Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BORNO INVESTMENTS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes Tenant: MNDC MNSD
Landlord: MND MNSD FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties. The participatory hearing was held, via teleconference. Both parties applied for multiple remedies under the *Residential Tenancy Act* (the "*Act*").

The Landlord attended the hearing and provided affirmed testimony. The Tenants did not attend the hearing. The Landlord stated that they served their Notice of Dispute Resolution Proceeding and evidence package on January 19, 2024. Proof of mailing was provided. I find this was sufficiently served. However, the Landlord also submitted an amendment with additional evidence. The Landlord sent this amendment by registered mail on April 25, 2024, with proof of mailing. However, this package is deemed served 5 days after it was sent, which means it is served late, as it had to be received by the RTB and the other party no later than 14 days before the hearing. As such, the amendment is not allowed, and the claim is limited to the items listed on the first worksheet. The Landlord is granted leave to reapply for items contained within the late amendment.

Tenant's application

Since the Tenants were not present at the hearing to support their own application, but the Landlords were, I hereby dismiss it in full, without leave to reapply.

Issue(s) to be Decided

- Is the Landlord entitled to a monetary order for damage to the unit?

- Is the Landlord authorized to retain all or a portion of the Tenant's security and pet deposit in partial satisfaction of the monetary order requested pursuant to section 38?

Background and Evidence

The Landlord indicated that monthly rent was $5,610.00, due on the 1st of the month. They still hold a security deposit in the amount of $727.50, but have returned the rest. The Landlord stated the tenancy ended on January 2, 2024, the day the move-out inspection occurred and when the keys were returned. The Landlord stated that the Tenant never gave her forwarding address, in writing, and only ever mentioned it to her verbally.

The Landlord is seeking the following items:

1) $577.50 – ceiling painting in bedroom

The Landlord explained that the rental unit was brand new at the start of the tenancy, and no damage was noted, as per the move-in condition inspection. The Landlord provided a couple of photos of the ceiling damage in one of the bedrooms, which shows several large holes and marks that required repainting. This invoice was provided.

2) $150.00 – Move-out fee

The Landlord stated that this is the fee the strata charges for every move-out in the building, and the Tenants failed to pay this fee when they moved out. As such, it is an amount the Landlord has been assessed by the strata, and an amount which they seek to recover in this hearing.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act.* Accordingly, an applicant must prove the following:

The burden of proof is on the applicant to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act,* regulation, or tenancy agreement on the part of the other party. Once that has been established, the applicant must then

provide evidence that can verify the value of the loss or damage. Finally it must be proven that the applicant did everything possible to minimize the damage or losses that were incurred.

Section 37 of the *Act* states:

> *(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…*

The meaning of "reasonable wear and tear" is set out in Policy Guideline 1 as follows:

> *Reasonable wear and tear refers to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. 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. An arbitrator may also determine whether or not the condition of premises meets reasonable health, cleanliness and sanitary standards, which are not necessarily the standards of the arbitrator, the landlord or the tenant.*

I also note the *Residential Policy Guideline #40 - Useful Life of Building Element*s, to assist with determining what residual value remains for damaged building elements, and what is reasonable for compensation amounts. This guideline states as follows:

> *This guideline is a general guide for determining the useful life of building elements for determining damages which the director has the authority to determine under the Residential Tenancy Act and the Manufactured Home Park Tenancy Act . Useful life is the expected lifetime, or the acceptable period of use, of an item under normal circumstances.*
>
> *When applied to damage(s) caused by a tenant, the tenant's guests or the tenant's pets, the arbitrator may consider the useful life of a building element and the age of the item. Landlords should provide evidence showing the age of the item at the time of replacement and the cost of the replacement building item. That evidence may be in the form of work orders, invoices or other documentary evidence.*
>
> *If the arbitrator finds that a landlord makes repairs to a rental unit due to damage caused by the tenant, the arbitrator may consider the age of the item at the time*

of replacement and the useful life of the item when calculating the tenant's responsibility for the cost or replacement.

In the above policy guideline, there are specific time periods for each type of item. The useful life expectancy of listed items is intended as a guideline, and is not prescriptive. When damage has occurred that stems from abnormal use, or use that goes beyond reasonable wear and tear, Policy Guideline #40 may not be applicable.

Based on all of the above, the evidence (condition inspection report, photos and invoices) and the testimony provided at the hearing, I find the following:

1) $577.50 – ceiling painting in bedroom

I find the evidence demonstrates that this damage goes beyond reasonable wear and tear, which is why I have not applied policy guideline #40. I find the damage is caused by the Tenants, during their tenancy, and they ought to be liable for this item, in full. The damage is corroborated by photos taken at the end of the tenancy, and an invoice.

2) $150.00 – Move-out fee

I accept the undisputed testimony and evidence that the Tenants failed to pay this amount at move-out, and the strata charged this amount to the Landlord. I find the Tenant is liable for this item, in full.

Extinguishment and the Security Deposit

Under sections 24 and 36 of the *Act*, landlords and tenants can extinguish their rights in relation to the security deposit if they do not comply with the *Act* and *Residential Tenancy Regulation* (the "*Regulations*"). Further, section 38 of the *Act* sets out specific requirements for dealing with a security deposit at the end of a tenancy.

Sections 23 and 35 of the Act states that a 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, and at the end of the tenancy before a new tenant begins to occupy the rental unit. 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.

In this case, it appears both parties participated in the move-in and move-out inspections. Overall, I find there is no evidence that the Landlord extinguished their right to claim against the deposit by not complying with the Act.

Although the Tenant provided her forwarding address, verbally, I find this does not comply with the Act, which specifies this must be done in writing, in order to trigger section 38(1) of the Act. Given this, I find the Tenants are not entitled to recover double the security deposit. The Landlord returned the bulk of the deposit, but still holds $727.50.

Further, section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. As the Landlord was successful with the application, I order the Tenants to repay the $100.00 fee that the Landlord paid to make application for dispute resolution.

Also, pursuant to sections 72 of the *Act*, I authorize that the security deposit, currently held by the Landlord, be kept and used to offset the amount owed by the Tenant. In summary, I grant the monetary order based on the following:

Claim	**Amount**
Total of items above	$727.50
Filing fee	$100.00
Less: Security Deposit currently held by Landlord	($727.50)
TOTAL:	**$100.00**

The Landlord may retain the deposits they hold, and will be given a monetary order for $100.00 which reflects the cost of the filing fee paid.

Conclusion

The Landlord is granted a monetary order pursuant to Section 67 in the amount of **$100.00**. This order must be served on the Tenant. If the Tenant fails to comply with this order the Landlord may file the order in the Provincial Court (Small Claims) and be 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: May 24, 2024

Residential Tenancy Branch