Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Introduction

This hearing dealt with the adjourned 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 September 8, 2023. The Landlord applied for a monetary order for losses due to the tenancy, permission to retain the security deposit and to recover their filing fee.

The Tenant's Application for Dispute Resolution was made on September 21, 2023. The Tenant applied a monetary order for the recovery of their security deposit.

The Landlord and their son attended the conference call hearing; however, the Tenant did not. As the Tenant is also an applicant in this hearing, I find that the Tenant had been duly notified of the Notice of Hearing in accordance with the *Act*.

The Landlord and their son were affirmed to be truthful in their testimony and 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 the 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.

Service of Evidence

- Based on the submissions before me, I find that the Landlord's evidence was served to the Tenant in accordance with section 88 of the Act.
- Based on the submissions before me, I find that the Tenant's evidence was served to the Landlord in accordance with section 88 of the Act.

Issues to be Decided

- Is the Landlord entitled to a Monetary Order for money owed or compensation for damage or loss under the Act, regulations, or tenancy agreement?
- Is the Landlords entitled to retain all or a portion of the Tenant's security deposit in partial satisfaction of the monetary award requested?
- If not, is the Tenant entitled to the recovery of their security deposit?
- Is the Landlord entitled to recover the filing fee for this application from the Tenants?

Background and Evidence

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

The Tenancy agreement recorded that this tenancy began on July 1, 2020, that rent for this tenancy was set at the amount of $1,000.00 and was to be paid by the first day of each month, with a $500.00 security deposit. The Landlord submitted a copy of the tenancy agreement with a one-page addendum into documentary evidence.

The Landlord testified that no written move-in or move-out inspection had been completed for this tenancy.

The Landlord submitted that this tenancy ended on August 31, 2023, and that the rent had been $1,030.00 per month, at the end of this tenancy.

The Landlord testified that the Tenant returned the rental unit to them in an unclean state, and that they are requesting $240.00 in labour costs to clean the rental unit, at the rate of $30.00 per hour for eight hours. The Landlord submitted 17 pictures of the rental unit into documentary evidence.

It was noted during the hearing that the Landlord's invoice totalled $445.07, but that the Landlord had only indicated a claim for $385.07 in losses, plus the $100.00 filing fee on their application for these proceedings. The Landlord was advised that the maximum award they could receive for their application for a monetary order for damages and losses would be $385.07, as indicated on their application to these proceedings.

The Landlord testified that the Tenant returned the rental unit to them in a damaged state, as the walls required patching, sanding, and repainting at the end of this tenancy.

The Landlord submitted that they are requesting $120.00 in labour costs to patch and paint the walls of the rental unit at the end of this tenancy, at the rate of $30.00 per hour for four hours.

The Landlord testified that the Tenant left a lot of garbage and personal items abandoned in the rental unit at the end of this tenancy and that it took them two hours to pack up, remove all of these items and take them to the dump. The Landlord submitted that they are requesting $60.00 in labour costs to remove the garbage and personal items from the rental unit at the end of this tenancy, at the rate of $30.00 per hour for two hours. Plus, the recovery of the dump fee of $15.00, and $10.07 in mileage for travel to and from the dump. The Landlord submitted an invoice for the dumping fee into documentary evidence.

Analysis

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

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 consequences 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.

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 undisputed submission of the Landlord, and I find that this tenancy ended on August 31, 2023, and that the Landlord had received the Tenant's forwarding address on August 30, 2023. Accordingly, I find that the Landlord had until September

15, 2023, to comply with sections 38(1) and 38(5) of the *Act* by repaying the deposit 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 and losses on September 8, 2023, even though they had extinguished their right to make this claim when they did not complete the move-in 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 deposit for this tenancy has doubled I value to the amount of $1,000.00 due to the Landlord's breach of the Act.

As for the Landlord's claim for a monetary order for damages for 385.07, consisting of $240.00 for eight hours of cleaning, $120.00 for patching, sanding, and repainting walls, $60.00 for labour to remove garbage and personal items, $15.00 in the recovery of a dump fee, and $10.07 in mileage. 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.

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 there is no inspection report for this tenancy, I must rely upon the remaining documentary evidence in my determination of the Landlord's claim.

First, the Landlord is claiming for $325.07, in costs to clean the rental unit at the end of tenancy, consisting of; $300.00 labour costs, $15.00 dump fee and $10.07 in mileage. Section 37(2) of the Act states the following regarding a tenant's responsibility for cleaning at the end of a tenancy:

> ***Leaving the rental unit at the end of a tenancy***
>
> *37 (1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.*
>
> *(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.*

Additionally, the Residential Tenancy Policy Guideline #1 Landlord & Tenant – Responsibility for Rental Premises goes on to state the following:

1. "… The tenant must maintain "reasonable health, cleanliness and sanitary standards" throughout the rental unit or site, and property or park. The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard. The tenant is also generally required to pay for repairs where damages are caused,

> either deliberately or as a result of neglect, by the tenant or his or her guest. **The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises), or for cleaning to bring the premises to a higher standard than that set out in the Residential Tenancy Act** or Manufactured Home Park Tenancy Act (the Legislation)."

I have reviewed the photos submitted into evidence by the Landlord, and I find that these photos show that the Tenant breached section 37 of the *Act* when they returned the rental unit to the Landlord in an uncleaned state at the end of this tenancy.

I also find that the Landlord has provided sufficient evidence to show that they, suffered a loss due to the Tenant's breach and that they took sufficient action to minimize the value of that loss. The Landlord has also provided sufficient evidence to prove the value of their claims for; $300.00 in the recovery of their labour costs and $15.00 in the recovery of a dump fee. Therefore, I award the Landlord their requested amounts for these items of $315.00.

However, I find that there is no evidence before me to prove the value of the $10.07 in mileage, that the Landlord has claimed for in this application. Therefore, I dismiss the Landlord claim for $10.07 in mileage.

The Landlord has also claimed for $120.00, in personal labour costs for patching, sanding, and repainting walls. I have reviewed the pictures submitted into evidence by the landlord, on this point of their claim, and I find that there is insufficient evidence before me to show that the Tenant had damaged the walls during this tenancy. Therefore, I dismiss this portion of the Landlord's claim in its entirety.

Is the Landlord entitled to recover the filing fee for this application from the Tenants?

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. Although I had initially indicated to the Landlord, during the hearing, that I would award the recovery of their filing fee, I find that on further consideration, and due to the Landlord's breach of sections 23 and 38 of the Act, I decline to award the Landlord the recovery their filing fee paid for this application.

Overall, I award the Tenant a monetary order in the amount of $685.00, consisting of $1,000.00 in the return of the doubled value of the security deposit for this tenancy, less $315.00 in the amount awarded to the Landlord in this decision.

Conclusion

I find that the Landlord breached section 23 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 deposit 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 and 38 of the *Act*.

I grant the Landlord permission to retain $315.00 from the doubled value of the deposit 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 **$685.00** for the return of their remaining doubled value of the security deposit pursuant to sections 38 and 67 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: February 6, 2024

Residential Tenancy Branch