



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Singla Homes Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNSD, FF
 MNSD, FF

Introduction

This hearing was convened by way of conference call concerning applications made by the landlord and by the tenants. The landlord has applied for a monetary order for damage to the unit, site or property; for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenants for the cost of the application. The tenants have applied for a monetary order for return of all or part of the pet damage deposit or security deposit and to recover the filing fee from the landlord.

An agent for the landlord company and all 3 tenants attended the hearing and each gave affirmed testimony. The landlord also called 2 witnesses and the tenants called 1 witness, all of whom gave affirmed testimony. The parties were given the opportunity to question each other and the witnesses with respect to the tenancy and evidence provided, all of which has been reviewed and is considered in this Decision.

During the course of the hearing, one of the tenants testified that a portion of the landlord's evidentiary material was missing. The landlord's agent advised that all evidentiary material was sent and if it is missing from the tenants' copy, it is an inadvertent omission. I accept that considering that the tenants have all other pages of the landlord's evidentiary material. The missing pages are from a move-in/out condition inspection report, and I accept the evidence. No further issues with respect to service or delivery of documents or evidence were raised.

Issue(s) to be Decided

- Has the landlord established a monetary claim as against the tenants for damage to the unit, site or property?
- Should the landlord be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?
- Have the tenants established a monetary claim as against the landlord for return of the security deposit?

Background and Evidence

The landlord's agent testified that this fixed-term tenancy began on November 1, 2014 and expired on October 31, 2015 thereafter reverting to a month-to-month tenancy. The tenancy ultimately ended after the tenants had given written notice to vacate effective November 15, 2015. Rent in the amount of \$1,400.00 per month was payable in advance on the 1st day of each month and there are no rental arrears. Prior to this tenancy, the landlord collected a security deposit from the tenants in the amount of \$645.00 which the landlord transferred to this tenancy. The security deposit is still held in trust by the landlord and no pet damage deposit was collected. The rental unit is a town-house in a complex containing 30 units and a copy of the tenancy agreement has been provided.

The landlord's agent further testified that a move-in condition inspection report was completed at the beginning of the tenancy, and the landlord's agent could not reach the tenants to arrange a move-out condition inspection. The landlord's agents left business cards in the door of the rental unit several times asking the tenants to call, and the landlord's agents attended at the rental unit on the morning of November 15, 2015 expecting to do it, but none of the tenants showed up. The landlord's agent completed the report herself, and a copy has been provided. The owner was also there and took photographs.

The landlord has provided a Monetary Order Worksheet setting out the following claims:

- \$400.00 to replace a fridge from the landlord's stock;
- \$150.00 for general cleaning costs and labour;
- \$4.00 for a toilet paper holder replaced from the landlord's stock;
- \$40.00 for a wired smoke alarm replaced from the landlord's stock;
- \$90.00 for replacing broken blinds from the landlord's stock;
- \$120.00 for stove repair;
- \$50.00 for a mail key payable to Canada Post; and
- \$6.00 for shower curtain rod holders also replaced from the landlord's stock, for a total of \$860.00.

The landlord company owns many rental units, and a lot of items are kept in stock.

During the tenancy the tenants had claimed to the landlord's agents that the handle of the fridge broke and the landlord had it fixed. It broke again and the landlord tried to go back to fix it again but the tenants wouldn't allow entry. At the end of the tenancy, the fridge door couldn't be aligned anymore so the landlord replaced it with a used fridge that was kept in stock. The approximate value is \$400.00.

Two of the landlord's employees spent 5 hours each cleaning the rental unit, and they are paid \$15.00 per hour. The fridge hadn't been pulled out and cleaned at the end of the tenancy, and the ceiling fans had to be taken down and cleaned. Cobwebs appeared in a pie-shape in the

living room window. Windows, floors, the tub, toilet, sink all remained soiled and the bathrooms had facial hair in a drawer.

The average price to replace a toilet paper holder is \$4.00, and the landlord's agent testified that the tenants left it with a broken spring.

At the end of the tenancy, the hard-wired smoke alarm was missing, and a photograph has been provided.

Photographs have also been provided showing that the vertical blinds in the dining room had been cut in half.

Buttons were missing off the stove, and the claim is \$120.00, for which the landlord's agent testified may include cleaning. The buttons were not in stock, and the landlord had to order them, however no receipt has been provided.

The tenants also failed to return the mail key and the landlord had to replace it. The standard fee is \$65.00, however, the landlord's claim was estimated at \$50.00. No receipt has been provided.

The landlord's agent also testified that the ends of a shower curtain rod, that hold up the rod were broken during the tenancy and the tenants used pink tape to repair it. A photograph has been provided, and the landlord's agent testified that some were in stock.

The landlord's agent also testified that she commenced working for the landlord in May, 2015, and has reviewed the notes respecting this rental unit. There are no notes about requests by a tenant or about repairs required.

The landlord received the tenants' forwarding address in writing on February 5, 2016. The tenants delivered a note to the landlord's office that day.

The landlord's first witness (NB) testified that she is the landlord's office administrator and bookkeeper and has also been employed by the landlord since May, 2015. There are no emails or requests or notices of damages for the landlord to repair during the tenancy. The witness also testified that she regularly asks tenants to notify the landlord's agents in writing if any repairs are required so that there is a record for the file. The standard is to give tenants a business card, although the witness does not recall meeting these tenants nor knows who the tenants are.

The landlord's second witness (SS) testified that he is part owner of the rental complex, and the owners have over 200 rental units. He always asks tenants to put repair requests in writing. He attended the rental unit several times, but the tenants wouldn't open the door.

At the end of the tenancy, the witness attended with the landlord's agent to inspect the rental unit and took photographs. He was there for 1 hour during which none of the tenants showed up.

The first tenant (LK) testified that although the tenancy didn't end until November 15, 2015, the tenants actually vacated on November 5. They went back to clean. The fridge was thoroughly cleaned, as well as the stove. The fridge door closed fine except for a missing door handle which happened during the tenancy. The landlord fixed it but it fell off again. Also, the tenants had issues with the washer and dryer and called the landlord a few times but they were never inspected. The tenants stopped asking for help because the landlord's agents wouldn't call back or failed to show up. The tenant denies that the landlord was ever refused entry. The tenants all have full-time jobs with different shifts and no notifications were received that the landlord intended to attend the rental unit. The landlord's agents have all of the tenant's phone numbers and no one has called or left a message.

The tenant also disagrees that any cards were left in the door. The tenant tried to call another owner of the landlord who always said to call back, then told the tenant to call the landlord's agent. No schedule was arranged for the move-out condition inspection.

With respect to the fire alarm, the tenant testified that the landlord took it during the tenancy and said it would be returned, but it never was.

The stove had missing buttons at the beginning of the tenancy and as far as the tenant remembers one button fell out and another was missing. They may have been behind the panel on the stove-top, and the tenants asked the landlord's agents about it. The tenant went to the rental unit after it was re-rented with the consent of the current tenant. The stove has not been replaced and the same buttons are still missing. A photograph has been provided.

The second tenant (JC) testified that she left a voice message with the landlord's agent at the beginning of December, 2015 asking about the move-out condition inspection, and the landlord's agent responded by text message asking for a forwarding address and saying that the mail key was missing. The message also asked for the tenant's email address. The tenant sent the information by text message and never heard back. The tenant thought it was okay to provide the address by text message, but a note was dropped off at the landlord's office on February 5, 2016.

The third tenant (RF) the tenancy agreement has phone numbers for all 3 tenants, so not being able to call or leave voice messages is simply not true. Usually someone was home, and whenever the landlord's agents arrived, they were allowed in.

The landlord fixed the fridge handle during the tenancy with super glue and told the tenant to leave it for an hour. All the tenants told him about it breaking off again, but no one came back to fix it. The fridge worked fine at the end of the tenancy, only the handle was broken. A photograph has been provided.

The tenant's witness (NK) testified that she is the mother of one of the tenants and was present when the tenants moved in. During the tenancy the landlord glued the door handle to the fridge, but it never did stick and wasn't on the door when the witness visited the tenants. The tenants told the witness that the landlords wouldn't get back to them about the repairs.

The witness also testified that the tenants called the landlords numerous times to schedule a move-out condition inspection because the tenants all work. The tenant, LK, was getting frustrated. The witness was surprised and couldn't understand why the landlord did the inspection in the absence of the tenants.

Analysis

The *Residential Tenancy Act* states that a landlord must ensure that move-in and move-out condition inspection reports are completed in the presence of a tenant at the beginning and end of a tenancy, and the regulations go into detail of how that is to happen. A landlord is required to provide a tenant with a scheduled opportunity to complete the inspection, and if the tenant is not available, the landlord must provide a second opportunity, different from the first. If the landlord fails to ensure that happens, the landlord's right to claim against the security deposit for damages is extinguished. In this case, the landlord's agents simply say that they left business cards in the door of the rental unit, but none of them contained a suggested date and time. The landlord was given notice of the tenants' intention to vacate the rental unit and I find had plenty of time to arrange the inspection in accordance with the regulations. Therefore, I find that the landlord's right to claim against the security deposit for damages is extinguished.

The *Act* also specifies that the move-in and move-out condition inspection reports are evidence of the condition of the rental unit at the beginning and end of the tenancy. Absent any opportunity by the tenants to participate with the move-out condition inspection, I am not satisfied that the report can be relied upon.

The *Act* requires a landlord to return a security deposit in full to a tenant or make a claim against it within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing. If the landlord fails to do so, the landlord must repay the tenant double the amount. The landlord's agent testified that the landlord received the tenants'

forwarding address in writing on February 5, 2016, and the landlord's application for dispute resolution was filed on December 30, 2015. The landlord has not returned any portion of the security deposit to the tenants. Because the landlord had no other claims against the tenants, the landlords ought to have returned the security deposit to the tenants and made a claim for damages. However, having found that the landlord's right to claim against the security deposit for damages is extinguished, I find that the tenants have established a claim for double the amount, or \$1,290.00.

Although the landlord's right to make a claim against the security deposit is extinguished, the landlord's right to make a claim for damages is not extinguished. In order to be successful in such a claim, the onus is on the landlord to establish the 4-part test:

1. That the damage or loss exists;
2. That the damage or loss exists as a result of the tenants' failure to comply with the *Act* or the tenancy agreement;
3. The amount of such damage or loss; and
4. What efforts the landlord made to mitigate any damage or loss suffered.

The tenants disagree that there was anything wrong with the fridge other than the handle that the landlord attempted to fix. I am not satisfied that the landlord ever had any intention of replacing the fridge, nor am I satisfied that the landlord suffered that loss, and I dismiss the landlord's \$400.00 claim. Similarly, the landlord's claim of \$120.00 to repair the stove has not been proven, in that the landlord has never done so. The tenant attended the rental unit after the tenancy ended, and the current tenant is using the same stove with the same missing buttons.

One of the tenants testified that the landlord's agent took away the smoke detector and promised to return it but never did. That was not disputed by the landlord's agents, and therefore I dismiss the landlord's \$40.00 claim for replacing it.

The tenants do not dispute the landlord's claims of \$4.00 for a new toilet paper holder or \$6.00 for shower curtain rod holders or \$90.00 for blinds, and I allow \$100.00 for those claims.

The tenants do not dispute the landlord's claim with respect to mailbox keys, however the landlord has claimed \$50.00 and testified that the standard amount is \$65.00. There is no supporting evidence of what if anything the landlord actually paid, and I find that the landlord has failed to establish element 3 in the test for damages.

Having found that the move-out condition inspection report cannot be relied upon, I have reviewed the photographs provided by the landlord, and I accept that they were taken on the last day of the tenancy, or November 15, 2015. A tenant is required to leave a rental unit reasonably clean at the end of a tenancy, and considering the photographs, the bathroom, the baseboards and ceiling fans required cleaning. I am not satisfied that at \$15.00 per hour the

landlord has established the entire 10 hours, but more likely 2 hours for those items, and I allow \$30.00 for cleaning.

Since both parties have been partially successful with the applications, I decline to order that either party recover the filing fees.

In summary, I find that the tenants are owed double the security deposit, or \$1,290.00 and the landlord has established monetary claims of \$4.00 for a new toilet paper holder, \$6.00 for shower curtain rod holders, \$90.00 for blinds and \$30.00 for cleaning. I set off the amounts and I grant a monetary order in favour of the tenants for the difference in the amount of \$1,160.00.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenants as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,160.00.

This order is final and binding and may be enforced.

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 04, 2016

Residential Tenancy Branch

