Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Introduction

This hearing was convened in response to applications by the landlord and the tenants.

The landlord's application filed on October 19, 2022, is seeking orders as follows:

1. For a monetary order for compensation for damages to the rental unit;
2. To keep all or part of the security deposit and pet damage deposit; and
3. To recover the cost of filing the application.

The tenants' application filed on October 25, 2022, is seeking orders as follows:

1. Return double the security deposit and pet damage deposit; and
2. To recover the cost of filing the application.

This matter proceeded on July 24, 2023, and an interim decision was made on July 25, 2023. After reviewing the file and evidence after the hearing, I was unclear whether or not the monetary order for unpaid rent dated August 23, 2022, was paid by the tenants. The reconvene hearing was to clarify that matter because section 38(3) of the Act would not apply if it was paid by the tenants. That was the only reasons at the hearing that I had indicated that the tenants would not be entitled to double the Deposits as I had believed it remained unpaid, which it had not. Therefore, I must fully consider the tenants' application for dispute resolution.

Both parties appeared on both dated, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions at the hearing.

Issues to be decided

Is the landlord entitled to a monetary order for compensation for damages to the rental unit?
Is the landlord entitled to keep the Deposits?
Are the tenants entitled to double their Deposits?

Background and Evidence

The tenancy began on March 15, 2018. Current rent in the amount of $1,494.00 was payable on the first of each month. A security deposit of $700.00 and pet damage deposit of $300.00 (Deposits) were paid by the tenants. The tenancy ended on September 24, 2022, the date the tenants vacated the rental unit.

The parties agreed a move-in and move-out condition inspection report was completed. The landlord stated that the tenants did not sign the move-out inspection and they ignored them while the landlord completed the inspection. The tenant stated that the landlord walked into the rental unit without even acknowledging them and we asked the landlord what they were doing. The tenant stated they refused to sign it as they had not vacated the rental unit yet.

The parties agreed that the monetary order for unpaid rent issued on August 23, 2022, was paid by the tenants.

Landlord's application

The landlord claims as follows:

a.	Missing shower head and shower arm	$ 107.66
b.	Missing toilet seat and sink screen	$ 49.54
c.	Missing window frames - Kit, screen, and labour 5.5 hrs. @ $30	$ 391.26
d.	Cleaning supplies and labour 30hr @ $30	$ 974.04
e.	Wall damage - paint supplies and labour 10.75 hrs. @ $30	$ 455.02
f.	Lawn repair, grass seed, soil, and labour 2.25 hrs.	$ 124.61
g.	Filing fee	$ 100.00
	Total claimed	**$ 2,202.13**

Items a and b

The landlord testified that the tenants removed the shower head and even removed the curved pipe that went into the wall. The landlord stated that the tenants did not notify them of any issues during the tenancy. The landlord stated they had to buy a new

shower pipe and a new shower head. The landlord seeks to recover the cost of the missing showerhead and pipe in the amount of $107.66.

The landlord testified that the tenants removed the toilet seat from the rental unit and the sink screens were missing. The landlord stated they were never informed of any issues during the tenancy. The landlord seeks to recover the cost the missing toilet seat and screens in the amount of $49.54.

The tenants testified that the showerhead had exploded off the wall during the tenancy and there never was a shower arm. The tenants stated that they replaced the shower head and bought a shower arm and when they knew they were being evicted they decided to take the shower head and arm that they had purchased.

The tenants testified that the toilet seat the landlord provided had cracked in half and they replaced the toilet seat and when they knew they were being evicted they decided to take the toilet seat that they had purchased.

Item c

The landlord testified that there were three missing window screens. The landlord stated that all the screens were on the windows when the tenants moved into the rental unit. The landlord stated that the frames kits were $143.00, the screen was $65.59, and it took them 5.5 hours to buy the materials and put the screens together. The landlord seeks to recover the amount of $391.26.

The tenants testified that when they moved in there were never any window screens and the only screen, they had in the window was the bathroom and they acquired by from a neighboring property. The tenant stated that all the other units have windows screens because the other renters installed them on their own as who would want to live without widow screens. The tenants stated the screen included a 4 x 4 screen, but the landlord had bought enough screen for a patio door. The tenants stated that the receipt is dated October 1, 2022, after the premises was re-rented.

The landlord responded that the window screens were there when the tenants moved in. The landlord stated that they were likely damaged by their cat.

Item d

The landlord testified that the refrigerator was missing and found at the back of the property. The landlord stated they brought the refrigerator back, which took them 1 hour and it took them 3 hours to clean all the appliances. The landlord stated that the tenants did not clean the rental unit, nor did they clean the fireplace. The landlord testified that the tenant had a cat and there was tons of cat hair all over the rental unit. The landlord stated the counter tops, cabinets, and closets were all dirty. The landlord stated that it took at least 30 hours for cleaning at the rate of $30.00. The landlord seeks to recover $900.00 for cleaning and cleaning supplies of $74. 04 for a total of $974.04.

The tenants testified that the rental unit was comparable to when they moved in but was not cleaned to the standard of a professional cleaning service.

The tenants stated they purchased a new refrigerator during their tenancy and left the landlord's refrigerator in the carport and it was the landlord's decision to take the refrigerator and place it in the back of the property unprotected.

The landlord stated that they did move the refrigerator from the carport to the backyard as the tenants did not want it to remain in the carport.

Item e

The landlord testified that were a large hole in the small bedroom which the tenants did not repair properly and there were scratches in the master bedroom. The landlord stated that the tenant had a large piece of furniture against the wall which scratches the walls and there were various holes made in the walls from the tenants hanging items on the walls. The landlord seeks to recover the cost of the paint, supplies, drywall mud and labour in the amount of $455.02.

The tenants testified that there was a hole in the small bedroom that was from their own actions which they repaired the best they could. The tenants stated that the master bedroom wall was not caused by their furniture, it was caused by water damage. The tenants stated when they put in their own showerhead the water leak stopped.

The tenants testified that they only used push pins to hand items on the walls. The tenant stated they did not use any screws and it is not their responsibility to fix items that were there when they moved in.

The tenants submit that the landlord bought more paint than needed and had a large amount of paint and supplies stored already.

Item f

The landlord testified that the tenant damaged the grass, and they had to repair the grass. The landlord stated they bought topsoil and a bag of grass seeds to repair the damaged lawn in the backyard, spread the seeds and covered the damaged area with topsoil. The landlord stated they had to pay $57.11 for the supplies for the repair and $67.50 for their time of 2 hours and 15 minutes for purchasing the product and making the repair. The landlord seeks to recover $124.61.

The tenants testified that they concede they bought a 6 x 8 outdoor rug as the other occupant would not stop moving their table and it did damage the lawn. The tenants stated it does not take over 100 liters of soil and a large bag of grass seed and the receipt is dated October 17, 2022. Highly unlikely that the landlord is concerned about lawn repair.

Tenants' application

The tenants testified that they sent the landlord their forwarding address on September 28, 2022 by registered mail which was successfully delivered. The tenants stated that the landlord did not return their Deposits or make an application for dispute resolution as required by the Act within the statutory time limit and seek double of the Deposits in the amount of $2,000.00.

The landlord testified that they received the tenants forwarding address on October 7, 2022. I note the landlord provided the following in their written submissions, which I have redacted personal names to protect privacy]

1. **October 7, 2022**: I received an envelope with the two pages of **"Tenant's Notice of Forwarding Address for the Return of Security and/or Pet Damage Deposit"**. On the notice there was a forwarding address for one tenant only, and it is: **DMG**. There was no relevant information or another notice for **JJ**.
2. I went to a Canada Post Office to clarify the dates the registered mail with the forwarding address sent to the landlord was supposed to be delivered. The clerk told me that his registered mail was not express one or fast one.

> It was a regular registered mail with a tracking number only. In other words, there was no guarantee when the mail should be received by the receiver. It could take a few days but sometime a week or longer. The conclusion is that they probably knew what kind of service they used by Canada Post and that is why [tenant] referred to me for two more days to come back with the deposit or dispute it.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, both parties have the burden of proof to prove their respective claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation, or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Landlord's application

How to leave the rental unit at the end of the tenancy is defined in Part 2 of the Act.

> **Leaving the rental unit at the end of a tenancy**
>
> *37 (2) When a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear*.

Normal wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

Items a and b

The evidence of the tenants was the shower head and toilet seat broke during their tenancy and they replaced them during their tenancy and when they vacated those items were removed. However, the tenants provided no evidence that they informed the landlord during their tenancy that they were broken under normal use.

Even if I accept the evidence of the tenants, the landlord had the right to inspect those items to determine if they could be repaired and determine if they were damage caused by the tenants. Therefore, I grant the landlord the cost of the missing items in the amount of **$157.20** and 1 hour to make the necessary repair in the amount of **$30.00** for a total amount of **$187.20.**

Item c

The move-in condition inspection report does not show any missing window screens at the start of the tenancy. The move-out condition inspection reports show there were 3 missing screens. The tenants, although they did not sign the move-out condition inspection report as required by the Act, had the opportunity in that report to disagree with it. Further, it is unreasonable to believe that all the other units only have windows screens because purchased by the other renters. This does not have the ring of truth. Therefore, I grant the landlord the cost of the 3 missing window screens in the amount of **$226.26** and 3 hours to make the repair of **$90.00** for a total of **$316.26.**

I did not grant the landlord the 5.5 they claimed to make the repairs as this included multiple trips to obtain the needed supplies and not the actual repair.

Item d

I have reviewed the photographs of the rental unit. I find the rental unit was not left reasonably clean. The stove was extremely dirty, cobwebs are seen on the walls, the kitchen cupboards are dirty, below the toilet was extremely dirty, floors were not clean, blinds were dusty.

However, the landlord cannot hold the tenants responsible for the dirty refrigerator as it was the landlord's action of placing the appliance in the back of the property, rather than storing it properly. Further, the refrigerator was noted as missing in the move-out condition report, but clearly the landlord had to have known it was not missing as they were the ones that removed the refrigerator from the carport.

The landlord is claiming the cost of $900.00 for their labour of cleaning and $74.04 for cleaning supplies. I find this to be an excessive amount and, in all likelihood, inflated or to bring the rental unit to a higher standard than the Act required or that this could have been done quicker if a professional cleaner had been hired. The photographs do not support it would take 30 hours to clean a rental unit that is approximately 900 square feet or such an excessive amount of cleaning supplies. I note in the receipts the landlord is claiming for items such, as liners for the stovetop and oven, which would not be the tenant's responsibility to pay. Therefore, I will grant the landlord a reasonable cost for cleaning of $400.00 and reasonable amount for cleaning supplies of $30.00 for the total amount of **$430.00.**

Item e

I accept there was some damage caused by the tenants during their tenancy that was above reasonable wear and tear, such as the large hole that was made from an incident by the tenant and poorly patched; however, the tenants were entitled to hang items on the walls and make the rental unit suitable for their use, such as hanging mirrors and other decorations this is not unreasonable and is considered normal wear and tear the tenants are not responsible to pay repair.

In this case, the landlord has provided photographs of damage to some walls; however, most of those photographs were taken after they had applied drywall mud and I am unable to determine if that damage was caused by the tenants' neglect or reasonable wear and tear as this was a tenancy of over four years. Further, the landlord written submission is claiming for painting baseboards, I heard no evidence that these were damage by the tenants.

Furthermore, it appears from the photographs that the paint may have been past its useful life span, even if I accept only some walls were painted, as you can see water marks or damage to the ceiling paint. Therefore, I grant the landlord a nominal amount to recognize the damage that was caused by the tenants' action or neglect of the tenants in the amount of **$100.00**.

Item f

The tenants admitted the lawn was damaged by their outdoor carpet. I find it was the tenants' responsibility to repair. The landlord is claiming travel time for going to the store to purchase the items and make the repair; however, the landlord had been at the

same store multiple times for supplies and could have picked up on an earlier trip to mitigate their loss.

Further, the landlord written statement at point 11, is inconsistent with the receipt as they submit in writing that they bought two bags of topsoil to make the repair; however, the receipts shows they purchased 4 bags and are claiming the full amount from the tenants. Therefore, I find the landlord is entitled to 2 bags of topsoil, and grass seed totaling $42.47, which includes taxes, and 30 minutes for labour to make the repair in the amount of $15.00. Therefore, I grant the landlord the total amount to fix the lawn in the amount of **$57.47**.

I find that the landlord has established a total monetary claim of **$1,190.93** comprised of the above described amounts and the $100.00 fee paid for this application.

I note at the hearing the tenants questioned the dates of some of the receipts. However, the landlord is not required to make all repairs immediately after the tenancy has ended or before the new renter takes possession.

Tenants' application

Section 38 of the Act states,

(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.

(2)Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.

…

(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.

The tenants sent the landlord their forwarding address on September 28, 2022 by registered mail, which the Canada Post tracking history shows it was successfully delivered to the landlord on October 3, 2022 and a signature was obtained and not October 7, 2023 as claimed by the landlord. I find the landlord did receive the tenants forwarding address on October 3, 2022.

The landlord alleged that the forwarding address was not sent in the quickest manner and no guaranteed when it would be delivered. While I accept that is true, that is why the Act refers that it must be **received**. The Act does not require it to be sent in the fastest possible way. The Act does not require both tenants to provide a forwarding address as either tenant is entitled to request the return of the Deposits.

The Act required the landlord to file their application within 15 days after they receive the tenants forwarding address, which was October 3, 2022. I find the last day the landlord had to claim against the Deposits was October 18, 2022. The landlord filed their application claiming against the Deposits on October 19, 2022, which is not within the required time frame.

Further, the tenants were present at the move-out condition inspection report. Both parties provided a different version as they both claim each party had ignored each other. That is not a breach of the Act, even if true. I accept the tenants did not sign the form as required by the Act; however, the penalty is not extinguishment as long as they were at the move-out inspection.

I find that the tenants are entitled to double their Deposits as I have no discretion under section 38(6) of the Act as the landlord did not make their application for dispute resolution within 15 days after receiving the tenants forwarding address. I find the tenants have established a total monetary claim of double the Deposits on the original amount held ($1,000.00 x 2=$2,000.00) and the $100.00 fee paid for this application for a total monetary claim of **$2,100.00.**

As both parties were in successful with obtaining a monetary claim against each other, I find it appropriate to offset their monetary awards and issue a monetary order for the remaining due.

As the tenants were entitled to receive the amount of **$2,100.00** from the landlord and the landlord was entitled to receive **$1,190.93** from the tenant. After offsetting their respective awards; I find the tenants are entitled to a monetary order for the balance due in the amount of **$909.07.**

Conclusion

The landlord is granted a monetary order. The tenants are granted a monetary order. Both claims were offset, leaving a balance due to the tenants. The tenants are granted a formal monetary order against the landlord.

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: September 27, 2023

Residential Tenancy Branch