Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNDL-S, FFL
MNDCT, MNSD, FFT

Introduction

This hearing dealt with an application filed by both the landlord and the tenant pursuant to the Residential Tenancy Act (the "Act"):

The landlord applied for:

- a Monetary Order for damage to the rental unit or common areas pursuant to sections 32 and 67; and,
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenants applied for:

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- a Monetary Order for the return of all or a portion of their security deposit and/or pet damage deposit pursuant to sections 38; and,
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

SL, the landlord, and AA and SN, the tenants, appeared at the hearing.
As both parties were in attendance, I confirmed that there were no issues with service of the Notice of Dispute Resolution Proceeding packages and evidence. In accordance with sections 88 and 89 of the Act, I find that both parties were served with the other's application materials.

The parties were cautioned that recording of the hearing is prohibited pursuant to Rule of Procedure 6.11. The parties were given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the landlord entitled to a Monetary Order for damage to the rental unit or common areas?
Is the landlord entitled to recover the filing fee for this application from the tenant?
Is the tenant entitled to a monetary order for damage or loss under the Act, regulation or tenancy agreement?
Is the tenant entitled to a Monetary Order for the return of all or a portion of their security deposit?
Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties agreed to the following details of the tenancy. The landlord entered into a written tenancy agreement with AA on May 1, 2012. The tenancy ended on September 1, 2022. Monthly rent was $1,750.00 payable on the first of each month. The tenant paid the landlord a security deposit of $1,500.00, which the landlord continues to hold in trust for the tenant.

Security Deposit

The landlord testified that no formal move-in condition inspection was completed, but that they did a did a visual inspection of the rental unit prior to AA moving in during which AA and the landlord made sure everything in the rental unit was satisfactory. The landlord testified that the move-in condition inspection was not documented.

The landlord testified that a move-out condition inspection was completed during which time the landlord, their real estate agent, and their staging agent inspected the rental unit with AA. The landlord testified that the move-out condition inspection was not documented.

The landlord testified that they became aware of the tenants' forwarding address by email prior to the tenancy ending. The landlord agreed with the tenants that this would have been in or around the month of July 2022.

SN agreed with the landlord's testimony regarding the move-in condition inspection and move-out condition inspection reports. However, SN testified that AA did not inspect the rental unit with the landlord and his real estate and staging agent. Rather, AA attended the property to ensure that it was clean, and everything had been removed. SN testified that the tenants were not offered any further opportunity to participate in a move-out inspection.

SN testified that they provided the landlord with their forwarding address by email in July 2022.

Landlord's Claim

The landlord testified that they had a "gentlemen's agreement" with AA that they would not increase the rent to market value in exchange for AA taking responsibility for all replacements and repairs required at the rental property.

The landlord testified that they are claiming $3,200.00 for the cost of replacement doors and the labour to install them. The landlord's real estate agent coordinated repairs and hired a contractor to do repairs to the rental unit. The landlord's real estate agent provided the landlord with a bill for the total cost of the new doors and the labour to install them. The landlord submitted and email from the real estate agent to support his claim.

The landlord testified that they were made aware of a problem with one door during the tenancy and suggested that the tenants have the door repaired. However, the landlord testified that they were unaware that the doors would be removed from the rental property entirely. The landlord testified that when they decided to sell the rental unit, they realized that all but one closet door was missing. When questioned, the landlord testified that they purchased the rental unit in 1997 and they believe the doors were the original closet doors.

In response to the landlord's claim, SN testified that the closet doors were big heavy metal mirrored doors that continuously came of their tracks. SN testified that the landlord came to the rental unit and attempted to repair the closet doors on two occasions.

However, in 2016, the tenants decided to change the flooring in the rental unit from carpet to hardwood. The tenants were unable to install the closet door tracks on the new hardwood. SN testified that the landlord was aware of this but did not want to deal with it. SN testified that they asked the landlord if they wanted to come and get the doors and the landlord declined. The tenants disposed of the doors as they were unable to store them in the rental unit and felt that storing them in the rental unit posed a danger to their children.

Tenant's claim

SN testified that they are seeking compensation for the cost of painting the rental unit and their personal labour to do so. SN testified that the walls had not been painted at least since AA started the tenancy with the landlord, if not longer. SN testified the walls were not hygienic anymore and they did not want their kids living there without new paint. SN testified that the walls were very banged up and required upgrading. SN testified that they wanted the place to look better, and the landlord would not paint the rental unit.

SN testified that they painted the entire unit over a period of months using the most expensive paint and completing three coats. SN testified that they were required to update the paint because the landlord believed that they had an agreement to do all of the repairs and replacements required at the rental property. SN testified that there was no agreement, verbal or otherwise, with the landlord they would repair and maintain the rental property in exchange for the landlord not increasing the rent.

SN testified that they took time off work and school to paint the rental unit and they had to do it slowly because of family and other responsibilities.

SN directed me to their evidence where they provided a summary of the events that are relevant to their claim and the landlord's claim. SN testified that they submitted every receipt for the paint and materials which supports their claim of $1,590.10. The tenant is further seeking $3,500.00 for their labour.

In response to SN's testimony, the landlord drew my attention a photograph in their evidence which they testified shows that the tenants' paint job was a little bit lacking. The landlord testified that there was a standing agreement with AA that they would be responsible for repairs and replacement. The landlord testified that they were saving the tenants money by not increasing the rent to market value.

When questioned, the landlord could not recall when the rental unit had last been painted and testified that it could have been the original paint.

Analysis

Security Deposits

Section 38(1) of the Act requires a landlord to repay security and/or pet deposits with interest or make an application for dispute resolution claiming against the security deposit and/or pet deposit. Section 38(6) of the Act states that if the landlord does not comply with section 38(1), the landlord may not make a claim against the security or pet deposit and must pay the tenant double the amount of the security deposit, pet deposit, or both, as applicable.

However, section 24 of the Act set out that landlords and tenants can extinguish their rights to security and pet damage deposits if they do not comply with the Act and Residential Tenancy Regulation (the "Regulations").

The parties agreed that a move-in condition inspection report was not completed nor was a copy of a move-in condition inspection provided to the tenants.

Section 24(2)(c) of the Act states:

> 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
>
> > (c)does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Based on the foregoing, I find that the landlord extinguished their right to claim against the security deposit because they did not complete the move-in condition inspection report and give the tenant a copy in accordance with the Act. The tenants have not extinguished their right to claim against the security deposit pursuant to section 24 of the Act.

Pursuant to section 38(1) of the Act, the Landlord had 15 days from the date the tenancy ended or the date the tenants provided the landlord with a copy of their forwarding address, whichever is later, to repay the security and pet damage deposits or file a claim against them.

The parties agree that the landlord has not returned any portion of the $1,500.00 security deposit. The parties agreed that the tenants provided the landlord with their forwarding address by email in July 2022. Neither party submitted the email into evidence. However, the parties agree that the tenancy ended on September 1, 2022, and that therefore, the landlord received the tenants' forwarding address prior to the end of the tenancy. As a result, the landlord had 15 days from September 1, 2022, to repay the tenants pet and security deposits or make a claim against the deposits.

The landlord made a claim against the security deposit on September 13, 2022, within the required 15 days following the end of the tenancy. However, I have previously determined that the landlord extinguished their right to retain the tenants' security deposit pursuant to section 24 of the Act. The tenants did not extinguish their rights in relation to the deposits. As a result, I find that the tenants are entitled to double the amount of the deposit held pursuant to section 38(6)(b) of the Act plus interest.

Policy Guideline 17 sets out that where a landlord has to pay double the security deposit to the tenant, interest is calculated only on the original security deposit amount before any deductions and is not doubled.

Based on the foregoing, I order the landlord to return to the tenants double the security and pet deposits plus interest. To give effect to this order, the tenant is granted a monetary order in the amount of $3,012.68 as set out below.

Landlord's Claim

Section 67 of the Act establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove their entitlement to their monetary claim.

I have considered the affirmed testimony of the parties and I find there is no dispute that the closet doors were removed by the tenants and disposed of. However, while I acknowledge the landlord was required to replace the doors prior to selling the rental

property, I find he is not entitled to his claim in the amount of $3,200.00 for the following reasons.

Residential Tenancy Policy Guideline #40 provides direction for determining the useful life of building elements. This *Guideline* must be read in conjunction with *Guideline #1*, which states, “An arbitrator may determine whether or not repairs or maintenance are required due to reasonable wear and tear or due to deliberate damage or neglect by the tenant.” Based on the testimony and evidence of the parties, I do not accept that the removal of the doors while updating the unit at their own expense was the result of deliberate damage or neglect caused by the tenants. I find in favour of the tenants that the landlord was notified that the doors would be removed and provided an opportunity to obtain them.

Further, the landlord’s claim must be considered in light of *Policy Guideline #40* which determines the useful life of items. This guideline notes the useful life of doors is 20 years. The landlord testified that they purchase the rental unit in 1997 and they believe the closet doors were the original doors. Based on this, I find that the useful life of the doors has long since expired. Therefore, I find that the landlord is not entitled to the return of money sought in relation to the closet doors.

Tenant’s claim

Residential Policy Guideline #1 sets out the landlord and tenant responsibilities for residential premises. With regard to renovations and changes to the rental unit, the following is stated at Page 2.

> Any changes to the rental unit and/or residential property not **explicitly consented to by the landlord** must be returned to the original condition.
>
> **[my emphasis added]**

I have reviewed the testimony and evidence of both parties and I find that neither party has presented evidence to support that the changes to the rental unit, in this case, the painting, was explicitly consented to by the landlord. Importantly, I do not accept that the landlord’s assertion that there was an agreement between themselves, and AA requiring AA to repair and maintain the property to support that the landlord “explicitly consented” to the painting, particularly in light of the fact that the tenants disagree this agreement existed.

On that basis, while I acknowledge that the landlord was responsible for painting the interior of the rental unit at reasonable intervals in accordance with Policy Guideline 1, because the landlord did not explicitly consent to the renovations completed by the tenants, I find that they are not retroactively entitled to a claim for the costs associated with the painting or labour required to paint.

Rather, had the tenants required repairs to have been completed to the rental unit during the tenancy, it was within their purview to make an Application for Dispute Resolution regarding the same.

Based on the foregoing, I find that the tenants are not entitled to a monetary order for the costs associated with painting the rental unit.

As the tenants were partially successful in their application, I find that they are entitled to recover the filing fee paid for their application from the landlord.

As the landlord was unsuccessful in their application, they are not entitled to recover the filing fee paid for their application.

Conclusion

I issue a Monetary Order in the tenants' favour in the amount of $3,112.68 as follows:

Item	**Amount**
Security Deposit ($1,500.00 x 2)	$3,000.00
Interest on Security Deposit	$12.68
Filing Fee	$100.00
Total Monetary Order	**$3,112.68**

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 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 08, 2023

Residential Tenancy Branch