Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for damage, pursuant to section 67;
- authorization to retain the tenants' security deposit, pursuant to section 38; and
- authorization to recover the filing fee from the tenants, pursuant to section 72.

Tenant P.L. and the landlord attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The tenant's advocate (the "advocate") also attended.

Both parties agree that the landlord served the tenants with his application for dispute resolution via registered mail. I find that the tenants were served in accordance with section 89 of the *Act.*

Issues to be Decided

1. Is the landlord entitled to a Monetary Order for damage, pursuant to section 67 of the *Act*?
2. Is the landlord entitled to retain the tenants' security deposit, pursuant to section 38 of the *Act*?
3. Is the landlord entitled to recover the filing fee from the tenants, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on July 1, 2013 and ended on February 29, 2020. Monthly rent in the amount of $780.00 was payable on the first day of each month. A security deposit of $490.00 was paid by the tenants to the landlord. The landlord purchased the subject rental property from the previous landlord and took possession of the subject rental property in August or September of 2015.

Both parties agree that a move in condition inspection report was not completed when the tenants moved in or when the landlord took possession of the subject rental property. Both parties agree that the landlord did not ask the tenants to complete a condition inspection report when he took possession of the subject rental property. Both parties agree that the landlord did not ask the tenants to complete a move out condition inspection report and that a move out condition inspection report was not completed.

Both parties agree that they had a previous arbitration which occurred on March 16, 2020 and a Decision dated April 1, 2020 resulted from that arbitration. The April 1, 2020 decision was entered into evidence. The file number for the previous decision is located on the cover page of this decision.

The landlord testified that the following damages arose from this tenancy:

Item	**Amount**
Replace kitchen closet door	$94.50
Replace kitchen faucet	$99.30 plus tax ($111.22)
Clean suite and carpets	$400.00
Haul garbage	$75.00
Total:	**$680.72**

Kitchen closet door

The landlord testified that the closet door was working when he took possession of the subject rental property and was broken when the tenants moved out and had to be

replaced. The landlord entered into evidence a receipt in the amount of $94.50 and a picture of the door off the hinges. The landlord testified that the door was approximately 10 years old, the same age as the house.

The advocate submitted that the damage to the door was caused by reasonable wear and tear and that prior to the end of the tenancy, the tenants informed the landlord about the closet door, but the landlord refused to repair it.

The landlord denied that the tenants informed him of the broken door.

Kitchen faucet

The landlord testified that the kitchen faucet was in working order when he took possession of the subject rental property but was broken when the tenants moved out and had to be replaced. The landlord entered into evidence a receipt in the amount of $99.30 plus 12% tax and a picture of the old faucet on the counter and the new faucet installed. The landlord testified that the faucet was approximately 10 years old, the same age as the house.

The advocate submitted that the damage to the faucet was caused by reasonable wear and tear and that prior to the end of the tenancy, the tenants informed the landlord about the faucet, but the landlord refused to repair it.

The landlord denied that the tenants informed him of the broken faucet.

Cleaning and dump fees

The landlord testified that the tenants did not clean the subject rental property when they moved out and left a large volume of garbage at the subject rental property. The landlord testified that he hired cleaners to clean the subject rental property which cost $400.00. A receipt for same was entered into evidence.

The landlord testified that he took three trips to the dump to haul away the tenants' garbage which cost $25.00 per trip for a total of $75.00. Receipts for same were entered into evidence. The landlord entered into evidence photographs of piles of garbage on the street and next to the property.

The advocate quoted the following sections from the April 1, 2020 decision:

> In the hearing, the Advocate provided the Tenants' forwarding address, which the Landlord had a chance to record. I told the Landlord that he has now been served with the Tenants' forwarding address, in terms of his responsibilities under section 38 of the Act, as of the date of the hearing, March 16, 2020….
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> Based on the evidence before me overall on this matter, I find that the mice infestation is a matter that fits within section 32(1) of the Act. I find that the Landlord is responsible for ensuring that the residential property complies with the health, safety and housing standards required by law, and therefore, that the Landlord was responsible for dealing this problem, himself, rather than delegating it to the Tenant, P.L., who had expressed her fear of the mice.
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> The Landlord focused on the amount of garbage that was at the curb on garbage day, February 25, 2020. However, the Parties agreed that the tenants in both units of the residential property moved out at the end of February 2020. I find it reasonable that there would be extra garbage left behind, due to the tenants' moving out at that time. I find that this does not detract from the Tenants' position on who is responsible for dealing with the mouse infestation….
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> I find that the Tenants downplayed the significance of this ongoing problem and minimized their losses by claiming only 30% of the rent back as compensation for this problem. I find that the Landlord took no steps to assist the Tenants in remedying this problem, for which he was responsible, according to sections 26 and 32 of the Act, and PGs #1 and #6. I, therefore, award the Tenants with 30% of their rent for the months of October 2019 through and including February 2020, in the amount of $1,170.00 from the Landlord pursuant to section 67 of the Act.

The advocate submitted that the tenant was not able to clean the subject rental property after she moved out due to the risk to her own health as exposure to mouse excrement can carry harmful viruses such as the hanta virus. The tenant's advocate submitted that the tenant should not bear the cost of cleaning up the mouse infestation which was the landlord's responsibility to remediate.

The advocate submitted that while some of the garbage left at the subject rental property was the tenants', most of it belonged to the other neighbour who moved out at the same time. The advocate submitted that the items left behind by the tenants were

contaminated with mouse droppings and were not safe to move to the tenants' new accommodations.

Both parties agreed that the tenant and the tenant's neighbour moved out at the end of February. The landlord testified that he believed that most of the garbage was the tenants'. No evidence to support this belief was entered into evidence.

Analysis

Section 67 of the *Act* states:

> Without limiting the general authority in section 62 (3) *[director's authority respecting dispute resolution proceedings]*, if damage or loss results from a party not complying with this 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.

Policy Guideline 16 states that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To be successful in a monetary claim, the tenant must establish all four of the following points:

1. a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
2. loss or damage has resulted from this non-compliance;
3. the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
4. the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Failure to prove one of the above points means the claim fails.

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails.

Kitchen closet door and faucet

Sections 23, 24, 35 and 36 of the *Act* establish the rules whereby joint move-in and joint move-out condition inspections are to be conducted and reports of inspections are to be issued and provided to the tenants. When disputes arise as to the changes in condition between the start and end of a tenancy, joint move-in condition inspections and inspection reports are very helpful. These requirements are designed to clarify disputes regarding the condition of rental units at the beginning and end of a tenancy.

Residential Tenancy Branch Policy Guideline #1 state in part:

> 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).

The landlord testified that the tenants damaged the kitchen closet door and the kitchen faucet. The advocate submitted that the damage to the above was caused by regular wear and tear. The landlord did not complete a move in condition inspection report with the tenant and did not provide any physical evidence to prove the condition of the subject rental property when the tenant moved in or when the landlord took possession of the subject rental property. The landlord has not proved the condition of the property when the tenant moved in or when the landlord took possession of the subject rental property. I find that the landlord has not proved, on a balance of probabilities, that the damage to the property was caused either deliberately or as a result of neglect and not regular wear and tear. I therefore dismiss the landlord's claim for the replacement of the kitchen faucet and closet door.

Cleaning

The April 1, 2020 Decision found that in failing to remedy the rodent infestation the landlord breached section 32(1) of the *Act* which states:

> **32** (1)A landlord must provide and maintain residential property in a state of decoration and repair that
>
> (a)complies with the health, safety and housing standards required by law, and
>
> (b)having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Residential Tenancy Branch Policy Guideline #1 states in part:

> The Landlord is responsible for ensuring that rental units and property, or manufactured home sites and parks, meet “health, safety and housing standards” established by law, and are reasonably suitable for occupation given the nature and location of the property. 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.

Based on the testimony and submissions of the parties and the April 1, 2020 decision, I find that the subject rental property did not meet “health, safely and housing standards” established by law because the landlord failed to remediate the rodent problem. I find that the landlord is therefore responsible for the cost of cleaning up after the rodent problem and that it was the landlord’s responsibility to clean the subject rental property and not the tenants. I therefore dismiss the landlord’s claim for cleaning costs.

Garbage

I find that the landlord has not proved, on a balance of probabilities, what proportion of garbage he hauled to the dump was the tenants and has therefore not proved the value of his loss. I therefore dismiss his claim for the cost of hauling items to the dump.

Security Deposit

Sections 35 and 36 of the *Act* state that 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 does not complete a condition inspection report in accordance with the regulations and provide the tenant a copy of that report in accordance with the regulations.

The landlord testified that no move out inspection report was completed. Responsibility for completing the move out inspection report rests with the landlord. I find that the

landlord did not complete the condition inspection report in accordance with the Regulations, contrary to sections 35 and 36 of the *Act.*

Since I find that the landlord did not follow the requirements of the *Act* regarding the joint move-out inspection and inspection report, I find that the landlord's eligibility to claim against the security deposit for damage arising out of the tenancy is extinguished.

Section 38 of the Act requires the landlord to either return the tenants security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenants' provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the Act, equivalent to double the value of the security deposit.

Section C(3) of Policy Guideline 17 states that unless the tenants have 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.

In this case, while the landlord made an application to retain the tenants' security deposit before the landlord received the tenants' forwarding address, he is not entitled to claim against it due to the extinguishment provisions in section 36 of the *Act.* The landlord breached section 35(1) and (2) of the *Act* because he did not provide the tenant with two opportunities, the last in writing, to complete the move out condition inspection report. Therefore, the tenants are entitled to receive double their security deposit as per the below calculation:

$490.00 (security deposit) * 2 (doubling provision) = **$980.00**

Filing Fee

As the landlord was not successful in his application for dispute resolution, I find that he is not entitled to recover the $100.00 filing fee from the tenants, pursuant to section 72 of the *Act.*

Conclusion

I issue a Monetary Order to the tenants in the amount of $980.00.

The tenants are 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: July 28, 2020

Residential Tenancy Branch