



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on May 05, 2021 (the “Application”). The Landlord applied as follows:

- For compensation for damage to the rental unit
- To keep the security deposit
- For reimbursement for the filing fee

The Landlord and Tenant appeared at the hearing. I explained the hearing process to the parties who did not have questions when asked. I told the parties they were not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I confirmed service of the hearing package and evidence and no issues arose.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all testimony provided and reviewed the documentary evidence submitted. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Landlord entitled to compensation for damage to the rental unit?
2. Is the Landlord entitled to keep the security deposit?
3. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

The Landlord sought to keep the \$425.00 security deposit towards water damage which occurred in the rental unit.

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. The tenancy started in September of 2020 and was for a fixed term ending August 31, 2021. Rent was \$850.00 per month due on the first day of each month. The Tenant paid a \$425.00 security deposit. Term 26 of the agreement states:

RESIDENT agrees to ensure all appliances are not left running and doors remain locked at all times when the RESIDENT is not present.

The parties agreed the Tenant vacated the rental unit April 19, 2021.

The parties agreed the Tenant provided their forwarding address to the Landlord by text April 21, 2021.

The parties agreed the Landlord did not have an outstanding monetary order against the Tenant at the end of the tenancy and the Tenant did not agree to the Landlord keeping the security deposit.

The parties agreed on the following. They did not do a move-in inspection together. The Tenant was not provided two opportunities to do a move-in inspection. A Condition Inspection Report ("CIR") was not completed.

The parties agreed on the following. They did not do a move-out inspection together. The Tenant was not provided two opportunities, one on the RTB form, to do a move-out inspection. A Condition Inspection Report ("CIR") was not completed.

The Landlord took the following position in relation to the claim for compensation for water damage. The water damage was caused by the washing machine leaking. The Tenant did not cause the washing machine to malfunction. The Landlord is seeking compensation based on a breach of term 26 of the tenancy agreement because the Tenant was not home at the time of the leak as required by term 26. Water was leaking for a significant amount of time. The Tenant should have been home while running the washing machine as stated in term 26 of the tenancy agreement. The Landlord experienced loss being the cost of repairing the water damage. The photos in evidence

show water leaked through three floors and the exterior of the rental unit. There is no documentary evidence of the cost to repair the water damage because the Landlord only received a verbal quote which was for more than \$5,000.00.

The Tenant took the following position. They were outside cleaning their vehicle when the water leak occurred. They never left the property. They did not breach term 26 of the tenancy agreement because they only went outside and did not leave the premises. When they went upstairs, they noticed water pouring out of the washing machine. Water leaked from the tank into the drip tray. They could not see the water dripping from the drip pan and could only see water coming out the front door of the washing machine. They reacted right away and cleaned up the water. The water leak did cause extensive damage which would cost at least \$425.00 to repair.

I asked the Landlord what evidence they are relying on to support their position that the Tenant had left the premises when the washing machine leak occurred. The Landlord testified that their position is based on a verbal discussion with the Tenant when the leak occurred. The Landlord submitted that the Tenant being away from the rental unit aligns with the extent of damage because water would not have gone through two levels of concrete flooring if it was only leaking for 15 minutes.

The Tenant relied on a text message in evidence to support their position that they had not left the property when the water leak occurred.

Analysis

Security deposit

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

Section 24 of the *Act* states:

(2) 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

(a) does not comply with section 23 (3) [2 opportunities for inspection],

(b) having complied with section 23 (3), does not participate on either occasion, or

(c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Based on the testimony of the parties, I find the Tenant was not offered two opportunities, one on the RTB form, to do a move-in or move-out inspection and therefore did not extinguish their rights in relation to the security deposit pursuant to sections 24 or 36 of the *Act*.

Based on the testimony of the parties, I find the Landlord did not provide the Tenant with two opportunities, one on the RTB form, to do a move-in inspection, did not do a move-in inspection with the Tenant and did not complete a CIR. Given this, the Landlord did extinguish their right to claim against the security deposit for damage to the rental unit pursuant to section 24 of the *Act*.

Based on the testimony of the parties, I find the tenancy ended April 19, 2021.

Based on the testimony of the parties, I accept that the Tenant provided their forwarding address to the Landlord by text April 21, 2021.

Pursuant to section 38(1) of the *Act*, the Landlord would have had 15 days from the later of the end of the tenancy or the date the Landlord received the Tenant's forwarding address in writing to repay the security deposit or file a claim against it. However, the Landlord had extinguished their right to claim against the security deposit for damage to the rental unit pursuant to section 24 of the *Act* and therefore the Landlord was required to claim against the security deposit for something other than damage or return the security deposit to the Tenant within 15 days of April 21, 2021. The Landlord did not claim against the security deposit for something other than damage or return the security deposit to the Tenant within 15 days of April 21, 2021 and therefore breached section 38(1) of the *Act*.

Section 38(6) of the *Act* states:

(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.

The Landlord did not comply with section 38(1) of the *Act* and therefore the Landlord cannot claim against the security deposit and must pay the Tenant double the amount of the security deposit which is \$850.00. There is no interest owed on the security deposit as the amount of interest owed has been 0% since 2009.

The Landlord is still entitled to claim for compensation pursuant to section 67 of the *Act* and I consider this now.

Compensation

Section 7 of the *Act* states:

7 (1) If a...tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying...tenant must compensate the [landlord] for damage or loss that results.

(2) A landlord...who claims compensation for damage or loss that results from the [tenant's] non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and

- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Pursuant to rule 6.6 of the Rules, it is the Landlord as applicant who has the onus to prove the claim. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

When one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

The issue here is whether the Tenant breached term 26 of the tenancy agreement by leaving the premises when the washing machine was running and the leak occurred.

The Landlord took the position that the Tenant had left the premises when the washing machine was running and the leak occurred. The Tenant took the position that they had not left the premises when the washing machine was running and the leak occurred.

I did not find the testimony of one party more reliable or credible than the other.

I am not satisfied based on the evidence provided that one version of events is more likely than the other based on the water damage that occurred. In the absence of further compelling evidence, I cannot conclude that the water damage that occurred could not have occurred in 15 minutes as claimed by the Landlord.

In the circumstances, I have considered what documentary evidence there is before me to support the position of each party. The Landlord did not point to documentary evidence to support their position. The Tenant did point to a text message to support their position and I am satisfied the text message does tend to support the Tenant's position. However, the text message is authored by the Tenant and therefore I have not put much weight on it as corroborative evidence.

It is the Landlord who has the onus to prove the claim. I find the Landlord has failed to prove the claim in the absence of further compelling evidence that the Tenant had left the premises when the washing machine was running and the leak occurred in breach of term 26 of the tenancy agreement. In the circumstances, I am not satisfied the Tenant did breach term 26 of the tenancy agreement and therefore I am not

satisfied the Landlord is entitled to compensation. The claim is dismissed without leave to re-apply.

Given the Landlord was not successful in the Application, the Landlord is not entitled to reimbursement for the \$100.00 filing fee.

In summary, the Landlord must return \$850.00 to the Tenant and the Tenant is issued a Monetary Order in this amount.

Conclusion

The Landlord must return \$850.00 to the Tenant and the Tenant is issued a Monetary Order in this amount. This Order must be served on the Landlord. If the Landlord fails to comply with this Order, it 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 *Act*.

Dated: November 03, 2021

Residential Tenancy Branch