Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Introduction

Hearings were held on August 28, 2023, and November 28, 2023, regarding these Applications.

These hearings dealt with an Application for Dispute Resolution that was filed by the landlord on November 14, 2022, under the *Residential Tenancy Act* (the Act), seeking:

- Compensation for the cost of repairing damage to the rental unit caused by the tenants, their pets, or their guests;
- Compensation for monetary loss or other money owed;
- Retention of the security deposit and pet damage deposit towards amounts owed; and
- Recovery of the filing fee.

They also dealt with a Cross-Application for Dispute Resolution that was filed by the tenant A.M. on January 18, 2023, seeking:

- The return of their security and pet damage deposits; and
- Recovery of the filing fee.

Service of Notice of Dispute Resolution Proceedings (Proceeding Packages) and Evidence

An interim decision was issued on August 28, 2023. In that interim decision service of the Proceeding Packages and documentary evidence was addressed. I will therefore not repeat those matters here and the interim decision must be read in conjunction with this decision.

Issue(s) to be Decided

Is the landlord entitled to compensation for damage to the rental unit?

Is the landlord entitled to compensation for monetary loss or other money owed?

Is the landlord entitled to retain the security deposit against the amounts owed? If not, are the tenants entitled to the return of the deposits or double their amounts, less any amounts owed or already returned?

Are the parties entitled to recovery of their respective filing fees?

Background and Evidence

The parties agreed that:

- the tenancy ended on October 31, 2022, because the tenants gave notice;
- the tenants vacated early on October 22, 2022;
- the landlord received the tenants' forwarding address in writing on November 9, 2022;
- a $462.50 security deposit was paid at the start of the tenancy;
- a $462.50 pet damage deposit was paid at the start of the tenancy;
- neither deposit has been returned to the tenants;
- a move-in condition inspection and report were completed in compliance with the Act and regulation at the start of the tenancy;
- a copy of the move-in condition inspection report was provided to the tenants as required; and
- a move-out condition inspection was not completed with the tenants.

The parties disagreed about whether a date and time for the move-out condition inspection had been mutually agreed upon, and therefore whether it was the tenants or the landlord that breached the requirements set out under section 35 of the Act. The agents stated that the tenant A.M. had agreed via text message to complete the inspection after the carpets were cleaned on October 26, 2022. The tenant disagreed, stating that although the agent repeatedly proposed this, they were clear that this would not work, as they were vacating on October 22, 2022. They stated that the agent refused to conduct the inspection on or before October 22, 2022, as they were going on vacation and wanted to wait until after the carpets were cleaned on October 26, 2022.

The tenant also stated that the agent for the landlord did not provide them with two proper opportunities to schedule the move-out condition inspection and did not provide them with a second opportunity using the approved form as required. As a result, the tenant stated that no condition inspection was scheduled or completed with them and the landlord has therefore improperly withheld the deposits.

The agents stated that the tenants were required under the tenancy agreement to have the drapes cleaned and failed to do so. As a result, they sought recovery of the $147.00

paid for drape cleaning. An invoice was provided. The tenant stated that they were unaware that this was a requirement prior to vacating, but agreed at the hearing to pay this amount.

The agents stated that the tenants were also required under section 7 of their pet agreement, which forms part of the tenancy agreement, to have the rental unit inspected for fleas at the end of the tenancy, and if necessary, treated. The agents stated that as the tenants had a pet that can carry fleas, and did not do this at the end of the tenancy, the landlord was required to have it inspected at a cost of $210.00 They therefore sought recovery of this amount from the tenants. The tenant agreed that they did not have the rental unit inspected for fleas because they were not notified of the requirement to do so. They also stated that their pet did not have fleas and that terms 6 and 7 of the pet agreement are confusing and conflict with one another. As a result, they stated that they should not be responsible for this cost.

The agents stated that the tenants damaged the walls, which were left chipped and scratched. They also stated that shelving units left behind had to be removed, and the holes patched. Although the agents acknowledged that the tenants had patched some holes prior to vacating, they stated that some of these needed to be fixed before the unit could be painted. The agents stated that the painting was only required due to the damage, and they therefore sought recovery of $135.53 paid for paint and painting supplies, and $472.50 paid to have the unit painted. An invoice and photographs were submitted. The agents also stated that only the affected walls were painted, and that they are not charging the tenants for patching or for fixing the patches improperly completed by the tenants.

The tenant states that they only washed the walls and patched the holes as it was their understanding that the landlord is responsible for painting. They also stated that one of the agents had advised them to leave the shelving behind as the new occupant wanted them. As a result, they denied responsibility for the painting costs.

The agents stated that as the tenants did not return the laundry card provided to them, they had to pay the third party that provides and maintains the laundry machines to replace and program a card for the new tenant. They therefore sought $50.00 from the tenants, which they stated represents the actual amounts charged to the landlord by the company. The tenant denied responsibility for replacing the laundry card as they said it was left behind in the rental unit. The tenant stated that as it still had money on it, they had advised an agent for the landlord to pass it along to someone else after they left.

They stated that they therefore left it behind in the rental unit, locked the unit, and dropped the keys through the mail slot of the office.

Finally, the agents sought $2,705.59 for the replacement of carpet they state was damaged by the tenants' pet during the tenancy. The tenant argued that the carpets were already in poor repair at the start of the tenancy and that they did not have proper transitions between rooms, which contributed to the fraying. However, they did concede that their cat had caused some damage. The agents stated that the only area shown on the move-in condition inspection report as having issues related to the carpet is the bedroom, and that the carpet in that area was therefore replaced during the tenancy.

The tenant sought recovery of the deposits. Both parties also sought recovery of their respective filing fees.

Analysis

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party with the burden of proof must provide sufficient evidence over and above their testimony to establish their claim.

Is the landlord entitled to compensation for damage to the rental unit?

Section 7 of the Act states that if a landlord or tenant does not comply with the Act, the regulations or the tenancy agreement, the non-complying party must compensate the other for damage or loss that results. It also states that a party who claims compensation for damage or loss that results from the other's non-compliance must do whatever is reasonable to minimize the damage or loss.

Section 32(3) of the Act states that a tenant must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

Section 37(2)(a) of the Act states that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Section 67 of the Act states that without limiting the general authority in section 62(3), if damage or loss results from a party not complying with the Act, the regulations, or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Under sections 7 and 67 of the Act, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. In this case, to prove a

loss, the landlord must satisfy me of the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the tenants in violation of the Act, regulation, or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the landlord followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find that the tenants are responsible for the following costs:

- drape cleaning;
- a flea inspection;
- carpet replacement; and
- painting.

As the tenant agreed that the landlord is owed the $147.00 sought for drape cleaning, I award them recovery of that amount. I also award them recovery of the $210.00 sought for a flea inspection. Term 7 of the pet agreement states that if a pet resides in or enters the rental unit for any length of time, an inspection for the presence of fleas must be conducted before the tenant vacates by a professional pest control company and that the tenant is responsible for this cost. I find that the pet agreement was signed by the tenants on September 18, 2019, in relation to their cat, who is specifically named in the pet agreement, and that the pet agreement forms part of the tenancy agreement. As a result, I find that the tenants were required to comply with term 7 of the pet agreement and have the rental unit inspected for fleas at the end of the tenancy agreement.

Although the tenant stated that term 6 and 7 conflict, making the pet agreement confusing, I disagree. Term 6 states that if applicable, after the tenant vacates the premises, the landlord may deduct charges from the pet deposit for the cost of any professional cleaning or pest control measures that may be required in the landlord's reasonable opinion. I do not find that this term conflicts with term 7, and in fact, I think further makes clear the tenants' responsibility to pay for pest control measures required due to the presence of their pet in the rental unit, including, but not limited to, the cost of a flea inspection. I therefore award the landlord recovery of the $210.00 paid for the flea inspection.

I am satisfied based on the photographs and invoices submitted by the landlord, the move-in condition inspection report, and the affirmed testimony of the parties, that the tenants caused damage to the walls, necessitating their re-painting, and that their cat caused damage to the carpets, necessitating their replacement. At the hearing, the tenant even acknowledged that they had patched holes they had caused in the walls

during the tenancy, and that their cat had caused damage to the carpets. Although the tenant argued that the carpets were in poor repair at the start, and that they lacked proper transitions between rooms, the agents denied this at the hearing and there was no documentary evidence before me from the tenant to support this. The only notation on the move-in condition inspection report regarding the carpet states that the carpet in the bedroom needs to be replaced, and I am satisfied by the affirmed testimony provided by the agents at the hearing, which the tenant did not refute, that this was done during the tenancy. As a result, I am satisfied that the walls needed to be painted due to damage caused by the tenants, regardless of the tenants' efforts to patch these areas, and find it more likely than not that the deterioration of the carpet was due to damage from the tenants' cat.

Although I am satisfied that the landlord spent $608.03 to paint the damaged walls, they only sought $600.00 for these costs in their Application and no amendment to the Application seeking an increase to this amount was submitted to the Branch or served on the tenant. I therefore award the landlord only $600.00 for painting, the amount set out in the Application.

I am also satisfied that the landlord spent $2,705.59 to replace the carpet damaged by the tenant's cat. However, the landlord only sought $2,500.00 for these costs in their Application. No amendment to the Application seeking an increase to this amount was submitted to the Branch or served on the tenant. I therefore award the landlord only $2,500.00 for painting, the amount set out in the Application.

Pursuant to section 67 of the Act, I therefore grant the landlord recovery of $3,457.00.

Is the landlord entitled to compensation for monetary loss or other money owed?

Sections 7 and 67 of the Act have already been set out above. For the sake of brevity, I have therefore not set them out here.

Although the parties disputed whether the tenant had returned the laundry card, I am not satisfied that they did. Although texts between the tenant A.M. and an agent for the landlord prior to the end of the tenancy indicate that the tenant *may* choose to leave the laundry card behind in the rental unit, no documentary or other corroboratory evidence was before me for consideration from the tenants that this occurred. The agents also denied that this occurred and provided an invoice for its replacement in the amount of $50.00. I am therefore satisfied by the landlord on a balance of probabilities that the tenants failed to return the laundry card provided to them for use during the tenancy, resulting in a $50.00 loss to the landlord for its replacement. Pursuant to section 67 of the Act, I therefore grant the landlord recovery of the $50.00 paid for replacement of the laundry card.

Is the landlord entitled to retain the security deposit against the amounts owed? If not, are the tenants entitled to the return of the deposits or double their amounts, less any amounts owed or already returned?

The parties agreed that the tenancy ended in October of 2022, and that the landlord received the tenants' forwarding address in writing on November 9, 2022. The Application seeking retention of the deposits was subsequently filed on November 14, 2022, which is less than 14 days after the later of the end date for the tenancy and the date the landlord received the tenants' forwarding address.

Based on the documentary evidence I have accepted for consideration in this matter, and the testimony provided during the hearing, I am satisfied that the landlord failed to meet the obligations incumbent upon them under section 35 of the Act and Part 3 of the regulations, with regards to scheduling the move-out condition inspection. I am not satisfied by the text messages, or any other evidence before me, that the tenants ever agreed to complete the inspection on October 26, 2022, as argued by the agents. In fact, the text messages submitted satisfy me that the contrary is true, and that the tenant was clear that they were vacating on October 22,2022, and therefore October 26, 2022, would not work.

As I find there was no agreement on the date and time for the inspection, and the agents acknowledged at the hearing that a second opportunity was not offered using the required Notice of Final Opportunity to Schedule a Condition Inspection form (#RTB-22), I am satisfied that the landlord extinguished their right to claim against the deposits for damage to the rental unit pursuant to section 36(2) of the Act. As the landlord did not properly schedule the move-out condition inspection as required, I find it unnecessary to determine if the tenants also extinguished their rights to its return by failing to attend, as Residential Tenancy Policy Guideline (Guideline) #17 states that the party who extinguishes their right in relation to the deposits first, shall bear the loss.

I am satisfied that the landlord filed their Application seeking retention of the tenants' security deposit within the legislative timeframe set out in section 38(1) of the Act. When a landlord extinguishes their right under section 36(2) of the Act, they do so only in relation to damage to the rental unit. As the landlord claimed against the security deposit for more than physical damage to the rental unit, I therefore find that they had authority to withhold the $462.50 security deposit pending the outcome of the Application. However, the same cannot be said about the pet damage deposit. Section 1 of the Act defines a pet damage deposit as money paid, or value or a right given, by or on behalf of a tenant to a landlord that is to be held as security for damage to residential property caused by a pet. Guideline #31 states that although a landlord may

apply to an arbitrator to keep all or a portion of a pet damage deposit, they may only claim against it for damage caused by a pet. It also states that a landlord may lose their right to keep a pet damage deposit if the rules regarding tenancy condition inspections and reports are not followed.

As set out above, I find that the landlord extinguished their right to claim against the deposits for damage. Although a security deposit may still be retained by a landlord in these circumstances pending the outcome of an application for non-damage related claims, provided the application was filed on time, the same is not true of a pet damage deposit. If a landlord extinguishes their right to claim against the deposits for damage, they must return any pet damage deposit to the tenant within the timeline set out under section 38(1) of the Act, as a pet damage deposit may only be claimed against for damage.

As the landlord extinguished their right to claim against the deposits for damage, I find that they were required to return the pet damage deposit to the tenants, plus any applicable interest owed, by November 24, 2022. As they did not do so, I therefore find that the tenants are entitled to the return of double the initial pet damage deposit amount, plus any interest owed on the base deposit amount, pursuant to section 38(6) of the Act.

As the tenants paid a pet damage deposit in the amount of $462.50 in September of 2022, I find that the tenants are therefore entitled to $933.65:

- $925.00 for double the initial pet damage deposit amount; plus
- $8.65 in interest owed as of the date of this decision on the base pet damage deposit amount.

Despite the above, I find that the landlord rightfully withheld the security deposit and that section 38(6) of the Act does not apply to that amount. As the tenants paid a security deposit in the amount of $462.50 in September of 2022, I find that the landlord currently holds $471.15 in trust;

- $462.50 for the base security deposit amount; plus
- $8.65 in interest owed as of the date of this decision on the base security deposit amount.

As set out above, the landlord is owed $3,507.00 by the tenants, and the tenants are owed $933.65 by the landlord. Pursuant to Guideline #17, I have set these amounts off against each other. As a result, I find that the landlord is still owed $2,573.35 by the tenants. Pursuant to section 72(2)(b) of the Act, I grant the landlord authority to withhold

the $471.15 security deposit and interest currently held in trust in partial repayment of this amount. Pursuant to section 67 of the Act, I grant the landlord a monetary order in the amount of $2,102.20 still owed.

Are the parties entitled to recovery of their respective filing fees?

As the parties were both at least partially successful in their Applications against one another, I decline to grant either party recovery of their filing fee.

Conclusion

Pursuant to section 72(2)(b) of the Act, the landlord is permitted to withhold the $471.15 security deposit and interest currently held in trust, in partial repayment of the amount owed to them by the tenants.

Pursuant to section 67 of the Act, I grant the landlord a monetary order in the amount of **$2,102.20** for the remaining balance owed. The landlord is provided with this order in the above terms and the tenants must be served with this order as soon as possible. Should the tenants fail to comply with this order, it 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 Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: December 15, 2023

Residential Tenancy Branch