Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes: Landlord: MNDL-S, FFL
Tenant: MNSDS-DR, FFT

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the "Act") for Orders as follows:

The landlord requested:

- a monetary order for damage to the unit, site, or property, money owed or compensation for loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant requested:

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

Pursuant to Rule 6.11 of the RTB Rules of Procedure, the Residential Tenancy Branch's teleconference system automatically records audio for all dispute resolution hearings. In accordance with Rule 6.11, persons are still prohibited from recording dispute resolution hearings themselves; this includes any audio, photographic, video or digital recording. Both parties confirmed that they understood.

Both parties confirmed receipt of each other's applications for dispute resolution hearing package ("Applications") and evidence. In accordance with sections 88 and 89 of the *Act*, I find that both parties were duly served with each other's Applications and evidence.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for damage to the rental unit?

Is the tenant s entitled to the return of all or a portion of their security deposit?

Are either of the parties entitled to recover the costs of their filing fees for their applications?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This one year fixed tenancy began on May 1, 2021, with monthly rent set at $2,380.00, payable on the first of the month. A security deposit of $1,190.00 was collected for this tenancy. There were two named tenants on the lease: EB and MF. The applicant, EB, testified that they were no longer comfortable living with their co-tenant, and gave notice to the landlord on January 7, 2022 by email that they will no longer be residing at the rental unit, but will continue to pay rent until the end of the fixed term, April 30, 2022. EB informed the landlord that they will not be renewing the lease after April 30, 2022. The tenant submitted a copy of the email, along with a reply from the landlord on January 8, 2022 requesting the tenant's new address.

The tenant submitted a copy of an email on April 3, 2022 informing the landlord of their forwarding address, as well as a request that the landlord propose a date for a move-out inspection The two parties agreed to perform the move-out inspection at 3:30 p.m. on April 6, 2022 as stated in the correspondence between the parties. The tenant submitted a copy of the move-out inspection report, which the tenant states the landlord refused to sign. The copy of the move-out inspection report also noted the tenant's full forwarding address. The tenant also submitted a signed proof of service for the provision of their forwarding address to the landlord. The tenant testified that the landlord refused to return the tenant's share of their security deposit. On May 24, 2022

the tenant filed an application through the direct request process for the return of their security deposit. In the June 29, 2022 decision, the adjudicator dismissed the tenant's application with leave to reapply due to service requirements not being met. The tenant filed a new application on August 16, 2022 after the landlord failed to return the tenant's portion of their deposit.

The landlord filed their own application on June 13, 2022 for compensation in the amount of $595.00 to cover losses associated with damage to the suite. The landlord denies that the tenant gave them notice that they were moving out, and states that the co-tenant MF had informed the landlord that EB had moved out. The landlord confirmed that they still hold EB's share of the security deposit as the tenant caused damage to the suite. The landlord testified that the damage exceeded $595.00, as supported by the estimate obtained to repair the flooring. The landlord testified that a move-In inspection was performed, and both parties had agreed that the rental unit was in good condition.

The tenant denies causing damage to the floor or rental unit, citing wear and tear. The tenant argued that the landlord not only failed to support that the tenant caused the damage, but that they suffered the loss claimed.

Analysis

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must return the tenant's security deposit plus applicable interest and must pay the tenants a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address.

In review of the evidence before me, I find that the tenant provided the landlord with their full forwarding address on April 6, 2022. Although the landlord disputes that the tenant had given them notice of them moving out or ending the tenancy, I find that the email submitted by the tenant clearly shows that the tenant had informed the landlord on January 7, 2022 that they were no longer living there, and would be paying the landlord rent until April 30, 2022, ending the tenancy on that date. I find that the landlord had clearly read and acknowledged that email as the landlord responded on January 8, 2022 requesting the tenants new address. Even if the landlord did not receive the

tenant's email on January 7, 2022, the landlord had clearly attended the move-out inspection on April 6, 2022. I find that the landlord did not file their application to keep the deposit until June 13, 2022, which is well past 15 days from when the tenancy ended on April 30, 2022.

I am not satisfied that the landlord had written authorization to keep the tenant's security deposit. In accordance with section 38 of the *Act*, I find that the tenant is therefore entitled to a monetary order amounting to double their portion of the original security deposit, plus applicable interest. As per the RTB Online Interest Tool found at http://www.housing.gov.bc.ca/rtb/WebTools/InterestOnDepositCalculator.html, over the period of this tenancy, $2.73 is payable as interest on the tenant's portion of the security deposit from May 1, 2021, until the date of this decision, March 27, 2023.

The landlord filed an application to recover losses associated with damage to the suite, which the tenant disputed, citing wear and tear. Section 37(2) of the *Act* states that "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.

Under the *Act*, a party claiming a loss bears the burden of proof. In this matter the landlord must satisfy each component of the following test for loss established by **Section 7** of the Act, which states;

Liability for not complying with this Act or a tenancy agreement

> ***7*** *(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.*
>
> *(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.*

The test established by Section 7 is as follows,

1. Proof the loss exists,
2. Proof the loss was the result, *solely, of the actions of the other party (the landlord)* in violation of the *Act* or Tenancy Agreement
3. Verification of the actual amount required to compensate for the claimed loss.

4. Proof the claimant followed section 7(2) of the *Act* by taking *reasonable steps to mitigate or minimize the loss*.

Therefore, in this matter, the landlord bears the burden of establishing their claims on the balance of probabilities. The landlord must prove the existence of the loss, and that it stemmed directly from a violation of the tenancy agreement or a contravention of the *Act* on the part of the other party. Once established, the landlord must then provide evidence that can verify the actual monetary amount of the loss. Finally, the landlord must show that reasonable steps were taken to address the situation to *mitigate or minimize* the loss incurred.

In this case although the landlord claims that they had performed a move-in inspection at the beginning of the tenancy, the landlord failed to provide sufficient evidence to support that a move-in inspection was done in accordance with section 23 of the *Act.* The consequence of not abiding by this section of the *Act* is that "the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished", as noted in sections 24(2) of the *Act*.

Furthermore, despite the photos and estimate submitted in evidence by the landlord, I am not satisfied that the landlord fulfilled their obligation to support what damage was caused by the tenant during this tenancy, and any actual losses suffered by the landlord due to the tenant's contravention of the *Act* and tenancy agreement. Without a move-in inspection report, I find that there is no way to determine what the pre-existing condition of the rental unit was, and what portion of the damage exceeded regular wear and tear. Although I acknowledge that there may have been damage to the home, as shown in the photos submitted, I find that the landlord failed to provide sufficient evidence to support that the tenant is responsible for the losses claimed. Accordingly, I am dismissing the landlord's entire claim for repairs without leave to reapply.

The recovery of the filing fee is normally awarded to the successful party after a hearing. Accordingly, the tenant is entitled to recover the $100.00 filing fee paid for their application. The landlord's application to recover the filing fee is dismissed without leave to reapply.

Conclusion

The landlord's entire application is dismissed without leave to reapply.

I issue the tenant a monetary order in the amount of **$1,292.74** in order to implement the monetary awards granted in this application as set out below.

Item	Amount
Double security deposit pursuant to section 38 of the Act	$1,190.00
Interest on tenant's security deposit	2.74
Recovery of Filing Fee	100.00
Total Monetary Order to Tenant	**$1,292.74**

The tenant is provided with this Order in the above terms and the landlord must be served with a copy of 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: March 27, 2023

Residential Tenancy Branch