of their security deposit when they refused to attend the verbal inspection or walk-through of the rental unit at the end of the tenancy.

The Tenant testified that they sent their forwarding address to the Landlord on July 27, 2022, by Canada Post registered mail, and that they believe that they are entitled to the return of the security deposit for this tenancy.

The Landlord agreed that they received the Tenant's forwarding address by Canada Post registered mail. The Landlord submitted a copy of the document with the forwarded address into documentary evidence.

The Landlord submitted that the Tenant returned the rental unit to them in a damaged state and that they are requesting the recovery of their costs for repairing the rental unit.

The Landlord testified that the flooring in the rental unit had to be replaced due to damage caused by a leaking air conditioner. The Landlord submitted that the damage was only to a small area of the floor but that there was no way to repair that area without replacing the full floor. The Landlord testified that they are requesting \$612.46 for the purchase of new flooring, and \$400.00 in labour costs, at the rate of \$25.00 per hour for 10 hours, to install the new flooring. The Landlord submitted a copy of a bill for flooring and three pictures into documentary evidence.

The Tenant submitted that the need to repair the air conditioner leak had been reported to the Landlord when it happened over a year before their tenancy ended and that there was no need to replace the flooring in the whole rental unit due to one small area of water damage. The Tenant submitted that the Landlord was being unreasonable in their request to have the pay for all new flooring that was not required.

The Landlord testified that there was damage to the wall that required repairs at the end of this tenancy. The Landlord submitted that the damage was caused due to the Tenants couch rubbing up against the wall during the tenancy. The Landlord testified that they are requesting \$100.00 for the purchase of supplies to repair the wall, and \$100.00 in labour costs, at the rate of \$25.00 per hour for 4 hours, to repair the wall. The Landlord three pictures into documentary evidence. The Landlord confirmed that they did not submit a copy of the bill for the wall repair supply that they purchased to these proceedings.

The Tenant testified that there was no damage to the wall, just normal wear and tear. The Tenant also testified that the Landlord did not repair the wall, as they know the new renter living in the rental unit.

Analysis

Based on the evidence before me, the testimony of the Landlords, and on a balance of probabilities that:

I accept the testimony of the Landlord that they did not conduct a written move-in inspection for this tenancy. Section 23 of the *Act* states the following:

Condition inspection: start of tenancy or new pet

23 (1) The landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.

(2) The landlord and tenant together must inspect the condition of the rental unit on or before the day the tenant starts keeping a pet or on another mutually agreed day, if

(a) the landlord permits the tenant to keep a pet on the residential property after the start of a tenancy, and

(b) a previous inspection was not completed under subsection (1).

(3) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.

(4) The landlord must complete a condition inspection report in accordance with the regulations.

(5) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.

(6) The landlord must make the inspection and complete and sign the report without the tenant if

- (a) the landlord has complied with subsection (3), and*
- (b) the tenant does not participate on either occasion.*

Section 19 of the *Residential Tenancy Regulations* (the “*Regulations*”) provides further guidance, stating the following:

Disclosure and form of the condition inspection report

19 A condition inspection report must be

- (a) in writing,*
- (b) in type no smaller than 8 point, and*
- (c) written so as to be easily read and understood by a reasonable person.*

I find that the Landlord breached section 23(4) of the *Act* and section 19(a) of the *Regulations* when they did not complete the required written move-in inspection of the rental unit at the beginning of this tenancy. Section 24(2) of the *Act* outlines the consequence for a landlord when the inspection requirements are not met.

Consequences for tenant and landlord if report requirements not met

24 (2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, 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.***

Pursuant to section 24(2c) of the *Act*, I find that the Landlord had extinguished their right to make a claim against the security deposit for damage to the residential property for this tenancy.

Section 38 of the *Act* sets the requirements on how a security deposit is handled at the end of a tenancy, stating the following:

Return of security deposit and pet damage deposit

38 (1) *Except as provided in subsection (3) or (4) (a), within 15 days after the later of*

- (a) the date the tenancy ends, and*
- (b) the date the landlord receives the tenant's forwarding address in writing,*

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;*
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.*

I accept the agreed-upon testimony of these parties, and I find that this tenancy ended on July 9, 2022. In addition, I accept the testimony of the Tenant supported by the documentary evidence submitted by the Landlord, that the Tenant had provided their forwarding address to the Landlord by Canada Post registered mail, sent on July 27, 2022. I find that the Landlord was deemed to have received the Tenant's registered mail five days after it was sent, on August 1, 2023, pursuant to section 90 of the *Act*.

Accordingly, this Landlord had until August 16, 2022, to comply with sections 38(1) and 38(5) of the *Act* by repaying the security deposit in full to the Tenant, as they had extinguished their right to claim against the deposit for damages caused during this tenancy.

However, in this case, the Landlord did not return the security deposit, as required, and instead made a claim against the deposit for damages even though they had extinguished their rights to do so when they breached the *Act* at the beginning of this tenancy. Additionally, I noted that the Landlord's application for damages was submitted late, on August 26, 2022, 10 days after the legislated deadline.

Section 38(6) of the *Act* goes on to state that if the landlord does not comply with the requirement to return the deposit within 15 days, the landlord must pay the tenant double the security deposit.

Return of security deposit and pet damage deposit

- 38 (6)** *If a landlord does not comply with subsection (1), the landlord*
- (a) may not make a claim against the security deposit or any pet damage deposit, and*

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Therefore, I find that pursuant to section 38(6) of the *Act*, the security deposit for this tenancy has doubled in value to the amount of \$1,200.00.

I acknowledge the Landlord's argument, made during the proceedings, that when the Tenant failed to respond to the Landlord's attempts to schedule a verbal move-out inspection of the rental unit the Tenant had extinguished their right to the return of the deposit. However, I find that argument to be incorrect as the Landlord had already extinguished their right to the security deposit when they failed to complete the written move-in inspection, as required, as per section 24 of the *Act*. Therefore, the Tenant retains the right to the return of their deposit.

Return of security deposit and pet damage deposit

38 (5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) [landlord failure to meet start of tenancy condition report requirements] or 36 (2) [landlord failure to meet end of tenancy condition report requirements].

As for the Landlord's claims for compensation, the Landlord has requested the recovery of their costs as follows; \$612.46 for new flooring, \$400.00 in labour to install flooring, \$100.00 in supplies for wall repair and \$125.00 in labour to repair the wall. Awards for compensation due to damage are provided for under sections 7 and 67 of the *Act*.

A party that makes an application for monetary compensation against another party has the burden of proving their claim. The Residential Tenancy Policy Guideline #16 Compensation for Damage or Loss provides guidance on how an applicant must prove their claim. The policy guide states the following:

"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. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. 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.

The Landlord has submitted that the Tenant returned the rental unit in a damaged state at the end of this tenancy. Section 37(2) of the *Act* requires that a tenant return the rental unit reasonably clean at the end of the tenancy.

Leaving the rental unit at the end of a tenancy

37 (2) When a tenant vacates a rental unit, the tenant must

- (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and*
- (b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.*

During these proceedings, the parties offered conflicting verbal testimony regarding the condition of the rental unit at the beginning and end of the tenancy, and whether the claims for damages made in this application are for damage caused by this Tenant or normal wear and tear. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. As it is the Landlords who filed this claim, the Landlords hold the burden to prove this claim over and above their testimony.

An Arbitrator normally looks to the move-in/move-out inspection report (the “inspection report”) as the official document that represents the condition of the rental unit at the beginning and the end of a tenancy as it is required that this document is completed in the presence of both parties and is seen as a reliable account of the condition of the rental unit. However, as the Landlord failed to create this document for this tenancy, I am unable to refer to it in my determinations on this claim.

In the absence of a move-in/move-out inspection report, I must rely upon the remaining documentary evidence regarding the condition of the rental unit at the beginning and the end of the tenancy.

I have reviewed the 28-page evidence submission provided by the Landlord in its entirety, and I find that while these documents show the need for some repairs to the rental unit, I find that there is no evidence before me to show the condition of this rental unit at the beginning of this tenancy. As I have no evidence of the condition of the rental unit at the beginning of this tenancy, I am unable to assess any change in the condition of this rental unit, or what could be reasonably determined to be damage verse normal wear and tear at the end of this tenancy.

Overall, after I thorough review of the Landlord's submissions, I find that there is insufficient evidence to support the Landlord's claims that the Tenant had damaged the rental unit during their tenancy. Therefore, I dismiss the Landlord's claim in its entirety.

Finally, section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord has not been successful in this application, I find that the Landlord is not entitled to recover the \$100.00 filing fee paid for this application.

I order the Landlord to return the \$1,200.00 security deposit they are holding for this tenancy to the Tenant within 15 days of the date of this decision.

In order to ensure compliance with the above order, I grant the Tenant a **Monetary Order** in the amount of **\$1,200.00** for the return of the doubled value of their security deposit pursuant to section 38 of the *Act*.

Conclusion

I order the Landlord to return the \$1,200.00 security deposits they are holding for this tenancy to the Tenant within 15 days of the date of this decision.

I grant the Tenant a **Monetary Order** in the amount of **\$1,200.00** for the return of their remaining security deposit pursuant to section 38 of the *Act*. The Tenant is provided with this Order in the above terms, and the Landlord must be served with this Order as soon as possible. Should the Landlord 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 6, 2023

Residential Tenancy Branch