Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the "*Act*"). The matter was set for a conference call.

The Landlord's Application for Dispute Resolution was made on May 20, 2023. The Landlord applied for a monetary order for losses due to the tenancy, permission to retain the security and pet damage deposits and to recover their filing fee.

The Tenant's Application for Dispute Resolution was made on June 5, 2022. The Tenant applied for the return of their security deposit and the return of their filing fee.

Both the Tenant and the Landlord attended the hearing and were each affirmed to be truthful in their testimony. The Tenant and the Landlord 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 evidence and testimony 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 compensation for damages under the *Act*?
- Is the Landlord entitled to retain the security deposit and pet damage deposit?
- Is the Landlord entitled to recover the cost of the filing fee?
- Is the Tenant entitled to the return of their security and pet damage deposits?
- Is the Tenant entitled to recover the cost of the filing fee?

Background and Evidence

I have reviewed all evidence, including the testimony of the parties, but will refer only to what I find relevant for my decision.

The Tenancy agreement recorded that this tenancy began on October 1, 2022, as a one-year fixed-term tenancy that contained a vacate clause, which indicated that it was the Landlord's intent to have their son move into the rental unit at the end of this tenancy. Rent for this tenancy was set at the amount of $2,100.00 and was to be paid by the first day of each month, with a $1,050.00 security deposit and $1,050.00 pet damage deposit (the "deposits"). The Landlord submitted a copy of the tenancy agreement with a one-page addendum into documentary evidence.

Both the Landlord and Tenant testified that the Tenant did not have a pet at the beginning of this tenancy and that the Landlord had strictly prohibited the Tenant from having a pet in the rental unit during this tenancy, as detailed in point two of the addendum to the tenancy agreement.

The parties also agreed that this tenancy ended on April 30, 2023, and that the Tenant had provided the Landlord with their forwarding address as of May 20, 2023.

The Landlord testified that they did not conduct a written move-in inspection, nor did they complete a written move-out inspection for this tenancy.

The Landlord submitted on their application that they were claiming for $2,100.00 in damages to the rental unit. However, the Landlord submitted a monetary worksheet totalling $2,424.27 in claims, consisting of $160.00 for garbage removal, $711.95 for painting, $1,050.00 for pet hair removal, $259.88 for cleaning, $27.50 for wall brackets, $100.00 to replace a chest of drawers, $64.94 for kitchen knobs and $50.00 for a new kitchen pot.

The Landlord confirmed that they had not submitted an amendment to their application to increase the value of their claim and confirmed that they understood that they could only be awarded the maximum amount of $2,100.00 as declared on their application.

During the hearing, the Landlord was asked to present documentation to support the amounts claimed for in their application. The Landlord testified that they had not submitted receipts to support any of the amounts claimed for in their application.

The Landlord testified that the Tenant had damaged a pot during the tenancy and that it cost them $50.00 to replace the pot. The Landlord submitted a picture of the damaged post into documentary evidence.

The Tenant agreed that they had damaged a pot during the tenancy and agreed that they owed the Landlord $50.00 for a new pot.

Analysis

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

I have reviewed the testimony and documentary evidence provided by these parties, including the tenancy agreement for this tenancy, and I find that the Landlord and Tenant agreed that the Tenant did not have a pet when this tenancy started; however, the tenancy agreement recorded that the Landlord collected a $1,050.00 pet damage deposit when this began on September 22, 2022. Additionally, I noted that the Landlord included a term in the one-page addendum to this tenancy agreement that strictly prohibited the Tenant from having a pet in the rental unit during the tenancy, stating the following:

> "Addendum to agreement
> ……
> 2. Pets. The keeping of any pets is forbidden"
>
> [Reproduced as written]

Section 20 of the Act states the following:

> ***Landlord prohibitions respecting deposits***
>
> ***20*** *A landlord must not do any of the following:*
>
> *(a) require a security deposit at any time other than when the landlord and tenant enter into the tenancy agreement;*
>
> *(b) require or accept more than one security deposit in respect of a tenancy agreement;*
>
> *(c) require a pet damage deposit at any time other than*
>
> *(i) when the landlord and tenant enter into the tenancy agreement, or*

(ii) if the tenant acquires a pet during the term of a tenancy agreement, when the landlord agrees that the tenant may keep the pet on the residential property;

(d) require or accept more than one pet damage deposit in respect of a tenancy agreement, irrespective of the number of pets the landlord agrees the tenant may keep on the residential property;

(e) require, or include as a term of a tenancy agreement, that the landlord automatically keeps all or part of the security deposit or the pet damage deposit at the end of the tenancy agreement.

The Residential Tenancy Branch Policy Guideline #31 Pet Damage Deposits provides further guidance, stating the following:

"When is the deposit given?

A landlord may require a pet damage deposit either when the tenant has a pet at the start of a tenancy or later, at the time a tenant acquires a pet and the landlord's required agreement is obtained.

Sometimes a tenancy agreement might already provide that a tenant will pay a pet damage deposit on acquiring a pet, in which case, the deposit would be paid then.

If a tenancy agreement is silent about pets, then the landlord cannot require a pet damage deposit.

A landlord cannot require a pet damage deposit for a guide animal under the Guide Animal Act."

[Reproduced as written]

After reviewing the Act and policy guideline #31, I find that a pet damage deposit may only be required and collected by a landlord when a tenant **has a pet**, and the Landlord **has agreed** that the Tenant may keep that pet in the rental unit.

As this Landlord clearly prohibited pets in the rental unit, as stated in the addendum to this tenancy agreement, and these parties agreed that the Tenant did not have a pet at

the beginning of this tenancy, I find that the Landlord was in breach of section 20 of the Act when they required and collected a pet damage deposit for this tenancy.

Additionally, 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 Regulation (the “Regulations”) sets out the form for that inspection, 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.*

Pursuant to section 23 of the Act, I find that the Landlord breached section 23 of the *Act* when they did not conduct a written move-in inspection with the Tenant at the beginning of this tenancy as required. 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(2) of the *Act*, I find that the Landlord extinguished their right to make a claim against the deposits for damage to the residential property for this tenancy.

Furthermore, I also accept the testimony of both parties that the Landlord did not conduct a written move-out inspection at the end of this tenancy. Section 35 of the *Act* states the following:

> ***Condition inspection: end of tenancy***
>
> ***35*** *(1) The landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit*
>
> *(a) on or after the day the tenant ceases to occupy the rental unit, or*
>
> *(b) on another mutually agreed day.*
>
> *(2) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.*
>
> *(3) The landlord must complete a condition inspection report in accordance with the regulations.*
>
> *(4) 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.*

I find that the Landlord breached section 35 of the *Act* when they did not conduct a written move-out inspection with the Tenant at the end of this tenancy as required.

Section 36(2) of the *Act* outlines the consequences for a landlord when the inspection requirements are not met.

> ***Consequences for tenant and landlord if report requirements not met***
>
> ***36*** *(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 36(2) of the *Act*, I find that the Landlord had again extinguished their right to make a claim against the deposits for damage to the residential property for this tenancy.

Section 38 of the *Act* sets the requirements on how the security and pet damage deposits are 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.*
>
> *(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].
(3) A landlord may retain from a security deposit or a pet damage deposit an amount that
(a) the director has previously ordered the tenant to pay to the landlord, and
(b) at the end of the tenancy remains unpaid.
(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,
(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or
(b) after the end of the tenancy, the director orders that the landlord may retain the amount.
(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].

I accept the agreed-upon testimony of these parties, and I find that this tenancy ended on April 30, 2023. In addition, I also accept the testimony of the Landlord that they had received the Tenant's forwarding address on May 20, 2023. Accordingly, I find that the Landlord had until June 5, 2023, to comply with sections 38(1) and 38(5) of the *Act* by repaying the deposits for this tenancy in full to the Tenant, as the Landlord had extinguished their right to claim against either of these deposits for damages caused during this tenancy.

However, in this case, the Landlord did not return the deposits, as required, but instead made a claim against the deposits for damages on May 20, 2023, even though they had extinguished their right to make this claim when they did not complete the move-in or move-out inspections as required by the *Act*.

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 value of the deposits.

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 value of the deposits for this tenancy has doubled to the amount of $4,200.00 due to the Landlord's breaches of the Act.

As for the Landlord's claim for a monetary order for damages. 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 to prove 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.

As stated above, a party making a monetary claim must provide sufficient evidence to prove the dollar amounts that they are claiming. I have carefully reviewed the Landlord's documentary evidence submitted to these proceedings, and I find that the Landlord has failed to provide any evidence to support the amounts that they have claimed for in their application.

As there is no evidence before me to support the values of the Landlord claims for $160.00 for garbage removal, $711.95 for painting, $1,050.00 for pet hair removal, $259.88 for cleaning, $27.50 new wall brackets, $100.00 to replace a chest of drawers, and $64.94 for kitchen knobs, I must dismiss these claimed amounts in their entirety and without leave to reapply.

As the Tenant agreed, during these proceedings, that they owed the Landlord $50.00 for a damaged pot, I find it appropriate to award the Landlord the agreed amount of $50.00.

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenant was successful in their application to recover their security and pet damage deposits, I find that the Tenant is entitled to recover the $100.00 filing fee paid for their application.

Due to the numerous breaches of the Act by the Landlord I decline to award the Landlord the recovery their filing fee paid for their application.

Overall, I award the Tenant a monetary order in the amount of $4,250.00, consisting of $4,200.00 in the return of the doubled value of the security and pet damage deposits for this tenancy, $100.00 in the recovery of the Tenant's filing fee paid for their application to these proceedings, less $50.00 in the amount awarded to the Landlord in this decision.

Conclusion

I find that the Landlord breached section 20 of the *Act* when they collected a pet damage deposit for a tenancy agreement that prohibited pets.

I find that the Landlord breached section 23 of the *Act* when they failed to conduct the written move-in inspection with the Tenant as required for this tenancy.

I find that the Landlord breached section 35 of the *Act* when they failed to conduct the written move-out inspection with the Tenant as required for this tenancy.

I find that the Landlord breached section 38 of the *Act* when they failed to repay the security and pet damage deposits for this tenancy to the Tenant, as required after they extinguished their right to make a claim against the deposits for this tenancy.

I find that the value of the security deposits paid for this tenancy has doubled in value due to the Landlord's breach of sections 23, 35 and 38 of the *Act*.

I grant the Landlord permission to retain $50.00 from the doubled value of the deposits for this tenancy in full satisfaction of the amounts awarded to them in this decision.

I grant the Tenant a **Monetary Order** in the amount of **$4,250.00** for the return of their remaining doubled value of the security and pet damage deposits and the recovery of their filing fee pursuant to sections 38 and 72 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: January 5, 2024

Residential Tenancy Branch