Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDL-S, MNRL-S, FFL**

Introduction

This hearing was scheduled to hear the landlord's application pursuant to the *Residential Tenancy Act* (the "*Act*") for:

- An order to retain the tenants' pet and security deposits pursuant to section 38 of the *Act*;
- An order to recover unpaid rent and utilities pursuant to section 67 of the *Act;* and
- a return of the filing fee pursuant to section 72 of the *Act*.

Both the tenants and the landlord attended the hearing. The tenants were represented at the hearing by their advocate K.S., while the landlord was represented by his lawyer, S.S. Both parties were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

All parties confirmed receipt of each others evidentiary packages, while the tenants confirmed receipt of the landlord's application for dispute. I note that the tenants' evidence was received beyond the applicable deadlines as set out by our Rules of Procedure, however, counsel for the landlord said he was ready to proceed with the matter. Pursuant to section 71(2)(b) of the *Act*, I find all parties were sufficiently served with all applicable documents.

Following opening remarks, the tenants' advocate sought to submit further evidence that was not made available to the landlords. I decline to consider this evidence. While I acknowledge the presence of a letter from a doctor outlining medical issues which the tenant S.W. currently faced, I find this letter excuses only the late evidence presently before the landlords and does not allow for me to consider evidence which neither the landlord or myself, the decision maker, have before us.

Issue(s) to be Decided

Can the landlord retain the tenants' forwarding address?
Can the landlord recover the filing fee associated with the application?

Background and Evidence

This tenancy began on June 1, 2017 and ended on March 31, 2021 after the parties reached a mutual agreement to end tenancy following a dispute before the Residential Tenancy Branch. Rent at the conclusion of the tenancy was $1,600.00. A security deposit of $750.00 was paid at the outset of the tenancy in June 2017. A pet deposit of $750.00 was collected when the parties entered into a new tenancy agreement in June 2018. Both deposits continue to be held in trust by the landlord.

The tenancy first began as a fixed term tenancy of one-year. Following the expiration of this fixed-term tenancy, a subsequent agreement was entered into by the parties.

The landlord seeks a monetary award of $1,662.00 which includes the retention of both deposits, a return of the filing fee and reimbursement for an unpaid Fortis bill of $62.00. The landlord acknowledged this Fortis bill included a period of time when the tenants were not in occupation of the rental home and therefore agreed to accept $31.00 in place of the $62.00 for which he applied. The tenants agreed to pay this amount and this decision will therefore not consider the portion of the application concerning payment of a Fortis bill.

The landlord detailed damage to the rental home which was purportedly done by the tenants during the tenancy. Specifically, the landlord cited the following damage:

- Damage to the walls – bedroom and kitchen
- Cat urine on stairs and throughout the property
- Damaged closet door
- Broken stove handle
- Broken fence in backyard

The tenants disputed all aspects of the landlord's application however, they acknowledged the closet door was remover. The tenants maintained the closet door was broken and they anticipated it would be easier for the landlord to repair with the door removed. They described the unit as "dirty" at move-in and "in need of painting."

The tenants took great issue with the condition inspection report submitted in evidence by the landlord, arguing they did not sign the report and they alleged it had been falsified. Further, the tenants said the condition inspection had been performed by the landlord's sister. The landlord disputed this assertion and maintained that he was the only person in charge of the property.

The landlord described the rental home as "nicer" than average, saying that all repairs and painting were "a couple of years old", citing the paint as 5 years old. The landlord said all repairs cost more than he was seeking from the tenants, however, he endeavoured only to keep their deposits for the damage allegedly done during the tenancy. The landlord testified that the carpets were replaced with vinyl plank because this was cheaper to replace. As part of his evidentiary package, the landlord included several photos purporting to show damage to the rental home along with an invoice detailing an estimate for repairs as follows:

Item	**Amount**
Remove and Dispose carpet/fence	475.00
Supply and install carpet on steps	500.00
1375 vinyl plank with soundproof underlay	3.388.00
1350 vinyl plank install	1.822.50
Base board install	600.00
Stair nosing transition, toilet, laundry, toilet supply line (5 door transition)	243.00
Floor level in B/R – Ent and Laundry	100.00
Install 3 locks and minor lights	100.00
Painting	3,500.00
Fence painting	200.00
GST	377.00
Subtotal	10,928.00
Total =	8,305.00 (includes less 3,000.00 paid by e-transfer)

In addition to the invoice submitted in evidence and dated April 8, 2021, the landlord supplied a text message dated April 1, 2021 which stated the following:

Painting all areas discuss and no laundry
Repair Walls

Repair cement floor in entrance and laundry
Replace door casing that is damaged
Paint ceiling
Doors
Paint front door and back door
$3500.00

Also the floor install is $1.35 per SF

Baseboards you supply I install $600.00

Change locks front and back $50.00

Tenant V.W. acknowledged meeting with the landlord on March 31, 2021 when a condition inspection was performed. Tenant V.W. confirmed his signature was accurate on the condition inspection report and the parties confirmed receipt of the tenants' forwarding address on this document.

Analysis

The landlord has applied to retain the tenants' pet and security deposits in full satisfaction of repairs required in the rental home following the conclusion of the tenancy.

Under sections 24 and 36 of the *Act*, landlords and tenants can extinguish their rights in relation to the security and pet deposits 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.

There was significant disagreement regarding whether the landlord participated in a condition inspection of the rental unit at the outset of the tenancy, as per the requirement of section 24(2). The parties presented contradictory information related to the matter, with the tenants alleging that the landlord's sister was present during the initial inspection, while the landlord argued he, himself was present for the inspection. Further, the tenants alleged the landlord misrepresented the condition of the unit and falsified their signature on the condition inspection report.

Based on the contrasting versions of events, I find it is impossible to determine the truth of the matter, however, I note that pursuant to section 1 of the *Act* that the definition of

landlord includes, “the owner of the rental unit, the owner’s agent or another person who, on behalf of the landlord, (ii) exercises powers and performs duties under this *Act*, the tenancy agreement or a service agreement.” Therefore, I find that even if I were to accept the tenants’ version of events as they related to the condition inspection report, pursuant to section 1 of the *Act,* there is no reason the landlord’s sister could not have performed these duties. I find no evidence in support of the tenants’ position that the condition inspection report was falsified, and I accept the condition inspection report as a true and accurate depiction of the state of the rental unit at the outset of the tenancy.

I note neither the landlord nor the tenants extinguished their right to claim against the security deposit following the conclusion of the tenancy pursuant to section 36 of the *Act*. As noted above, Tenant V.W. acknowledged meeting with the landlord on March 31, 2021 when a condition inspection was performed. Tenant V.W. confirmed his signature was accurate on the condition inspection report and the parties confirmed receipt of the tenants’ forwarding address on this document. I therefore, turn my attention to section 38 of the *Act*.

Section 38 of the *Act* requires the landlord to either return a tenant’s security and/or pet deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the *later* of the end of a tenancy or upon receipt of the tenant’s forwarding address in writing. In this case, the landlord received the tenants’ forwarding address in writing on March 31, 2021 when it was given to him on the condition inspection report. The landlord therefore had 15 days following receipt of this address to apply for dispute resolution or to return the deposits, in this case, the landlord had until April 15, 2021 to apply to retain the deposits.

If this 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 and/or pet deposit. Further, a pursuant to section 38(6)(a) of the *Act*, a landlord may not make a claim against the security deposit or any pet damage deposit if they have not repaid or applied to retain the deposits within the 15 day period detailed above.

This provision does not apply if the landlord has obtained the tenants’ written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy as per section 38(4)(a). A landlord may also under section 38(3)(b), retain a tenant’s security or pet deposit if an order to do so has been issued by an arbitrator. I find no evidence that the landlord had authorization to retain the deposits or that a previous order had been granted during the March 15, 2021 hearing.

While I note testimony was provided at the hearing by the landlord that he suffered a loss from damage and cleaning that was required in the unit following the tenants' departure, the landlord had an obligation to apply for dispute resolution related to any damages which may have occurred within 15 days after the later of receiving the tenants' forwarding address or the end of the tenancy. The landlord failed to do so as he applied to retain the deposits on April 18, 2021.

Pursuant to section 38(6)(b) of the *Act* I find I am bound by the *Act* and must order a doubling of both the pet and security deposits, granting the tenants an award of $3,000.00 (2 x pet deposit @750.00 and 2 x security deposit @750.00).

Despite this order in favour of the tenants, the landlord can claim for damages under section 67 of the *Act* and I will therefore analyze their application as described above. The landlord and his counsel provided significant information related to the state of the property following the end of tenancy. The landlord's testimony and his counsel's submissions were supported by photographs purporting to depict the damage in the rental home along with an invoice and text message for the work required in the home. I note the invoice was for $8,305.00, while the text message detailed costs equating to approximately $4,100.00 of which the landlord sought only to recover $1,500.00 for damage to the bedroom, kitchen, flooring, closet, stove and fence.

Policy Guideline #16 provides an outline of what must be examined when parties are claiming compensation. Specifically, I must examine if a party has failed to comply with the *Act*, the regulation or tenancy agreement; that the loss or damage has resulted from this non-compliance; that the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and that the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

It is evident the landlord has acted reasonably to minimize loss because he is only claiming for a fraction of the invoice submitted, further I find the state of the property at the conclusion goes beyond 'normal wear and tear' as argued by the tenants. Specifically, I find that the holes in the walls and damage to the closet door go beyond reasonable wear and tear as contemplated by section 36(2)(a) of the *Act.* I find that the paint was beyond its useful life as noted by Policy Guideline #40 (4 years) and therefore decline to consider any amount sought for painting of the unit.

The remainder of the landlord's claim concerns replacement of the floors due to cat urine, a broken stove handle and the replacement of a back fence.

While I find the invoice dated April 8, 2021 makes no mention of repairs to walls, there is some reference to them in the text message of April 1, 2021 which contains breakdown of the work associated with repairing various items in the home but does not include individual costs for the work.

I find the landlord has sufficiently met all parts of the four-point test as noted above and grant the landlord $750.00 for repairs to the walls.

I acknowledge that questions remain concerning the state of the carpets and the fence at the outset of the tenancy. As noted by the tenants, the condition inspection report makes no mention of the fence, while the carpet is listed as being in 'fair' condition. Reviewing the photos, it is apparent damage has occurred to the carpet and I accept the landlord's submissions that cat urine had stained the carpet throughout the home. Per section 32(3) of the *Act*, "A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or person permitted on the residential property by the tenant." I find sufficient evidence in the form of testimony, photos and invoices was presented to show the carpets were neglected and required replacement. For these reasons, I grant the landlord the remainder of his claim, inclusive of the $31.00 agreed on at the outset of the hearing ($719.00 + 31.00 = 750.00).

Using the offsetting provisions contained in section 72 of the *Act* I grant the tenants' a monetary award of $1,500.00. The landlord must bear the cost of his own filing fee.

Conclusion

The landlord is ordered to return double the tenants' security and pet deposit. The landlord is award a monetary award of $1,500.00 for damage to the rental property. I grant the tenants' a monetary award as follows:

ITEM	**AMOUNT**
Return of Pet Deposit (2 x 750.00)	1,500.00
Return of Security Deposit (2 x 750.00)	1,500.00
Less Landlord's monetary award	(-1,500.00)
TOTAL =	1,500.00

The tenants are provided with a Monetary 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: November 4, 2021

Residential Tenancy Branch