Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNDL-S, FFL

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear an application regarding a residential tenancy dispute. The landlord applied on February 16, 2023 for:

- compensation for damage caused by the tenant, their pets, or their guests to the unit or property, requesting to retain the security and/or pet damage deposit; and
- recovery of the filing fee.

Those present were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

Neither party raised an issue regarding service of the hearing materials.

Issues to be Decided

1) Is the landlord entitled to compensation for damage caused by the tenant, their pets, or their guests to the unit or property, in the amount of $4,667.25?
2) Is the landlord entitled to the filing fee?

Background and Evidence

While I have considered all the presented documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claims and my findings around each are set out below.

The parties agreed on the following facts. The tenancy began September May 31, 2020 and ended January 28, 2023; rent was $1,910.00, due on the first of the month; and the tenant paid a security deposit of $922.50, and a pet damage deposit of $922.50 which the landlord still holds.

The parties agreed they completed a move in inspection together and that the landlord gave the tenant a copy. The parties agreed the tenant was present for part of the move out inspection, and that the landlord gave the tenant a copy of the completed report. The parties agreed that the tenant provided a forwarding address in writing; the tenant testified she provided it on February 1, 2023 by text, and later by email. The parties agreed the tenant did not agree in writing for the landlord to keep any part of the security or pet damage deposit.

The landlord submitted as evidence the move-in and move-out condition inspection reports.

Regarding their claim for $4,667.25 in damages, the landlord's Monetary Order Worksheet indicates they are requesting compensation for:

- general repairs: $670.67;
- flooring replacement: $3,963.75; and
- visitor parking passes: $50.00.

The landlord testified that the $670.67 sought for general repairs breaks down as follows:

- restoration and painting of the den: $350.00;
- repair of scrapes to paint in the bedroom: $75.00, which the tenant testified she was willing to pay for;
- repairs to entryway: $75.00, which the tenant testified she was willing to pay for;
- reattaching smoke detectors: $10.00, which the tenant testified she was willing to pay for;
- colour matching: $75.00;
- materials: $ 53.73; and
- GST: 31.94.

Regarding the den, the RTB-27 move-in *Condition Inspection Report* does not mention a den; it lists the following general-use rooms and areas: entry, living room, dining room, master bedroom (1), and bedroom (2). The move-out report is of a different format, and lists the following comparable areas: entry, living room, bedroom, bedroom 2, and den.

It does not mention a dining room, and does not clarify whether the den and the dining room are the same space.

For the den walls, the move out report states “good, marked, damaged,” and notes the use of 4 adhesive hooks, a patch where “paint pulled,” scrape marks beneath an electrical outlet, and states that “walls need a repaint.” The bottom of the report states that the tenant is responsible for “restoration and painting of den walls,” and that those damages are to be charged to the deposit. The report has a box stating: “I, the tenant agree that this report fairly represents the condition of the rental unit”; the accompanying note says: “Tenant to agree via email.” An email of this nature was not presented as evidence. In an email from the landlord to the tenant, dated February 16, 2023 and submitted as evidence, the landlord states: “We haven’t had a full discussion or reached a settlement regarding your deposit and the amounts to cover repairs needed for the unit.” The move-out condition inspection report is signed by the landlord’s representative, but not by the tenant.

The landlord testified that the tenant pulled one of the adhesive hooks off, which stripped the paint; the landlord also testified that the den walls were “heavily marked.” The landlord submitted that the hooks needed to be pulled off, and the spots sanded, filled, and painted.

The tenant testified that they were of the understanding that the landlord asked them to use the paint in the unit to touch up spots in the den. The tenant testified they had intended to do so, but had not been able to get the paint can open. The tenant testified that the landlord later sent them a $350.00 invoice for much more work, including sanding, priming, and painting. The tenant testified there was a disparity between the discussed touch ups and the invoiced work and cost. The tenant submitted they did not understand how the limited damage to the den as recorded on the move-out condition report turned into doing a full paint job on the room.

The landlord testified they are seeking $3,963.75 for flooring replacement due to water damage during the tenancy. The landlord testified that when the tenant moved out, the landlord had thought they would be able to repair a gapping in the living room floor. The landlord testified they later consulted a contractor, who said the floors must be replaced due to water damage.

Regarding the living room floor, the move-out condition inspection report states: “Good, Fair, Clean” and “Floor panels have shifted by the patio door” and “1 scratch and superficial scratches on floor.”

The tenant submitted the shift in the two floorboards was not listed as damage on the move-out condition report, and that flooring damage is not listed on the report as the responsibility of the tenant, or that it is to be charged to the security deposit.

The landlord submitted that they were not initially aware of the extent of the damage to the floor, and that they had wanted to get a professional opinion on the flooring.

Regarding the visitor parking passes, the tenant testified she was willing to pay the $50.00 sought by the landlord.

Analysis

The landlord seeks to recover from the tenant $4,667.25 in damages, comprising: $670.67 inclusive of GST, for general repairs; $3,963.75 for flooring replacement; and $50.00 for visitor parking passes.

The tenant has agreed to pay the following: $75.00 to repair scrapes to paint in the bedroom, $75.00 for repairs to the entryway, and $10.00 for reattaching smoke detectors. Therefore, I find the landlord is entitled to the $160.00 plus GST of $8.00 the landlord paid, for a total of $168.00. The tenant has also agreed to pay the landlord $50.00 for the parking passes.

Section 32(3) of the Act states that a tenant must repair damage to the rental unit caused by the actions or neglect of the tenant.

Section 21 of the *Residential Tenancy Act Regulation* (the Regulation) states that in dispute resolution proceedings, a condition inspection report is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

The landlord submitted they seek $350.00 for restoration and painting of the den, stating that the walls were heavily marked at the end of the tenancy. However as the move-in condition inspection report does not reference a den, I have nothing to compare the move-out report against for this area of the unit. Additionally, while the move-out report references marks on the den walls due to the tenant's use of adhesive hooks, and the tenant submitted there was leftover paint in the unit, the landlord has

failed to clarify how what sounds like wear and tear requires repair by professionals at a cost of $350.00.

The landlord seeks $3,963.75 for flooring replacement due to water damage during the tenancy. The landlord submitted they later learned there was water damage to the floor, requiring its replacement.

Pursuant to the Regulation, I rely on the condition inspection report as the evidence of the state of repair of the rental unit. The move-out condition inspection report stated only that the living room floor was in “Good, Fair, Clean” condition with a few scratches, and that the floor panels had shifted in one spot. I find this does not describe damage requiring floor replacement, but rather wear and tear.

I find the landlord has provided insufficient evidence in support of their monetary claims, and has failed to discharge their evidentiary burden. Therefore, I find the landlord is not entitled to compensation for damages beyond that agreed to by the tenant.

Section 72(1) of the Act provides that an arbitrator may order payment of a fee under section 59(2)(c) by one party to a dispute resolution proceeding to another party. As the only success the landlords have had with their application is with the agreement of the tenant, I decline to award the landlord the filing fee.

As agreed to by the tenant, the landlord is entitled to retain from the security deposit $168.00 for damages and $50.00 for the parking passes, for a total of $218.00.

Conclusion

The landlord may retain $218.00 of the tenant’s security deposit, as agreed by the tenant.

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: May 02, 2023

Residential Tenancy Branch