Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MDL-S, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Landlord on August 12, 2022, under the *Residential Tenancy Act* (the Act), seeking:

- Reimbursement for the cost of cleaning and repairs;
- Retention of the security deposit; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call at 1:30 pm on May 9, 2023, and was attended by the Tenant and the Landlord. All testimony provided was affirmed. As the Tenant acknowledged service of the Notice of Dispute Resolution Proceeding (NODRP), and stated that there are no concerns regarding the service date or method, the hearing proceeded as scheduled. As the parties acknowledged receipt of each other's documentary evidence, and raised no concerns with regards to service dates or methods, I accepted the documentary evidence before me for consideration. The parties were provided the opportunity to present their evidence orally and in written and documentary form, to call witnesses, and to make submissions at the hearing.

The parties were advised that interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The parties were asked to refrain from speaking over me and one another and to hold their questions and responses until it was their opportunity to speak. The parties were also advised that pursuant to the Rules of Procedure, recordings of the proceedings are prohibited, and confirmed that they were not recording the proceedings.

Although I have reviewed all evidence and testimony before me that was accepted for consideration as set out above, I refer only to the relevant and determinative facts, evidence, and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be emailed to them at the email addresses confirmed in the hearing.

Issue(s) to be Decided

Is the Landlord entitled to reimbursement for the cost of cleaning and repairs?

Is the Landlord entitled to retention of the security deposit?

If not, is the Tenant entitled to its return, or double its amount?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The parties agreed that:

- the tenancy ended on July 31, 2022;
- the Tenant provided the Landlord with their forwarding address in writing on January 31, 2022;
- the Tenant paid a $550.00 security deposit, which the Landlord still holds in trust;
- sections 38(3) and 38(4) of the Act do not apply; and
- condition inspections and reports were completed and served in accordance with the Act and regulation.

However, the parties disputed whether the condition inspection report before me was accurate. The Tenant stated that they completed the report with the Landlord on the date of the inspection, and signed it as they agreed with the report completed at that time stating that there were no deficiencies or damage and that no amount needed to be retained from the deposit. The Tenant stated that the Landlord later added things to the previously signed off report before providing them with a copy. A witness statement was submitted by the Tenant in support of this testimony. The Landlord disagreed, stating that the form was completed after the inspection, not at the same time, and that a blank copy was signed off during the inspection under the expectation that it would be updated later if damages were found. The Landlord stated that damages that were not

immediately apparent were later found and documented on the report before it was served to the Tenant.

The parties disagreed about whether the Tenant left the rental unit reasonably clean at the end of the tenancy and whether the Tenant damaged the microwave, tub drain, bathroom cabinet doors and laminate flooring. The Tenant denied causing damage and argued that any deterioration of the above noted items listed is wear and tear. The Tenant also argued that given the pandemic, they and their young child spent more time at home over the 4.5-year tenancy than perhaps an average previous tenant would have, which likely contributed to more wear and tear than the Landlord was previously used to.

The Landlord disagreed, stating that the items were damaged, and the damage does not constitute reasonable wear and tear. When asked why they did not document the damage now claimed at the time of the inspection, they stated that it was not immediately apparent. The Landlord also confirmed that the unit was built in 2010, and that none of the items claimed had been replaced since the unit was built.

Analysis

I am satisfied by the testimony of the parties that neither party extinguished their rights in relation to the security deposit. I am also satisfied that the Landlord complied with section 38(1) of the Act when they filed the Application seeking retention of the security deposit on August 12, 2022, as that is less than 15 days after July 31, 2022, the date the parties agreed the tenancy ended and the Tenant provided their forwarding address in writing. As a result, I find that the Tenant is not entitled to double the amount of their security deposit under section 38(6) of the Act.

The Landlord argued that the Tenant signed a blank move-out condition inspection report with the understanding that the Landlord would add anything to it later found to be damaged, which they did. The Landlord also argued that these items were added later as they were not easily noticeable or identifiable during the inspection, and therefore could not have been found and documented at the time of the inspection. For the following reasons, I dismiss both arguments. First, the Tenant denied signing a blank document, and the Landlord did not point to any documentary or other evidence at the hearing that would substantiate this version of events. The Tenant also submitted a signed statement from a witness, MB, who stated that they were present during the move-out condition inspection, the rental unit was inspected thoroughly and without

rush, and that the Landlord and their ex-spouse advised the Tenant that there were no issues and that they would receive their full security deposit back. The witness also stated that the copy of the move-out condition inspection now submitted for my consideration is not the same one signed by the parties at the time of the inspection.

Second, I find the Landlord's version of events illogical. The purpose of the move-out condition inspection and report is to document together, at the time the tenancy ends, the condition of the rental unit so that both parties understand each others respective positions with regards to whether the rental unit has been left in compliance with section 37(2)(a) of the Act. This also provides both parties with an opportunity to gather any documentary evidence regarding the state of the rental unit at the end of the tenancy, should there be a disagreement on its condition, and an opportunity for the Tenant to remedy any deficiencies. Completing a condition inspection and then signing a blank report negates the entire purpose of the condition inspection and report.

Further to the above, I also find the Landlord's argument that the damages and lack of cleanliness later noted by them on the move-out condition inspection report could not reasonably have been noticed and documented at the time of the move-out condition inspection, flawed and unreasonable. The items allegedly damaged are things such as flooring, bathroom cabinet doors, a tub drain, and a microwave. These are all things that I find would have been reasonably visible during the move-out condition inspection. As a result, I see no reasonable reason why the Landlord would have been unable to observe them during the inspection and document any damage to them, had they been acting diligently in inspecting the unit for damage and cleanliness as required.

As a result, I find it more likely than not that the Tenant's version of events is accurate and credible. I do not find that it was open to the Landlord to inspect the rental unit with a Tenant, sign a condition inspection report devoid of any notations of damage or a lack of cleanliness, then re-inspect the rental unit after the Tenant had left and the tenancy had ended, and document damage that would have been reasonably noticeable during the original inspection if the Landlord had been acting diligently at that time or took issue with them. This is not a case of hidden damage, such as a dryer that does not dry correctly, that would likely go unnoticed until the appliance was used by another occupant. I am satisfied that all the damage and lack of cleanliness now claimed by the Landlord was reasonably visible at the time of the inspection, and therefore could and should have been

noted by the Landlord at the time of the move-out condition inspection if they took issue with it.

Section 7 of the Act and Residential Tenancy Policy Guideline (Policy Guideline) #5 and #16 state that parties seeking compensation for damage or loss must act reasonably to mitigate that damage or loss. I find that the Landlord failed to mitigate their loss by failing to act diligently in completing the inspection and documenting the condition of the rental unit on the required condition inspection report at that time. I therefore dismiss the Application without leave to reapply.

Pursuant to Policy Guideline #17 and section 67 of the Act, I grant the Tenant a monetary order in the amount of $550.00 for the return of their security deposit. I order the Landlord to pay this amount to the Tenant.

Conclusion

The Landlord's Application is dismissed without leave to reapply.

Pursuant to section 67 of the Act, I grant the Tenant a Monetary Order in the amount of **$553.82** for the return of their security deposit, plus interest. The Tenant is provided with this order in the above terms and the Landlord must be served with this order as soon as possible. Should the Landlord fail 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: May 10, 2023

Residential Tenancy Branch