Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

A matter regarding Kassa Solutions Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S, LRSD, FFL, MNSDS-DR, FFT

Introduction

This hearing dealt with the Applications for Dispute Resolution filed under the *Residential Tenancy Act* (the "Act") by the Landlord on February 15, 2024, and the Tenant on February 16, 2024.

The Landlord applied for:

- a Monetary Order for damage to the rental unit or common areas under sections 32 and 67 of the Act
- authorization to retain all or a portion of the Tenant's security deposit in partial satisfaction of the Monetary Order requested under section 38 of the Act
- authorization to recover the filing fee for this application from the Tenant under section 72 of the Act

The Tenant applied for:

- a Monetary Order for the return of all or a portion of their security deposit and/or pet damage deposit under sections 38 and 67 of the Act
- authorization to recover the filing fee for this application from the Tenant under section 72 of the Act

Issues to be Decided

1. Is the Landlord entitled to a Monetary Order for damage to the rental unit or common areas under sections 32 and 67 of the Act?
2. Is the Landlord entitled to authorization to retain all or a portion of the Tenant's security deposit in partial satisfaction of the Monetary Order requested under section 38 of the Act? If not, is the Tenant entitled to a Monetary Order for the return of all or a portion of their security deposit under sections 38 and 67 of the Act?

3. Is the Landlord entitled to authorization to recover the filing fee for this application from the Tenant under section 72 of the Act?
4. Is the Tenant entitled to authorization to recover the filing fee for this application from the Landlord under section 72 of the Act?

Background and Evidence

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

Evidence and testimony provided by both parties indicates that the tenancy began on May 19, 2023, with a monthly rent of $8000.00 due on the first of each month. A security deposit of $4000.00 was paid. The Landlord agreed to allow the Tenant to sublet the property. The tenancy ended on January 14, 2024.

According to Landlord representative R.Q.., the Landlords are seeking $400.00 for unpaid move-out fees incurred in January 2024, $2,853.76 to replace four damaged chairs, $5000.00 to replace a damaged sofa, $157.00 to replace the balacony door weather stripping and $280.35 to replace a fridge water filter and door stopper. Copies of a strata invoice for June, July and August 2023, chair and sofa original 2020 purchase receipts and two invoices for weather stripping and water filter and door stop replacement services were submitted as evidence.

Landlord representative R.Q. testified that she conducted a move-in inspection with the Tenant on May 19, 2023, and provided him with a copy of the written report. She further testified that a move-out inspection was conducted on February 7, 2024, but that the Tenant did not attend as he had indicated that he was ill on the Landlord proposed date. She conformed that no second opportunity was offered to the Tenant. Copies of pictures and the move-in, move-out report, which included before and after pictures of the unit, was submitted as proof of the alleged damage.

R.Q. testified that the Landlord did not receive the Tenant’s forwarding address until February 15, 2024, and alleged that the evidence provided by the Tenant that shows that an email was sent to the Landlord on January 18, 2024, with the Tenant’s forwarding address was fabricated by the Tenant. She argued that the format in the “to:” section of the email does not show a proper address as is the case in all of the Tenant’s correspondence with the Landlord. A copy of the alleged fabricated email and the email forwarding it to the Landlord on February 15, 2024, was submitted as evidence.

The Tenant testified that he did not fabricate the January 18, 2024, forwarding address email to the Landlord and that it is standard policy for him to send an email with his forwarding address immediately after the end of a tenancy and that his colleague R. had sent one out accordingly and that when he hadn't received it by February 15, 2024, he asked R. to follow up with the Landlord as to it's whereabouts.

The Tenant confirmed that he had been present at the move-in inspection and received a copy of the report and that he was not present at the move-out inspection and that he received a copy but was not given two opportunities to attend.

Tenant counsel I.D. argued that the as the Landlord failed to offer the Tenant two opportunities to conduct a move-out inspection the Landlord's application should be dismissed. He further argued that the Landlord's inspection reports do not comply with regulation 20(1)(k) of the Residential Tenancy Regulations and therefore the document is deficient.

Tenant counsel I.D. argued that the Tenant could not book the elevator as the Tenant must be authorized to speak to the strata and the Landlord did not complete the paperwork.

He stated that the before pictures submitted by the Landlord show that the sofa was already damaged before the tenancy began and that preexisting scuffs on the floors were also present. He also stated that the condition of the chairs could not be clearly seen in the pre-move in photos and that they appear to be made to look distressed. He argued that there is therefore no way to conclude the condition of the chairs at the time the tenancy. He further argued that the couch, chairs, weather stripping and door stopper are not referenced anywhere on the move-out report.

Tenant counsel I.D. stated that the Tenant sent the forward address to the email address he routinely used to communicate with the Landlord and argued that in any case section 71(2) of the Act would allow for a finding that the forwarding address was sufficiently served for the purposes of the Act.

Analysis

Is the Landlord entitled to a Monetary Order for damage to the rental unit or common areas under sections 32 and 67 of the Act?

Section 35 of the Act establishes that, at the end of the tenancy, a landlord must inspect the condition of the rental unit with the tenant, the landlord must complete a condition inspection report with both the landlord and the tenant signing the condition report.

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.

To be awarded compensation for a breach of the Act, the landlord must prove:

- the tenant has failed to comply with the Act, regulation or tenancy agreement
- loss or damage has resulted from this failure to comply
- the amount of or value of the damage or loss
- the landlord acted reasonably to minimize that damage or loss

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find that the Landlord has not established a claim for damage to the rental unit or common areas and loss resulting from the tenancy.

I find that the Landlord failed to complete a move-in and move-out report that is in compliance with the regulation 20(1)(g) and 20(1)(k) and that, even if the reports were in compliance, the Landlord failed to provide the Tenant with two opportunities to attend the move-out and therefore I am unable to determine the condition of the unit and the furniture at the start of the tenancy versus at the condition of the unit and the furniture at the end of the tenancy.

I find that water filters and weather-stripping replacement are routine maintenance items and therefore constitute normal wear and tear.

I find that the Landlord's claim that the Landlord incurred strata fines due to the Tenant's failure to book the elevator for his January 2024 move out is not supported by the evidence submitted which indicates that the fees were incurred during June, July and August 2023 and therefore the Landlord has failed to prove that the fines were incurred as a result of the Tenant's actions in January 2024.

I find, therefore, that the Landlord is not entitled to a monetary award for damage to the rental unit or common areas under sections 32 and 67 of the Act and hereby dismiss the claim without leave to reapply.

Is the Landlord entitled to authorization to retain all or a portion of the Tenant's security deposit in partial satisfaction of the Monetary Order requested under section 38 of the Act? If not, is the Tenant entitled to all or a portion of their security deposit?

At the commencement of the tenancy, the Landlord did not pursue a condition inspection of the suite with the Tenant, that complies with the regulations, as required by section 23 of the Act. (reproduced below)

23 Condition inspection: start of tenancy or new pet

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.

Pursuant to section 24, the Landlord's right to claim against the security deposit **is extinguished** if the Landlord does not comply with section 23 of the Act.

Section 38 of the *Act* addresses the return of security deposits.

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.
…
(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.

Section 38(5) and (6) is further clarified in Residential Tenancy Branch Policy Guideline PG-17 which says, in part C-3:

Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit if the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act;

I find the Landlord did not complete a move-in inspection report which is in compliance with section 23 of the Act and the Landlord's right to claim against it was extinguished pursuant to sections 23 and 24. I further find that even if the move-in inspection report was in compliance with the Act, by failing to offer the Tenant two opportunities to conduct a move-out inspection the Landlord's right to claim against the security deposit would still be extinguished. I also find that the Landlord did not return the Tenant's security deposit within 15 days of being served with the Tenant's forwarding address at the end of the tenancy, contrary to section 38 of the *Act*.

The wording of section 38(6) is clear and unequivocal. The Tenant has not waived the doubling of the security deposit and is therefore entitled to **$8,101.29,** including interest, in compensation. Pursuant to section 67 of the Act, I award the Tenant a monetary order for this amount.

Is the Landlord entitled to authorization to recover the filing fee for this application from the Tenant under section 72 of the Act?

As the Landlords were not successful in this application, the Landlord's application for authorization to recover the filing fee for this application from the Tenant under section 72 of the Act is dismissed, without leave to reapply.

Is the Tenant entitled to authorization to recover the filing fee for this application from the Landlord under section 72 of the Act?

As the Tenant was successful in this application, the Tenant's application for authorization to recover the filing fee for this application from the Landlord under section 72 of the Act is granted.

Conclusion

I grant the Tenants a Monetary Order in the amount of **$8,201.29** under the following terms:

Monetary Issue	Granted Amount

a Monetary Order for the Tenants for the return of double their security deposit from the Landlords under section 38 of the Act	$8,101.29
authorization to recover the filing fee for this application from the Tenants under section 72 of the Act	$100.00
Total Amount	**$8,201.29**

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.

The Landlord's application for a Monetary Order for damage to the rental unit or common areas under sections 32 and 67 of the Act is dismissed without leave to reapply.

The Landlords' application for authorization to retain all or a portion of the Tenant's security deposit in partial satisfaction of the Monetary Order requested under section 38 of the Act is dismissed without leave to reapply.

The Landlords' application for authorization to recover the filing fee for this application from the Tenant under section 72 of the Act is dismissed, without leave to reapply.

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: June 26, 2024

Residential Tenancy Branch