Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, MNDL-S, FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- authorization to retain all or a portion of the security deposit and pet damage deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- a monetary order for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of $8,703.83 pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

This matter was reconvened from a previous hearing on August 19, 2022 (the "**August Hearing**"), which in turn was reconvened from on June 3, 2022 (the "**June Hearing**"). I issued interim decisions following each hearing (on September 18, 2022 and June 3, 2022, respectively). This decision should be read in conjunction with these interim decisions.

None of the parties attended this hearing. The landlord was represented by two property managers ("**Mr. C**" and "**Ms. C**") and the tenant was represented by counsel ("**SD**").

In the September 18, 2022 interim decision, I ordered the tenants to serve the landlord with certain evidence. SD stated, and Mr. C confirmed, that the tenants did this on October 19, 2022.

Neither party raised any preliminary matters at the start of the hearing.

Issues to be Decided

Is the landlord entitled to:

1) a monetary order for $8,703.83;
2) recover the filing fee;

3) retain the security deposit and the pet damage deposit in partial satisfaction of the monetary orders made?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into a written, fixed term tenancy agreement starting June 1, 2020 and ending May 31, 2021. After the end of the fixed term, the tenancy converted to a month to month tenancy, as per section 44(3) of the Act. Monthly rent was $2,850 and was payable on the first of each month. The tenants paid the landlord a security deposit of $1,425 and a pet damage deposit of $1,425, both of which the landlord continues to hold in trust for the tenants.

The tenants vacated the rental unit on September 30, 2021. The provided their forwarding address to the landlord on that same date. The landlord made this application on October 14, 2021.

The parties conducted a move-in condition inspection on June 1, 2020 (the "**Move-In Inspection**") and a move out condition inspection on September 30, 2021 (the "**Move-Out Inspection**"). The Move-Out Inspection was originally scheduled for 1:00 pm, but was delayed to 4:00 pm. The landlord attributed this delay to the tenant. However, the landlord does seek any compensation in connection with the delay, so I will not discuss the matter further.

The landlord prepared inspection reports after each inspection (the "**Move-In Report**" and the "**Move-Out Report**" respectively). There is disagreement between the parties about the contents and timing of service of the Move-Out Report (the tenants alleged that the landlord added to the Move-Out Report after they signed it and were not provided with a copy of it until the landlord made this application; the landlord denied this). However, nothing turns on these issues, and the outcome of this decision is the same, regardless of the version of the Move-Out Report I accept. I make no determination of these issues.

The landlord alleges that the tenants failed to adequately clean the rental unit when they moved out and that they damaged the rental unit and front and back lawns during the tenancy. The landlords seek compensation of $8,703.63, as follows:

Description	Total
Insurance deductible for water-damaged ceiling	$500.00
Cleaning	$140.00
New vanity	$350.00

Re-sod lawn	$7,024.50
New toilet	$689.33
	$8,703.83

1. Insurance deductible

The landlord alleged that the tenants caused water damage to the basement ceiling of the rental unit during the tenancy. Mr. C stated that the landlord believed that the tenants spilled liquid on the upper floor of the rental unit, and that this liquid seeped through the floorboards, down through the joists and insulation, and created a stain on the ceiling of the lower floor of the rental unit. The landlord filed an insurance claim to have the damage repaired and paid a $500 deductible.

The landlord submitted a report created by the remediation company who repaired the damage. It stated that the "source of water damages is determined as 'unknown' at this time". Mr. C stated that the author of the report advised him that he guessed the source of the water might have been the tenants' fish tank, or that the tenants' dog could have knocked over the water bowl, or the tenants' child could have knocked over a "sippy cup".

The landlord submitted photographs of the ceiling of the rental unit basement, which showed two large holes cut into the ceiling drywall. Mr. C stated the water damage which necessitated the cutting of these holes could have been from the same spill or from multiple spills; the landlord is uncertain. Mr. C stated that "no one could know for sure how [the water damage] was caused".

Mr. C testified when he attended the rental unit at 1:00 pm to do the Move-Out Inspection, he noticed two or three puddles of water on the upstairs floor. He was uncertain of the origin of the puddles, but speculated that similar puddles could have caused the aforementioned water damage.

SD argued that, as the cause of the water damage is not known, the tenants cannot be said to have breached the Act by causing the water damage.

2. Cleaning

Mr. C stated that the tenants did not adequately clean the basement shower before moving out of the rental unit. Additionally, he testified that the tenants did not clean under the refrigerator (which was on wheels) or stove (which has metal feet that, he stated, slide easily on the linoleum floor) nor did they adequately clean the kitchen cupboards. He also testified that there were cobwebs on the ceilings in some parts of the rental unit.

The Move-Out Report listed the blinds in the dining room, master bedroom, and second bedroom as dusty or dirty. It also listed the bathroom, shower and toilet in the bathroom

as dirty. It did not list the areas behind and underneath the kitchen appliances as dirty. The landlord submitted photos of behind the appliances and inside the cabinets, in which a small amount of dust and debris can be seen.

The landlord submitted an invoice for $140 from a cleaner into evidence, which the landlord seeks to recover in full. It specified that the cleaner worked for 3.5 hours at an hourly rate of $40.

The tenants admitted that they did not clean the cobwebs. However, they denied that they failed to adequately clean the bathroom or in the cupboards. They submitted photos of the basement bathroom shower that show it to be clean.

SD argued that the tenants could not be expected to clean behind the kitchen appliances.

The tenants submitted a recording they made of the Move-Out Inspection into evidence. In it, tenant CD refers to the Move-Out Report, and asks about the description of the shower and toilet being dirty. Ms. C states that there “is pee on the toilet” and “the shower has dog hair”. Mr. C stated “we're going to have a cleaner come in. We're noticing a lot of spider webs up in the corners so we're going to have someone come in and give it a nice little quick clean otherwise I mean looks really good.” While he was saying this, an unidentified male in the background stated “and the blinds are dusty”. The tenants did not dispute this on the recording.

SD argued that this recording, coupled with absence of any comments on the Move-Out Report regarding the condition of the area of kitchen behind and under the appliances, shows that the rental unit did not necessitate $140 of cleaning. He suggested that $70 was a more appropriate amount.

3. <u>New vanity</u>

Mr. C testified that the tenants spilled bleach or some other substance on the countertop of the vanity in the upstairs bathroom. He stated that this caused a ring-shaped stain that could not be cleaned or removed. The landlord submitted a photograph of this damage into evidence. Mr. C testified that the landlord replaced the vanity at a cost of $350.00 ($192.50 for materials, $150.00 for labour, and $7.50 for GST) as the cost of a new vanity was less expensive than the cost of a new countertop. He provided an invoice showing this amount.

At first, Mr. C stated that the landlord did not charge the tenant for labour when installing the vanity, but later (after I pointed out to him that the invoice indicated the landlord was charged for labour) corrected himself and said that the landlord had to pay for labour because the installation of the vanity required some plumbing to be disconnected and reconnected. He stated that the vanity that was replaced was two years old.

The Move-Out Report did not list any damage to the bathroom vanity. Mr. C explained that there was no mention of the damage because it was not until after the cleaner attended the rental unit that the landlord discovered the damage could not be cleaned off. I note that the Move-Out Report does not indicate that any cleaning is necessary in the upper bathroom. It lists the condition of the bathroom as "same".

SD stated that Mr. C or Ms. C did not refer to any required cleaning of the bathroom vanity during the recording of the Move-Out Inspection. In the recording, Ms. C can be heard to say "the vanity on the bathroom up, does it have a mark on the counter?" Shortly after, tenant CD states "that was there though. I do have photos from when we moved in that I can pull up". I have reviewed the photos submitted into evidence by the tenants, but cannot locate such a photo. There is at least one photo taken by the tenant during the Move-Out Inspection where the stain can be seen.

4. Re-sod lawn

The landlord alleged that the tenants substantially damaged the front and back lawns of the rental unit during the tenancy. She claims that the tenants failed to adequately water the lawns, and that their dog damaged the grass.

The tenants did not dispute the condition of the lawn at the end of the tenancy. Rather, they argued that the lawn was damaged due to a severe drought that occurred during the tenancy and the associated water restrictions.

Additionally, the tenants submitted photos of the lawn taken after the landlord made this application. They show the front lawn to be good repair. Mr. C stated that both the front and the back lawns were repaired by the current occupant of the rental unit. He testified that this occupant had worked hard to bring the damaged lawn back to the state it was prior to the start of the tenants' tenancy. Ms. C characterized the current condition of the lawns as "immaculate" and "beautiful."

Mr. C stated that the landlord did not pay or agree to pay the current tenant any amount to remediate the lawns. Additionally, although the landlord submitted a quote from a landscaping company for $7,024.50 to repair the damage to the lawn, she did not claim that she paid this company, or any other company, to repair the lawn.

5. New toilet

At the June Hearing, Ms. C testified that the tenants used cleaning products in the downstairs toilet that left blue stain on the inside of the bowl. She testified that the landlord's cleaner attempted to scrub the toilet but could not remove the stain. The landlord submitted a photo of the stain into evidence. Ms. C stated that, because they could not remove the stain, the landlord replaced the toilet.

The Move-Out Report does not mention this stain. Ms. C testified that during the Move-Out Inspection she thought the stain would come out with cleaning, and that it was captured under the description of “toilet dirty”.

The landlord submitted an invoice of $689.33 for the purchase and installation of the new toilet.

At the December Hearing, Mr. C gave very different testimony about the reason the toilet was replaced. He testified that the landlord replaced the downstairs toilet because the “guts were not functional”. The landlord tried to replace the “guts” but that did not resolve the problem. He stated that there was a crack at the base of the toilet and that a small amount of water came out. The landlord replaced the seal and tried to patch the crack, but this did not fix the problem. As a result, the landlord replaced the toilet. The landlord is not seeking to recover any amount for cost of the attempted repairs.

The tenants disputed that the downstairs toilet was stained. They submitted a photograph of the downstairs toilet into evidence which shows that there is no stain in the toilet bowl. However, in a video they submitted taken during the Move-Out Inspection, the inner bowl of the *upstairs* toilet has a blue ring at the water line.

Additionally, SD noted that the Move-Out Report did not list any of the damage to the downstairs toilet described by Mr. C and the recording made during the Move-Out Inspection did not contain any reference to a damaged toilet.

Mr. C testified that it is not his practice to flush the toilets during move out inspections to see if they are operational, so he only discovered that the downstairs toilet was damaged after the Move-Out Inspection.

Analysis

Residential Tenancy Branch Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

> The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. 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:
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> - 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.

(the "**Four-Part Test**")

Section 37 of the Act states:

> **Leaving the rental unit at the end of a tenancy**
> 37(2) When a tenant vacates a rental unit, the tenant must
> (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear

Rule of Procedure 6.6 states:

> **6.6 The standard of proof and onus of proof**
>
> The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.
>
> The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

So, the landlord bears the onus to prove that it is more likely than not that the tenants breached section 37(2) of the Act by failing to clean the rental unit or by damaging it, that she suffered a quantifiable monetary loss as a result of this breach, and that she acted reasonably to minimize this loss.

I will apply the Four-Part Test to each portion of the landlord's monetary claim.

1. Insurance deductible

Based on the report authored by the contractor who remediated the water damage and the testimony of Mr. C, I find that the source of water damage which necessitated the insurance claim is not known. Accordingly, I cannot say it is more likely than not that the tenants are responsible for causing the damage. The landlord bears the burden of proof on this point, and in the absence of evidence to the cause of the water damage, I find that the landlord has failed to discharge her onus.

The landlord has not satisfied the first part of the Four-Part Test. I therefore dismiss this portion of the landlord's application, without leave to reapply.

2. Cleaning

The Move-Out Report does not record any debris behind or under the kitchen appliances or in the cabinets. However, it may be that the landlord did not discover this until the cleaner attended the rental unit. The photos taken by the landlord show that debris had accumulated behind the appliances.

RTB Policy Guideline 1 states:

> 2. If the refrigerator and stove are on rollers, the tenant is responsible for pulling them out and cleaning behind and underneath at the end of the tenancy. If the refrigerator and stove aren't on rollers, the tenant is only responsible for pulling them out and cleaning behind and underneath if the landlord tells them how to move the appliances without injuring themselves or damaging the floor. If the appliance is not on rollers and is difficult to move, the landlord is responsible for moving and cleaning behind and underneath it.

The refrigerator was on rollers. The stove was not. There is no evidence before me to suggest that the landlord advised the tenants how to move the stove. As such, the tenants were responsible for cleaning under the refrigerator, but not under the stove. Based on the photos submitted into evidence, I find that they failed to do this.

Based on the evidence presented at the hearing, I find that the blinds were not dusted, there were cobwebs on the ceilings, that there was urine on the base of the basement toilet, and that there was doghair in the basement shower. Had the downstairs bathroom been in the condition claimed by the tenants, I would have expected them to object to Ms. C's assertion about the urine and the dog hair. The absence of such an objection, coupled with the photos in evidence, leads me conclude that the downstairs bathroom was not adequately cleaned, as specified by Ms. C in the recording.

By not cleaning the urine off of the basement bathroom toilet, the dog hair from the shower, the cobwebs from the ceilings, and the dust from backs of the blinds, I find that the tenants have failed to leave the rental unit reasonably clean at the end of the tenancy. I note that RTB Policy Guideline 1 states: "The tenant is expected to leave the internal window coverings clean when he or she vacates."

I find that the landlord has suffered a monetary loss as a result of this failure. The cleaning invoice specifies the cleaner worked for 3.5 hours. I cannot say what portion of this related to the cleaning under the stove. In the circumstances, I find it appropriate to reduce the recoverable amount of cleaning costs by 10%. Accordingly, I find that the amount of the landlord's monetary loss is $126. The landlord acted reasonably in incurring this cost. I order that the tenants pay the landlord this amount.

3. <u>New vanity</u>

I am not persuaded by Mr. C's testimony that the landlord did not notice any damage to the upstairs bathroom countertop during the Move-Out Inspection. The recording indicates that Ms. C identified the damage, and that CD explained it was present when the tenants moved in. The lack of photographic evidence confirming CD's claim is not fatal to her assertion. The issue was raised during the Move-Out Inspection, and Ms. C had an opportunity to rebut it, and indicate the countertop was damaged in the Move-Out Report. She did not do this. I infer that the reason she did not list the damage to the countertop on the Move-Out Report was because she accepted CD's claim that the damage existed at the start of the tenancy.

As such, I do not find the landlord has established it is more likely than not that the tenants damaged the upper bathroom countertop. I dismiss this portion of the landlord's claim, without leave to reapply.

4. Re-sod lawn

The second and third parts of the Four-Part Test require that the landlord prove that she suffered a quantifiable monetary loss as a result of the tenants' breach of the Act. Based on the testimony of Mr. C, I cannot find that the landlord suffered *any* monetary loss in connection with the tenants' alleged breach of the Act.

Even if I found that the tenants caused unreasonable damage to the lawns (on which I explicitly make no findings), the landlord's evidence does not support her claim for compensation. The landlord did not pay anyone any amount to remediate the damaged lawn. The lawn is now in the same or better condition than it was at the start of the tenants' tenancy. Accordingly, the landlord is not in a position worse than she was when the tenancy started.

As the landlord has not paid or agreed to pay her current tenant any compensation in exchange for repairing the lawn, I do not find that she is entitled to a monetary order equal to the quoted amount for the lawn repairs, or any other amount. The landlord is the beneficiary of her current's tenant's labour, and it would be improper to grant the landlord a monetary order for an amount that she did not incur.

Accordingly, I dismiss this part of her application, without leave to reapply.

5. New toilet

Mr. C and Ms. C gave completely different accounts for the reason why the landlord replaced a toilet in the rental unit. They did not even agree on which toilet was replaced. I cannot reconcile their conflicting testimony. I am uncertain which of the toilets was replaced, and for what reason. As such, I cannot find that the landlord has met her evidentiary burden to prove that the tenants breached the Act.

Accordingly, I dismiss this portion of the landlord's application, without leave to reapply.

As the tenants has been mostly successful in the defending against the landlord's application, I decline to order that they reimburse the landlord her filing fee.

Pursuant to section 72(2) of the Act, the landlord may deduct the amount of the monetary order from the security deposit. I order the landlord to return the balance of the security deposit and the entirety of the pet damage deposit to the tenants.

Conclusion

Pursuant to sections 67 and 72 of the Act, I order that the landlord may deduct $126 from the security deposit.

I issue the attached monetary order, ordering the landlord to pay the tenants $2,724, representing the return of the balance of the security deposit and all of the pet damage deposit.

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 23, 2022

Residential Tenancy Branch