Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL

Introduction

On August 14, 2020, the Landlord made an Application for Dispute Resolution seeking a Monetary Order for compensation pursuant to Section 67 of the *Act*, seeking to apply the security deposit toward this debt pursuant to Sections 38 and 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

Both the Landlord and the Tenant attended the hearing. All parties in attendance provided a solemn affirmation.

The Landlord advised that she served the Tenant with the Notice of Hearing package by registered mail on or around August 18, 2020 and the Tenant confirmed that he received this package. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenant has been served the Notice of Hearing package.

She also advised that she served the Tenant with her evidence by text message on July 2, 2020. The Tenant advised that he "probably" received this evidence and he did not make any submissions to dispute how or when it was served. As such, I have accepted the Landlord's evidence and will consider it when rendering this Decision.

The Tenant advised that he did not serve his evidence to the Landlord. As this evidence was not served to the Landlord in accordance with the Rules of Procedure, I have excluded this evidence and will not consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to a Monetary Order for compensation?
- Is the Landlord entitled to apply the security deposit towards this debt?
- Is the Landlord entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on October 11, 2019 as an unwritten, month-to-month tenancy. The Tenant was one of four co-tenants of the rental unit. While the Tenant vacated the rental unit at some point during the tenancy, he never served the Landlord with any notice to end the tenancy pursuant to the *Act*. As such, the tenancy continued until one of the other co-tenants provided written notice to end the tenancy on June 30, 2020. The tenancy ended when the co-tenants gave up vacant possession of the rental unit on July 30, 2020, in accordance with their notice to end tenancy. Rent was established at $2,400.00 per month and was due on the first day of each month. A security deposit of $1,200.00 was also paid.

All parties agreed that neither a move-in inspection report nor a move-out inspection report were conducted.

The Tenant did not know if he provided a forwarding address in writing. The Landlord advised that the Tenant texted her on August 1, 2020 to send his deposit to the address that she listed on the Application. The Tenant advised that neither he nor any of the other co-tenants gave the Landlord written authorization to keep any of the security deposit. He stated that the Landlord attempted to electronically transfer $305.00 twice, with the first time being on August 4, 2020, but he declined these transfers. The Landlord confirmed that she attempted to transfer this amount twice.

The Landlord advised that she is seeking compensation in the amount of **$295.00** for the cost of rekeying the rental unit. She stated that the four co-tenants were provided with four keys to the rental unit; however, only three keys were returned at the end of the tenancy. She read from a text message conversation with the Tenant on July 31, 2020 where she stated that he advised that he could not locate this fourth key. She

stated that she received a quote for $295.00 to rekey the rental unit; however, she did not submit any evidence of this.

The Tenant advised that he only remembered receiving three keys at the start of the tenancy and he stated that the back door did not have a handle. He submitted that he could not find a fourth key, but he left his key behind when he vacated the rental unit.

The Landlord advised that she is seeking compensation in the amount of **$400.00** for the cost of repairing damage to the stainless-steel refrigerator. This appliance was brand new at the start of the tenancy; however, the co-tenants allowed their children to use magnets on the fridge, which scratched it heavily. She referenced the pictures she submitted as documentary evidence to support her position. She also noted that the fridge handle was ripped off. She made several inquiries to find out how much it would cost to repair the scratches and discovered that it would cost $500.00 per panel, plus installation. However, she did not provide any evidence of this. She paid $200.00 to have the scratches buffed out and it only improved the damage marginally, but she did not submit any evidence of this work either.

The Tenant stated that they were never advised not to put magnets on the fridge. As well, he stated that the handle was already loose. He acknowledged that he saw the scratches in the pictures, and it is his position that this is reasonable wear and tear.

Finally, the Landlord advised that she is seeking compensation in the amount of **$200.00** for the cost of repairing damage to the walls. She stated that the co-tenants put an excessive number of holes in the walls and their children wrote on the walls as well. She testified that the walls were freshly painted at the start of the tenancy and she submitted pictures as documentary evidence to support her claims for damage. She advised that this amount of compensation is for her time to fix this damage, charged at $10.00 per hour.

The Tenant stated that they were never advised not to mount items on the walls. He stated that as far as he knew, the remaining co-tenants offered to paint the rental unit and fill the holes prior to vacating the rental unit.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the

following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 23 of the *Act* states that the Landlord and Tenant must inspect the condition of the rental unit together on the day the Tenant is entitled to possession of the rental unit or on another mutually agreed upon day.

Section 35 of the *Act* states that the Landlord and Tenant must inspect the condition of the rental unit together before a new tenant begins to occupy the rental unit, after the day the Tenant ceases to occupy the rental unit, or on another mutually agreed upon day. As well, the Landlord must offer at least two opportunities for the Tenant to attend the move-out inspection.

Section 20 of the *Residential Tenancy Regulations* (the "*Regulations*") lists the standard information that must be included in a condition inspection report.

Section 21 of the *Regulations* outlines that the condition inspection report is evidence of the state of repair and condition of the rental unit on the date of the inspection, unless either the Landlord or the Tenant has a preponderance of evidence to the contrary.

Sections 24(2) and 36(2) of the *Act* state that the right of the Landlord to claim against a security deposit or pet damage deposit for damage is extinguished if the Landlord does not complete the condition inspection reports.

As the undisputed evidence before me is that the Landlord failed to complete a move-in or move-out inspection report, I find that the Landlord extinguished her right to claim against the deposit.

Section 38(1) of the *Act* requires the Landlord, within 15 days of the end of the tenancy or the date on which the Landlord receives the Tenant's forwarding address in writing, to either return the deposit in full or file an Application for Dispute Resolution seeking an Order allowing the Landlord to retain the deposit. If the Landlord fails to comply with Section 38(1), then the Landlord may not make a claim against the deposit, and the Landlord must pay double the deposit to the Tenant, pursuant to Section 38(6) of the *Act*.

Based on the evidence before me, I am satisfied that the Landlord had the Tenant's forwarding address by way of the text message she received on August 1, 2020. As the tenancy ended on July 30, 2020, I find that August 1, 2020 is the date which initiated the

15-day time limit for the Landlord to deal with the deposit. The undisputed evidence before me is that the Landlord made this Application to claim against the deposit on August 14, 2020. As the fifteen day fell on Sunday August 16, 2020, the Landlord had until this day to return the deposit in full, or until Monday August 17, 2020 to make this Application. However, the Landlord failed to comply with the requirements of the *Act* as she did not return the deposit in full by August 16, 2020. Furthermore, while she made filed this Application within the legislated timeframe, she was not entitled to do so as she extinguished her right to claim against the deposit. Consequently, I am satisfied that the doubling provisions apply to the deposit. As such, I grant the Tenant a monetary award in the amount of **$2,400.00.**

With respect to the Landlord's claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

Section 67 of the *Act* allows a Monetary Order to be awarded for damage or loss when a party does not comply with the *Act*.

Regarding the Landlord's claim of compensation in the amount of $295.00 for the cost to re-key the rental unit, I found the Tenant's testimony to be vague, uncertain, and not persuasive. As well, given that he believed he was no longer a tenant of this tenancy as he had vacated the rental unit prior to July 30, 2020, and thus no longer responsible for anything after he left, it is clear that he had limited involvement in the tenancy nor did he care much for whatever happened in the rental unit after he left. As a result, I give very little weight to the reliability of his testimony. While the Landlord provided scant evidence to support her claims, I find that I prefer her evidence on a balance of probabilities. I am satisfied that re-keying the rental unit would reasonably cost **$295.00**, and I grant her a monetary award in this amount to satisfy this claim.

With respect to the Landlord's claim for compensation in the amount of $400.00 for the cost of repairing damage to the stainless-steel refrigerator, I do not find the Tenant's submission that they were not advised not to put magnets on the fridge to be a reasonable explanation for any damage that may have occurred. Furthermore, as the Tenant had vacated the rental unit prior to the tenancy ending and was under the impression that he could not be held responsible for any damage after he left, he was

clearly indifferent to this issue as he had no knowledge of how the co-tenants treated the rental unit after he vacated.

When weighing this against the Landlord's limited evidence, I find that her evidence carries marginally more weight. While she submitted little evidence to support this cost of repair, I am satisfied that fixing a damaged stainless-steel door would reasonably cost $400.00. As such, I grant the Landlord a monetary award in the amount of **$400.00** to remedy this claim.

Finally, regarding the Landlord's claim for compensation in the amount of $200.00 for the cost of repairing damage to walls, I again do not find the Tenant's submission that they were not advised not to hang items on the walls to be a reasonable explanation for any damage that may have occurred. Furthermore, as the Tenant had vacated the rental unit prior to the tenancy ending and was under the impression that he could not be held responsible for any damage after he left, he was clearly indifferent to this issue as he had no knowledge of how the co-tenants treated the rental unit after he vacated.

When weighing this against the Landlord's more substantial evidence, I find that I prefer the Landlord's evidence on the whole. Given the evidence of the number of items hung on the walls, in addition to the pictures of writing on the walls, I am satisfied that the Landlord has established this claim. As such, I grant the Landlord a monetary award in the amount of **$200.00** to satisfy this claim.

As the Landlord was successful in her Application, I find that the Landlord is entitled to recover the $100.00 filing fee paid for this Application.

Pursuant to Sections 38, 67, and 72 of the *Act*, I grant the Tenant a monetary award as follows:

Calculation of Monetary Award Payable by the Landlord to the Tenant

Rekeying of the rental unit	$295.00
Repair of stainless-steel fridge	$400.00
Repair of wall damage	$200.00
Recovery of filing fee	$100.00
Double security deposit	-$2,400.00
TOTAL MONETARY AWARD	**$1,405.00**

Conclusion

I provide the Tenant with a Monetary Order in the amount of **$1,405.00** 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: December 7, 2020

Residential Tenancy Branch