Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDL-S, MNDCL-S, MNSD, FFL, FFT

Introduction

This hearing was convened in response to cross applications.

The Landlord filed an Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss, for a monetary Order for damage to the rental unit, to keep all or part of the security deposit, and to recover the fee for filing an Application for Dispute Resolution.

The Tenant filed an Application for Dispute Resolution, in which the Tenant applied for the return of the security deposit and to recover the fee for filing an Application for Dispute Resolution.

The Agent for the Landlord stated that on April 13, 2022 the Dispute Resolution Package and evidence the Landlord submitted to the Residential Tenancy Branch in April of 2022 was sent to the Tenants, via registered mail. The Tenant acknowledged receiving these documents. He stated that the female Tenant has also seen these documents and that he is representing her at the proceedings. On the basis of the information provided by the male Tenant, I find that both Tenants have been sufficiently served with the Landlord's Dispute Resolution Package and the hearing proceeded in the absence of the female Tenant. As the Tenant acknowledged receiving the evidence submitted by the Landlord in April of 2022, it was accepted as evidence for these proceedings.

The Tenant stated that on April 30, 2022 the Dispute Resolution Package and evidence submitted to the Residential Tenancy Branch on April 19, 2022 was sent to the

Landlord, via registered mail, at the service address noted on the Application. The Tenant cited a tracking number that corroborates this statement. (The tracking number is recorded on the first page of this decision.) On the basis of this evidence, I find that the Tenants' Dispute Resolution Package and evidence of April 19, 2022 was served to the Landlord in accordance with section 89 of the *Residential Tenancy Act (Act*).

The Landlord stated that she did not receive the aforementioned registered mail.

I have checked the Canada Post website, which indicates that the Landlord signed by the aforementioned package on May 11, 2022. I therefore find that the Tenants' Dispute Resolution Package and evidence package of April 12, 2022 have been served to the Landlord in accordance with section 89 of the *Act*. The evidence is therefore accepted as evidence for the proceedings.

On July 11, 2022 and September 06, 2020, the Landlord submitted additional evidence to the Residential Tenancy Branch. The Landlord stated that this evidence was served to the Tenant, via registered mail, on September 07, 2022. The Tenant acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant affirmed they would not record any portion of these proceedings.

Issue(s) to be Decided

Is the Landlord entitled to compensation for damage to the rental unit?
Should the security deposit be returned to the Tenant or retained by the Landlord?

Background and Evidence

The Landlord and the Tenant agree that:

- the tenancy began on May 31, 2020**;**
- the rental unit was vacated on March 15, 2022;

- rent was due, in advance, on the last day of each month;
- the Tenants paid a security deposit of $675.00;
- a condition inspection report was not completed at the beginning of the tenancy;
- the Landlord did not schedule a time to complete a condition inspection report at the start of the tenancy;
- a final condition inspection report was completed on April 03, 2022; and
- the Tenant provided a forwarding address, in writing, on April 03, 2022.

The Tenant stated that the monthly rent was $1,750.00. The Landlord stated that it was $1,350.00.

The Landlord is seeking compensation, in the amount of $618.00, for cleaning the rental unit.

The Landlord stated that the rental unit required cleaning at the end of the tenancy, which included general cleaning and cleaning the carpet.

The Tenant stated that the carpet was cleaned at the end of the tenancy. When he was asked if the carpet was shampooed, he acknowledged that it was not.

The Landlord submitted photographs of the rental unit which the Landlord stated were taken on March 30, 2022. The Tenant acknowledged that those photographs fairly represented the condition of the rental unit when it was jointly inspected on April 03, 2022.

The Landlord submitted an estimate to show that it would cost $250.00 to clean the carpets. She stated that she paid $250.00 to clean the carpets.

The Landlord submitted an estimate to show that it would cost $368.00 for general cleaning. She stated that she did not pay to have the unit cleaned and that she spent approximately 45 hours cleaning the unit.

The Landlord submitted photographs, which the Agent for the Landlord stated were taken at the end of the tenancy, which show the rental unit required cleaning. The Landlord submitted an invoice to show that the Landlord incurred this expense.

The Landlord is seeking compensation, in the amount of $200.00, for oil from the Tenants' sparking space. The Landlord stated that there were no stains on the parking space at the start of the tenancy. The Landlord submitted a photograph of the parking

space that was allegedly taken one day before the start of the tenancy and one taken at the end of the tenancy.

The Tenant stated that oil leaked from his vehicle during the tenancy but he cleaned the oil that leaked onto the parking space. He stated that there were some stains on the parking space at the start of the tenancy and that the photograph the Landlord stated was taken at the end of the tenancy fairly represents the condition of the parking space at the end of the tenancy.

The Landlord submitted an estimate from a “handyman”, which indicates the oil stain can be cleaned for $200.00. She stated that she paid this amount to clean the stain.

The Landlord is seeking compensation, in the amount of $331.00, for repairing the balcony door and two closet doors.

The Landlord stated that these doors worked properly at the start of the tenancy and that they did not work properly at the end of the tenancy.

The Tenant stated that the closet doors did not work properly at the start of the tenancy and that the condition of those doors did not change during the tenancy. He stated that the balcony door did not close properly when the tenancy began and that it did not lock at all at the end of the tenancy, which he believes is because the building “settled” during the tenancy.

The Landlord submitted invoices to show she paid $361.00 to repair the doors.

The Landlord is seeking compensation, in the amount of $4,150.00, for repairing and painting the walls.

The Landlord stated that the walls were in good condition at the start of the tenancy. The Landlord submitted photographs of the unit, which the Landlord submits were taken one day prior to the start of the tenancy. The Landlord also submitted photographs of damage to the walls, which the Landlord submits were taken on March 30, 2022.

The Tenant stated that most of the damage that can be seen in the photographs of the walls, which were taken on March 30, 2022, was present at the start of the tenancy.

The Landlord submitted an estimate from a “handyman”, which indicates the walls can be repaired for $800.00; the unit can be painted for $3,350.00; and that she paid this amount to repair and paint the walls. She stated that the walls in the unit were previously painted in late 2017 or early 2018.

At the hearing the Landlord withdrew the claim for repairing bathroom tiles.

Analysis

Section 23(1) of the *Act* stipulates the landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day. On the basis of the undisputed evidence, I find that the rental unit was not inspected at the start of the tenancy.

Section 23(3) of the *Act* requires that the landlord offer the tenant at least 2 opportunities to inspect the rental unit at the start of the tenancy, as prescribed by the *Residential Tenancy Regulation (Regulation*).

Section 17(1) of the *Regulation* stipulates that a landlord must offer to a tenant a first opportunity to schedule the condition inspection by proposing one or more dates and times.

Section 17(2) of the *Regulation* stipulates that if the tenant is not available at a time offered under subsection (1), the tenant may propose an alternative time to the landlord, who must consider this time prior to acting under paragraph (b), and (b) the landlord must propose a second opportunity, different from the opportunity described in subsection (1), to the tenant by providing the tenant with a notice in the approved form.

On the basis of the undisputed evidence, I find that the Landlord did not schedule at time to inspect the unit at the start of the tenancy. I therefore find that the Landlord did not comply with section 23(3) of the *Act*.

Section 24(2)(a) of the *Act* stipulates 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 comply with section 23(3) *of* the *Act.*

Section 38(1) of the *Act* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in

writing, the landlord must either repay the security deposit and/or pet damage deposit or file an Application for Dispute Resolution claiming against the deposits.

On the basis of the undisputed evidence I find that the Landlord received a forwarding address for the Tenants on April 03, 2022, which is after the rental unit was vacated on March 15, 2022. Residential Tenancy Branch records shows that the Landlord filed an application to retain the security deposit on March 31, 2022.

In circumstances such as these, where the Landlord's right to claim against the security deposit for damage has been extinguished, pursuant to section 23(3) of the *Act*, the Landlord does not have the right to file an Application for Dispute Resolution claiming against the deposit and the only option remaining open to the Landlord is to return the security deposit and/or pet damage deposit within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing.

As the Landlord has not yet returned the security deposit and pet damage deposit and she did not have the right to apply to keep it, I find that the Landlord did not comply with section 38(1) of the *Act.*

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1), the Landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable. As I have found that the Landlord did not comply with section 38(1) of the *Act*, I find that the Landlord must pay double the security deposit to the Tenant, which is $1,350.00.

When making a claim for damages under a tenancy agreement or the *Act,* the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

On the basis of the testimony of the parties and the photographs submitted in evidence, I find that the Tenants failed to comply with section 37(2) of the *Act* when they failed to leave the rental unit in reasonably clean condition at the end of the tenancy. I therefore find that the Landlord is entitled to compensation for the cost of cleaning the carpets, in

the amount of $250.00. I also find she is entitled to compensation of $368.00 for the 45 hours she spent cleaning.

After considering the testimony of both parties and the photographs submitted in evidence, I find that there were oil stains on the Tenants' parking space at the end of the tenancy that were not present at the start of the tenancy. I therefore find that the Tenants failed to comply with section 37(2) of the *Act* when they failed to leave the parking space in reasonably clean condition at the end of the tenancy and that the Landlord is entitled to the $200.00 she paid for cleaning the parking space.

I favor the testimony of the Landlord, who stated that the balcony door and closet doors were in good condition at the start of the tenancy, over the testimony of the Tenant, who stated that those doors were not in good working condition at the start of the tenancy. In reaching this conclusion I was heavily influenced by the letter from the realtor who showed the unit on behalf of the Landlord, who declared the doors in the unit were in good working order. I find this letter corroborates the testimony of the Landlord.

On the basis of the undisputed evidence, I find that the balcony door and two closet doors were not working properly at the end of the tenancy. I therefore find that they were damaged by the actions and/or neglect of the Tenants during the tenancy.

I find that the Tenants failed to comply with section 37(2)(a) of the *Act* when they did not repair the damaged doors and that the Landlord is entitled to recover the $361.00 that she paid to repair the doors.

In reaching this conclusion I have placed no weight on the Tenants' submission that t damage to the balcony door was the result of the building settling. The Tenants submitted no evidence to corroborate this submission. The photographs of the damage to the balcony door is not, in my view, the type of damage one would expect to see as a result of settling.

I favor the testimony of the Landlord, who stated that the walls were in good condition at the start of the tenancy, over the testimony of the Tenant, who stated that walls were not in good condition at the start of the tenancy. In reaching this conclusion I was heavily influenced by the letter from the realtor who showed the unit on behalf of the Landlord in May of 2020, who declared the wall paint was in good condition. I find this letter corroborates the testimony of the Landlord.

I find that the Landlord's testimony is further corroborated by the photographs submitted in evidence, which the Landlord submits were taken the day before the tenancy began. These photographs show the walls are in good condition.

On the basis of the undisputed evidence, I find that walls were damaged at the end of the tenancy. I therefore find that they were damaged by the actions and/or neglect of the Tenants during the tenancy.

I find that the Tenants failed to comply with section 37(2)(a) of the *Act* when they did not repair the damaged walls and that the Landlord is entitled to recover the $800.00 that she paid to repair the walls.

Claims for compensation related to damage to the rental unit are meant to compensate the injured party for their actual loss. In the case of fixtures in a rental unit, a claim for damage and loss is based on the depreciated value of the fixture and not based on the replacement cost. This is to reflect the useful life of fixtures, such as carpets and countertops, which are depreciating all the time through normal wear and tear.

The Residential Tenancy Policy Guidelines show that the life expectancy of interior paint is four years. The evidence shows that the living room was painted at the end of 2017 or beginning of 2018. I therefore find that the paint was over four years old when the tenancy ended in early 2022. I therefore find that the paint in the unit has exceeded its life expectancy and that the Landlord is not entitled to recover any of the costs of painting the unit.

I find that the Landlord's Application for Dispute Resolution has merit and that the Landlord is entitled to recover the fee for filing this Application for Dispute Resolution.

I find that the Tenants' Application for Dispute Resolution has merit and that the Tenants are entitled to recover the fee for filing this Application for Dispute Resolution.

Conclusion

The Tenants have established a monetary claim, in the amount of $1,450.00, which includes double the security deposit and $100.00 in compensation for the fee paid to file an Application for Dispute Resolution.

The Landlord has established a monetary claim, in the amount of $2,079.00, which includes $618.00 for cleaning the unit, $200.00 for cleaning the parking space, $361.00 for repairing doors, $800.00 to repair the walls, and $100.00 in compensation for the fee paid to file an Application for Dispute Resolution.

After offsetting the two claims, I find that the Tenants must pay $629.00 to the Landlord and I grant the Landlord a monetary Order for that amount. In the event the Tenants do not voluntarily comply with this Order, it may be served on the Tenants, filed with the Province of British Columbia Small Claims 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: September 29, 2022

Residential Tenancy Branch