Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNDL-S, MNSDB-DR, FFT

Introduction and Preliminary Matters

This hearing dealt with cross-applications filed by the parties. On January 16, 2024, the Landlord made an Application for Dispute Resolution seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the "Act") and seeking to apply the security deposit and pet damage deposit towards this debt pursuant to Section 67 of the Act.

On January 23, 2024, the Tenant made an Application for Dispute Resolution seeking a Monetary Order for a return of the security deposit and pet damage deposit pursuant to Section 38 of the Act and seeking to recover the filing fee pursuant to Section 72 of the Act.

Both the Landlord and the Tenant attended the hearing. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited, and they were reminded to refrain from doing so. As well, all parties in attendance provided a solemn affirmation.

Service of the respective Notice of Hearing and evidence packages was discussed, and there were no issues concerning service. As such, I have accepted all parties' evidence and will consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to a Monetary Order for compensation?
- Is the Landlord entitled to apply the security deposit and pet damage deposit towards these debts?
- Is the Tenant entitled to a return of the security deposit and pet damage deposit?
- Is the Tenant entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy commenced on September 1, 2023, and that the tenancy ended when the Tenant gave up vacant possession of the rental unit on January 1, 2024. Rent was established at an amount of $3,400.00 per month and was due on the first day of each month. A security deposit of $1,700.00 and a pet damage deposit of $850.00 were also paid. A copy of the signed tenancy agreement was submitted as documentary evidence for consideration.

All parties also agreed that a move-in inspection report was conducted with the Tenant on August 31, 2023, and that a move-out inspection report was conducted with the Tenant on January 1, 2024. A copy of the move-in and move-out inspection report was submitted as documentary evidence for consideration.

Furthermore, they then agreed that the Tenant provided her forwarding address in writing on the move-out inspection report. As well, they confirmed that the Tenant did not authorize any amount of the security deposit or pet damage deposit to be withheld despite the move-out inspection report somewhat indicating as much.

The Landlord advised that she was seeking compensation in the amounts of **$2,348.65**

for replacing a damaged garage door, and **$374.50** for the cost of painting it. She testified that the Tenant acknowledged backing into the door and damaging it. She referenced emails submitted as documentary evidence where the Tenant confirmed that she was responsible for this damage. As well, she cited pictures submitted of this damage, and quotes to repair it. She stated that she has not fixed this damage yet as the door is currently operational, but does not function properly in the winter.

The Tenant advised that the garage door worked fine despite her damaging it. She testified that the door was still completely functional, and this is the reason the Landlord has not fixed it yet. It is her belief that being responsible for this entire cost is not fair.

The Landlord then advised that she was seeking compensation in the amount of **$1,177.00** for the cost to repair an irrigation line that the Tenant's dog chewed. She referenced the Tenant's acknowledgement of this damage in the emails submitted. As well, she cited the pictures provided and the invoice of the cost to repair this damage. She then stated that she had no idea of the actual damage that was caused, and that she would attempt to fix this herself.

The Tenant confirmed that her dog was likely responsible for this damage. However, she advised that she contacted a repair company, who reported that this was minor damage. She referenced the email from this company, as well as the estimated costs to fix this damage to refute the Landlord's claim.

The parties were invited to attempt to settlement their disputes; however, they were unable to reach an amenable outcome.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following sections of the Act that are applicable to this situation. My reasons for making this Decision are below.

Section 23 of the Act states that the Landlord and Tenant must inspect the condition of the rental unit together on the day the Tenant is entitled to possession of the rental unit or on another mutually agreed upon day.

Section 35 of the Act states that the Landlord and Tenant must inspect the condition of the rental unit together before a new tenant begins to occupy the rental unit, after the

day the Tenant ceases to occupy the rental unit, or on another mutually agreed upon day. As well, the Landlord must offer at least two opportunities for the Tenant to attend the move-out inspection.

Section 21 of the *Residential Tenancy Regulation* (the "*Regulation*") outlines that the condition inspection report is evidence of the state of repair and condition of the rental unit on the date of the inspection, unless either the Landlord or the Tenant have a preponderance of evidence to the contrary.

Sections 24(2) and 36(2) of the Act state that the right of the Landlord to claim against a security deposit or pet damage deposit is extinguished if the Landlord does not complete the condition inspection reports in accordance with the Act.

Section 32 of the Act requires that the Landlord provide and maintain a rental unit that complies with the health, housing and safety standards required by law and must make it suitable for occupation. As well, the Tenant must repair any damage to the rental unit that is caused by their negligence.

Section 67 of the Act allows a Monetary Order to be awarded for damage or loss when a party does not comply with the Act.

With respect to the inspection reports, as it is evident that the Landlord completed these reports with the Tenant in accordance with the Act, I am satisfied that the Landlord did comply with the requirements of the *Regulation*. As a result, I find that the Landlord has not extinguished the right to claim against the deposits.

Section 38(1) of the Act requires the 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 deposits in full or file an Application for Dispute Resolution seeking an Order allowing the Landlord to retain the deposits. If the Landlord fails to comply with section 38(1), then the Landlord may not make a claim against the deposits, and the Landlord must pay double the deposits to the Tenant, pursuant to section 38(6) of the Act.

The consistent and undisputed evidence before me is that the forwarding address in writing was received on January 1, 2024, and that the Landlord made the Application on January 16, 2024. As the Landlord claimed against the Tenant's deposits by making this Application within 15 days of receiving the forwarding address in writing, and as the Landlord has not extinguished the right to claim against the deposits, I am satisfied that

the Landlord complied with the requirements of the Act with respect to the handling of the security deposit and pet damage deposit at the end of the tenancy. As such, the doubling provisions of the Act do not apply in this instance.

With respect to the Landlord's claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

As noted above, 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. When establishing if monetary compensation is warranted, it is up to the party claiming compensation to provide evidence to establish that compensation is owed. In essence, to determine whether compensation is due, the following four-part test is applied:

- Did the Tenant fail to comply with the Act, regulation, or tenancy agreement?
- Did the loss or damage result from this non-compliance?
- Did the Landlord prove the amount of or value of the damage or loss?
- Did the Landlord act reasonably to minimize that damage or loss?

In addition, I find it important to note that when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. Given the contradictory testimony and positions of the parties, I may also turn to a determination of credibility. I have considered the parties' testimonies, their content and demeanour, as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy.

With respect to the Landlord's claim for compensation in the amounts of $2,348.65 for repairing the damaged garage door, and $374.50 for the cost of repainting it, the consistent and uncontroverted evidence is that the Tenant acknowledged damaging the garage door. While it is the Tenant's belief that this is mostly just aesthetic in nature, I find it reasonable to conclude that it is entirely possible that there would likely be mechanical issues that would be necessary to address and adequately fix what would, on the face of it, appear to be simply cosmetic damage. I do not accept the Tenant's

assessment as this merely being superficial. However, I also note that the Landlord has not yet fixed this damage, which causes me to doubt the significance of this damage.

As such, I am not satisfied that the Landlord has sufficiently established the veracity of this entire claim. However, as it is undisputed that the Tenant was responsible for this damage, I find it appropriate to award the Landlord a monetary award in the amount of **$1,500.00** to repair the damaged door, and **$367.50** for the cost to repaint it.

Regarding the Landlord's claim for compensation in the amount of $1,177.00 for the cost to repair a damaged irrigation line due to the Tenant's dog, the consistent and undisputed evidence before me is that the Tenant acknowledged that her dog damaged this irrigation line. However, I find it important to note that the Landlord appeared to be unsure of the actual damage and was attempting to fix this herself possibly. Given that there has been no evidence presented that she had any qualifications to undertake this repair, this causes me to doubt the significance of this damage. As such, I am doubtful of the reliability of the Landlord's submissions with this claim. Nevertheless, as I am satisfied from the undisputed evidence that the Tenant's dog was negligent for this damage, I find it appropriate to award the Landlord an amount that would reasonably account for her own DIY repair. Consequently, I grant the Landlord a monetary award in the amount of **$75.00** to remedy this matter.

As the Landlord filed an Application to claim against the Tenant's deposits, it was not necessary for the Tenant to make her own Application. As such, I am satisfied that the Tenant was not successful in her claim and is not entitled to recover the $100.00 filing fee paid for this Application.

Pursuant to sections 38 and 67 of the Act, I grant the Tenant a Monetary Order as follows:

Calculation of Monetary Award Payable by the Landlord to the Tenant

Damage to the garage door	$1,867.50
Damage to the irrigation line	$75.00
Security deposit and pet damage deposit	-$2,550.00
TOTAL MONETARY AWARD	**$607.50**

Conclusion

The Tenant is provided with a Monetary Order in the amount of **$607.50** 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, 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: May 8, 2024

Residential Tenancy Branch