Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ORCA REALTY INC. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S, FFL, MNSDB-DR, FFT

Introduction

This hearing dealt with cross applications filed by the parties. On June 13, 2021, the Landlord applied for a Dispute Resolution proceeding seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the "*Act*"), seeking to apply the security deposit and pet damage deposit towards these debts pursuant to Section 38 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On July 14, 2021, the Tenants applied for a Dispute Resolution proceeding seeking a Monetary Order for a return of the security deposit and pet damage deposit pursuant to Section 38 of the *Act* and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

Tenant E.A. attended the hearing. M.X., an agent for the Landlord/Owner attended the hearing late, but he stated that the property management company is still representing this individual. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so. All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation.

X.U. advised that a Notice of Hearing package was served to each Tenant by registered mail on July 13, 2021, which was almost a week after they were required to be served to the parties pursuant to Rule 3.1 of the Rules of Procedure (the "Rules"). The Tenant confirmed that they each received a separate Notice of Hearing package and she did not have any position with respect to how late this package was served. As the Tenant did not have any opposition regarding the timing with which these packages were served, and as she was willing to proceed, I am satisfied that the Tenants were sufficiently served the Landlord/owner's Notice of Hearing package.

The Tenant advised that their Notice of Hearing package was served to the property management company by registered mail on October 1, 2021, which was months after it was required to be served to the property management company or Landlord/owner pursuant to Rule 3.1 of the Rules. X.U. confirmed the property management company received the Notice of Hearing package and he did not have any position with respect to how late this package was served. As X.U. did not have any opposition regarding the timing with which this package was served, and as he was willing to proceed, I am satisfied that the Landlord/owner and property management company were sufficiently served the Tenants' Notice of Hearing package.

X.U. advised that he was not sure if he included any evidence in the Notice of Hearing packages, but he believes that the pictures submitted to the Residential Tenancy Branch were "probably not" served to the Tenants. He believes that the quote for painting was included in the Notice of Hearing packages though. The Tenant confirmed that she received copies of text messages, the quote for painting, the condition inspection report, and the tenancy agreement; however, no pictures were included as evidence. X.U. stated that the pictures were likely not included as it would have been too costly to print. As X.U. did not even know what evidence was included in the Notice of Hearing packages, I accept the Tenant's submissions of what she received. As such, I have accepted all of the evidence that the Tenant confirmed receiving, and I will only consider these specific documents when rendering this Decision.

The Tenant advised that their evidence was not served to the Landlord/owner or property management company. As this evidence was not served to the other party, I have excluded all of the Tenants' 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/owner entitled to a Monetary Order for compensation?
- Is the Landlord/owner entitled to apply the security deposit and pet damage deposit towards these debts?
- Is the Landlord/owner entitled to recover the filing fee?
- Are the Tenants entitled to double the security deposit and pet damage deposit?
- Are the Tenants 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 March 1, 2020 and the tenancy ended when the Tenants gave up vacant possession of the rental unit on May 31, 2021. Rent was established at an amount of $2,300.00 per month and was due on the first day of each month. A security deposit of $1,150.00 and a pet damage deposit of $1,150.00 were also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

They also agreed that a move-in inspection was conducted on February 27, 2020 and a move-out inspection was conducted on June 3, 2021. A copy of these reports was submitted as documentary evidence. As well, all parties agreed that the Tenants provided their forwarding address in writing on the move-out inspection report.

X.U. advised that the Landlord/owner is seeking compensation in the amount of **$1,000.00** because the Tenants made at least 40 holes in the walls from hanging various items. He could not remember the size of the holes, but he stated that some were small and some were the size of a credit card. He submitted that the Tenants patched these holes, but they were a different colour and the walls required repainting. He stated that the walls were brand new at the start of the tenancy and the

Landlord/owner estimated repainting to cost $1,000.00. He is unsure of if the Landlord/owner has repainted the walls as of yet.

The Tenant advised that one of the other Tenants sent an email to X.U. in mid May 2020 asking him for the paint colour code so that they could repaint the holes to match the wall colour; however, X.U. refused to provide this information. So, they did their best to match the colour of the paint, but it was not exact. She confirmed that they hung things on the walls, but the holes were the size of nails. She estimated that there were approximately 30 nail holes that were patched, and this was normal wear and tear.

X.U. confirmed that he received this email from one of the Tenants, but he was not able to get a colour code and simply told them to take a sample of the wall colour to the hardware store to colour match it.

X.U. advised that the Landlord/owner is seeking compensation in the amount of **$120.00** because the Tenants did not clean the fridge or around the toilet. He stated that scraps were left in the fridge and that he “could not remember” many details with respect to explaining the deficiencies in the cleanliness of the rental unit. He submitted that the condition the rental unit was left in was “not that bad”, but he told them that it would take approximately three to four hours to clean. He was not sure if this cleaning was ever done, and he did not have an invoice to support the cost of this cleaning.

The Tenant refuted X.U.’s allegations, and she advised that the Tenants cleaned the entire rental unit prior to giving up vacant possession.

Finally, X.U. advised that the Landlord/owner is seeking compensation in the amount of **$300.00** because the Tenants damaged a door, and the Landlord/owner quoted this amount as the cost to replace the door. He did not submit any documentary evidence to support this cost and he is unsure if the Landlord/owner actually even replaced the door or not.

The Tenant acknowledged that they accidentally damaged the door; however, she stated that the rental unit was built with poor quality materials. She stated that the sticker was still on the door, so she researched the cost of this particular item and it was listed for sale at $75.00 at a local hardware store.

X.U. advised that none of the requested claims for damage were caused by a pet.

Analysis

Upon consideration of the testimony 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 Tenants must inspect the condition of the rental unit together on the day the Tenants are entitled to possession of the rental unit or on another mutually agreed day.

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

Section 21 of the *Residential Tenancy Regulations* (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 Tenants have 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 and pet damage deposit for damage is extinguished if the Landlord does not complete the condition inspection reports in accordance with the *Act*.

The undisputed evidence is that a move-in and a move-out inspection report were conducted with the Tenants. As a result, I find that the Landlord/owner complied with the *Act* or *Regulations* in completing these reports. Therefore, I find that the Landlord/owner has not extinguished the right to claim against the deposits.

Section 38 of the *Act* outlines how the Landlord/owner must deal with the security deposit and pet damage deposit at the end of the tenancy. With respect to the Landlord/owner's claim against the Tenants' deposits, Section 38(1) of the *Act* requires the Landlord/owner, within 15 days of the end of the tenancy or the date on which the Landlord/owner receives the Tenants' forwarding address in writing, to either return the deposits in full or file an Application for Dispute Resolution seeking an Order allowing the Landlord/owner to retain the deposits. If the Landlord/owner fails to comply with Section 38(1), then the Landlord/owner may not make a claim against the deposits, and

the Landlord/owner must pay double the deposits to the Tenants, pursuant to Section 38(6) of the *Act*.

Based on the consistent and undisputed evidence before me, the Landlord/owner received the Tenants' forwarding address in writing on June 3, 2021. Furthermore, the Landlord/owner made an Application, using this same address, to attempt to claim against the deposits on June 13, 2021. As the Landlord/owner made this Application within 15 days of receiving the Tenants' forwarding address in writing, and as the Landlord/owner was permitted to claim against the deposits still, I am satisfied that the Landlord/owner has complied with the *Act*. Therefore, I find that the doubling provisions do not apply to the security deposit in this instance.

However, the pet damage deposit can only be claimed against if there is damage done due to a pet. As X.U. confirmed that there was no damage that was due to a pet, the pet damage deposit should have been returned in full within 15 days of June 3, 2021. As the pet damage deposit was not returned to the Tenants in full within 15 days of this date, the Landlord/owner in essence illegally withheld the pet damage deposit contrary to the *Act*. Thus, I am satisfied that the Landlord/owner breached the requirements of Section 38. As such, under these provisions, I grant the Tenants a monetary award amounting to double the original pet damage deposit, or **$2,300.00**.

With respect to the Landlord/owner'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."

Regarding the Landlord/owner's claim for painting in the amount of $1,000.00, the consistent and undisputed evidence is that there were many patches on the walls due to holes created by the Tenants. However, I find that X.U. has provided insufficient evidence to substantiate the size of the holes and whether or not this was beyond normal wear and tear. In addition, the Tenants asked X.U. for the colour code of the paint so that they could adequately paint over the holes in the same colour; however, X.U. gave little assistance in providing this information. As the walls were brand new at the start of the tenancy, I find it reasonable that he could have easily found the colour code to assist the Tenants. Rather, he advised them to simply take a sample to the

hardware store, which I find would be a much more difficult way to match the colour accurately. Had the Tenants had the right colour code, I am not persuaded that this would have been an issue. In addition, X.U. was not even sure if the Landlord/owner had even bothered repainting the walls yet, which causes me to question how significant this damage is. As I am not satisfied that X.U. has substantiated this claim, I dismiss it in its entirety.

With respect to the Landlord/owner's claim in the amount of $120.00 for cleaning, I find it important to note that X.U. "could not remember" many details about what was allegedly not cleaned in the rental unit, and he stated that the actual state of the unit was "not that bad". Overall, I found X.U. to have very little knowledge of the details on any of the claims in this Application, and he even appeared hesitant about what submissions he was attempting to advance. In addition, I note that he has not submitted any documentary evidence to demonstrate that a cleaning company was hired to do this alleged work, and he is unsure if any work was actually done to clean the rental unit after the tenancy had ended. As X.U.'s uncertain submissions have caused me to doubt the reliability of those submissions, I dismiss this claim without leave to reapply.

Finally, regarding the Landlord/owner's claim in the amount of $300.00 for a broken door, the consistent and undisputed evidence is that the Tenants did damage this door during the tenancy. As a result, I am satisfied that they are responsible for correcting this damage. However, X.U. did not provide any documentary evidence to support the cost of replacing this door. As such, I am not satisfied that he has corroborated the actual cost of this claim. Consequently, I grant the Landlord/owner a monetary award in an amount of **$150.00**, that I find would be reasonable to replace the door.

As the Landlord/owner was partially successful in these claims, I find that the Landlord is entitled to recover $50.00 of the filing fee paid for this Application. Under the offsetting provisions of Section 72 of the *Act*, I allow the Landlord/owner to retain a portion of the security deposit in satisfaction of these claims.

As the Landlord/owner made their Application to claim against the deposits within 15 days of receiving the Tenants' forwarding address in writing, it was unnecessary for the Tenants to make their own Application. As such, I find that the Tenants are not 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 Tenants a Monetary Order as follows:

Monetary Award Payable by the Landlord/owner to the Tenants

Door damage	$150.00
Filing fee	$50.00
Security deposit	-$1,150.00
Double pet damage deposit	-$2,300.00
TOTAL MONETARY AWARD	**-$3,250.00**

Conclusion

The Tenants are provided with a Monetary Order in the amount of **$3,250.00** in the above terms, and the Tenants must be served with **this Order** as soon as possible. Should the Tenants 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: October 20, 2021

Residential Tenancy Branch