Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNDL-S, FFL

Introduction

The Landlord seeks the following relief under the *Residential Tenancy Act* (the "*Act*"):

- a monetary order pursuant to ss. 67 and 38 to pay for repairs caused by the tenant during the tenancy by claiming against the deposit; and
- return of the filing fee pursuant to s. 72.

M.W. appeared as the Landlord and was joined by her husband, A.W.. H.R. appeared as the Tenant.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The Landlord testified that she served the Tenant with her application and evidence by way of registered mail, which the Tenant acknowledged receiving without objection. I find that the Landlord's application materials were served in accordance with s. 89 of the *Act*.

The Tenant advised that he served his response evidence by way of email sent on or about February 21, 2023. The Landlord acknowledges receiving the email but says that she could not open its contents due to a virus warning she obtained. I enquired with the parties whether email is an approved form of service. The Tenant says that the parties have communicated via email and that when he served his evidence, he asked in the email if the Landlord wanted to have mailed copies sent as well.

Section 89(1) of the *Act* proscribes the method of service permitted for dispute resolution hearings such as this. Email may be a method of service provided it is an agreed form of service beforehand as per s. 43 of the *Residential Tenancy Regulation* (the "Regulation"). In this instance, it does not appear that the parties did agree that email would be a method of service under the *Act*. Given this, I find that the Tenant has failed to serve his evidence in a method proscribed by the *Act* and was not received by the Landlord in any event due to issues with the email contents. As such, I do not allow the Tenants evidence and shall not consider it as it was not properly served.

Issues to be Decided

1) Is the Landlord entitled to monetary compensation for damage to the rental unit?
2) Is the Landlord entitled to claim against the security deposit?
3) Is the Landlord entitled to the return of her filing fee?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all admitted written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this decision.

The parties confirm the following details with respect to the tenancy:

- The tenants moved into the rental unit on February 1, 2020.
- The tenants vacated the rental unit on May 21, 2022.
- Rent of $1,680.00 was due on the first of each month.
- The tenants paid a security deposit of $820.00 to the landlords.

I am provided with a copy of the tenancy agreement by the Landlord.

The Landlord provides a monetary order worksheet detailing the following claims:

1)	Toilet Bowl	$266.56
2)	Paint/Tint/Bifold Bolts	$131.05
3)	Bifold Track Guide, Pivot	$16.81
4)	Rental Unit Flood Response	$247.00
5)	Painter	$238.00
6)	Paint Supplies	$45.92

7)	Fridge Part	$40.00
8)	Floor Lamp	$70.00
9)	Strata Move-Out Fee	$100.00
10)	Canada Post	$2.04

The Landlord testified that the after the Tenant and his family vacated the rental unit they discovered that the tenants' child had marked the walls and a closet door with a crayon. The Landlord further testified that the same closet door had been pulled such that it bent the rail in which it glided. The Landlord seeks the costs of partially repainting the walls and closet door drawn on with crayon as well as repair costs for the closet door. I am provided with receipts by the Landlord for these expenses, which I am told by the Landlord that the material costs were adjusted downward to reflect the amount of materials used. The Tenant acknowledges his child drew on the walls and had pulled on the closet door.

The Landlord also seeks the costs for a fridge shelf bracket that was broken and am directed to a screenshot for the part purchased from Amazon, which was $32.35 with $13.99 in shipping costs. The Tenant acknowledges that this was broken by them during the tenancy and takes no issue with the $40.00 claimed by the Landlord for this part.

The Landlord further seeks the replacement cost for a floor lamp that she says was part of the tenancy. I was directed to the tenancy agreement addendum outlining the items provided as part of the tenancy. I am told the lamp was thrown out by the Tenant, which the Tenant admits as it had been broken. The Landlord seeks $70.00, though review of the evidence does not indicate how this figure was obtained. The Tenant says that the amount is too high given the age and quality of the lamp that was damaged. He argues that $30.00 or $40.00 is appropriate and that he had left a replacement lamp from IKEA after the previous one was broken.

The Landlord advises that the strata never did charge the move-out fee such that she does not seek that amount. No submissions were made with respect to the $2.04 Canada Post charge.

The Landlord testifies that she was contacted by the tenants on October 28, 2022 to notify her that the tank from the toilet had overflowed. According to the Landlord, the tenants told her the incident resulted from other plumbing that was being done elsewhere in the building. The Tenant acknowledges notifying the Landlord on this

occasion about the toilet, though says it was merely a speculation that the plumbers working elsewhere in the building caused the overflow. The Tenant says he is not a plumber.

I am told that when the landlords attended the rental unit, they discovered that the lid for the tank had been broken. The Tenant admits that it was broken by them during the tenancy, though argues that the toilet functioned otherwise. The Landlord advises that the toilet was replaced and that they did the work themselves such that they seek the cost for the new toilet, being $266.56 as evidenced by a receipt put into evidence. The Tenant argued that the Landlord could have simply purchased the replacement lid rather than replace the toilet. A.W. testified that they had tried to find a lid that would be suitable but found that they did not match the toilet such that replacement was the only option.

The Landlord also brought the plumbers who were working in the property to the rental unit to ascertain whether the leak was attributable to the work they conducted. Unbeknownst to the landlords, the plumbers charged a service fee for investigating the leak totalling $235.60. I am provided with that invoice by the Landlord and the Landlord seeks its repayment. The Tenant disputes he should be responsible for this amount at all.

I am told by the Landlord that a move-in inspection was conducted on January 31, 2020. No copy of a move-in condition inspection report was provided to me. The Landlord says that she did not have a pen on that occasion such that she left the paperwork for the inspection with the tenants for them to fill out and send to her. I am told this never happened. The Landlord says that the move-out inspection was conducted on May 21, 2022 without the tenants as they were at the airport. A copy of the move-out report is provided to me by the Landlord. I am also provided with photographs of the rental unit after the tenants vacated.

I enquired when the Tenant provided his forwarding address. The Landlord was uncertain, saying it was either June 6th or 7th and was provided to her via email after she requested the same from the Tenant. The Tenant says it was done on June 8th.

The parties confirm the security deposit has been retained in full by the Landlord.

Analysis

The Landlord seeks compensation for damage to the rental unit by claiming against the security deposit.

Under s. 67 of the *Act*, the Director may order that a party compensate the other if damage or loss result from that party's failure to comply with the *Act*, the regulations, or the tenancy agreement. Policy Guideline #16 sets out that to establish a monetary claim, the arbitrator must determine whether:

1. A party to the tenancy agreement has failed to comply with the *Act*, the regulations, or the tenancy agreement.
2. Loss or damage has resulted from this non-compliance.
3. The party who suffered the damage or loss can prove the amount of or value of the damage or loss.
4. The party who suffered the damage or loss mitigated their damages.

The applicant seeking a monetary award bears the burden of proving their claim.

Section 37(2) of the *Act* imposes an obligation on tenants to leave the rental unit in a reasonably clean and undamaged state, except for reasonable wear and tear, and to give the landlord all keys in their possession giving access to the rental unit or the residential property. Policy Guideline 1 defines reasonable wear and tear as the “natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion.”

In this instance, there is no dispute that the tenants breached s. 37(2) of the *Act* with respect to the crayon markings on the wall and closet, the damage to closet door, the damage to the fridge bracket, the toilet tank lid, and the floor lamp. I accept that pursuant to the addendum the floor lamp formed part of the tenancy. I find that the tenants breached s. 37(2) of the *Act* with respect to the items listed above.

The Landlord seeks $414.97 for repainting the affected portions of the rental unit ($131.05 for bifold door + $238.00 for painter + $45.92 for paint supplies). I have no issue with granting the amounts for hiring the painter and the paint supplies, which are clearly demonstrated in the Landlord’s evidence. However, it is unclear to me how the $131.05 to paint a closet door was arrived at as the receipt provided appears to relate to the purchase of 2 gallons of paint.

Given that there is no dispute the Tenant was responsible, I accept that he should be responsible to pay for painting the closet door. I find that the amount claimed by the Landlord is disproportionate to the other costs listed for painting the walls such that there is an issue with mitigation of the claim. Accordingly, I reduce the cost to repainting the closet door to $50.00. I find that the Landlord is entitled to $333.92 for repainting the rental unit.

With respect to the fridge bracket, I accept that the Landlord's evidence demonstrates that the cost of replacing the part exceeds the amount claimed, being $40.00. I find that the Landlord is entitled to this amount as part of her claim.

Similarly, I accept that the cost of the replacement parts for repairing the closet, as demonstrated in the receipts provided, support the claim of $16.81. I find that the Landlord is entitled to this amount as part of her claim.

Looking next to the floor lamp, I am provided with no evidence to support that the cost to replace it is $70.00. Though I accept that the Tenant left a replacement lamp behind, I also accept that this was not of a similar kind and quality to the Landlord's. In light of the lack of evidence provided by the Landlord and the Tenant's admission that he was responsible for throwing away the lamp, I find that an appropriate amount for this portion would be $40.00, as suggested by the Tenant.

The Landlord also seeks the cost of replacing the toilet. The Tenant argues, essentially, that the Landlord did not mitigate her damages by replacing the broken lid over the whole toilet. However, I accept A.W.'s testimony that replacing the lid was not practical given that it did not match the older toilet. I find that the Landlord is entitled to the total amount of $266.56 as demonstrated in the receipt provided.

Finally, the Landlord seeks the cost for the plumber to investigate the overflow from the toilet. There is no evidence to suggest that the tenants were responsible for the overflow other than notifying the Landlord that the overflow had occurred. Indeed, I am provided with no evidence to explain why the overflow occurred. In light of this, I find that the Landlord has failed to establish the Tenant's breached s. 32 of the *Act* such that this portion of the claim is dismissed without leave to reapply.

As no amount was incurred for the strata fee, this potion is dismissed without leave to reapply. Similarly, as no submissions were made for the Canada Post claim, this portion is also dismissed without leave to reapply.

In total, I find that the Landlord has established a monetary claim for damages to the rental unit totalling $697.29 ($266.56 (Toilet Replacement) + $40.00 (Floor Lamp) + $16.81 (Closet Repair) + $333.92 (Repainting) + $40.00 (Fridge Part)). I also grant the Landlord their filing fee as they were largely successful on their claims such that the tenants shall pay the Landlord's $100.00 filing fee as per s. 72(1) of the *Act*.

Section 38(1) of the *Act* sets out that a landlord must within 15-days of the tenancy ending or receiving the Tenant's forwarding address, whichever is later, either repay a tenant their security deposit or make a claim against the security deposit with the Residential Tenancy Branch. A landlord may not claim against the security deposit if the application is made outside of the 15-day window established by s. 38.

I am told that the forwarding address was provided by way of email sometime in early June 2022. However, as noted earlier in my decision, I have been provided no evidence to suggest that email is an approved form of service under the *Act*. Accordingly, I find that the Tenant has not technically provided his forwarding address such that s. 38(1) of the *Act* has not yet been triggered. Given this, I find that the question of extinguishment is irrelevant as the process established by s. 38 of the *Act* has not been triggered.

Policy Guideline #17 states the following with respect to the retention or the return of the security deposit through dispute resolution:

> 1. The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:
>   - a landlord's application to retain all or part of the security deposit; or
>   - a tenant's application for the return of the deposit.
>
>   Unless the tenant's right to the return of the deposit has been extinguished under the Act. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for dispute resolution for its return.

Taking the amounts ordered above into account and in light of the security deposit of $820.00, I order that the Landlord's retain $797.29 from the security deposit and return the balance, $22.71 to the tenants.

Conclusion

The Landlord has established a claim for damages under s. 67 of the *Act* totalling $697.29.

The Landlord is entitled to her filing fee under s. 72(1) of the *Act* in the amount of $100.00.

The Landlord shall retain $797.21 from the security deposit of $820.00, such that I order pursuant that the Landlord pay **$22.71** to the Tenants as the return of the balance of the security deposit.

It is the Tenants' obligation to serve the Landlord with the monetary order. If the Landlord does not comply with the monetary order, it may be filed with 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 03, 2023

Residential Tenancy Branch