



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL MND MNSD FF

Introduction

This hearing was convened as a result of the Landlords' Application for Dispute Resolution, received at the Residential Tenancy Branch on May 12, 2016 (the "Application").

The Landlords seek the following relief pursuant to the *Residential Tenancy Act* (the "Act"): an order of possession; a monetary order for damage to the rental unit; an order permitting the Landlords to retain all or part of the security deposit and pet damage deposit; and an order granting recovery of the filing fee.

The Tenant attended the hearing on her own behalf and was assisted by her mother, C.T. Both Landlords attended the hearing on their own behalf. All parties giving evidence provided their solemn affirmation.

At the outset of the hearing, the Landlords advised that an order of possession is no longer required. The Tenant has moved out of the rental unit. Accordingly, I consider this aspect of the Landlords' claim withdrawn and will not address it further in this Decision.

The Landlords submitted documentary evidence in support of the Application. The Tenant acknowledged receipt of the Landlords' evidence.

The Tenant advised she sent evidence to the Landlords by registered mail on June 10, 2015. The Landlords stated they have not received the Tenant's evidence.

The Residential Tenancy Branch Rules of Procedure 3.15 states:

"The respondent must ensure documents and digital evidence that are intended to be relied on at the hearing are served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. In all events, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than 7 days before the hearing."

The Tenant's evidence was received by the Residential Tenancy Branch on June 13, 2015. The Landlords say they have not received it, and there is no evidence to the contrary. Accordingly, I have not considered the Tenant's documentary evidence in this Decision.

The parties were given the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

Are the Landlords entitled to a monetary order for damage to the rental unit?

Are the Landlords entitled to an order permitting them to retain all or part of the security deposit and pet damage deposit in satisfaction of their claim?

Is the Landlord entitled to recover the filing fee for the Application?

Background and Evidence

The Landlords provided with their documentary evidence a copy of the tenancy agreement between the parties. The tenancy agreement confirms a fixed-term tenancy for the period from July 1, 2014 to July 31, 2015. Thereafter, the tenancy continued on a month-to-month basis. Rent in the amount of \$1,500.00 was payable on the first day of each month. The Landlords received a security deposit of \$750.00 and a pet damage deposit of \$375.00.

The Landlords say the actual cost of repairing damage to the rental unit exceeds the amount of the security and pet damage deposits, but that they want only to retain the deposits, which total \$1,125.00.

On behalf of the Landlords, M.D. provided oral testimony describing the condition of the rental unit at the end of the tenancy. She described cat and rat feces in parts of the rental unit, which produced a "terrible smell". Photographs were submitted in support of the Landlords' allegations.

On discovering the source of the odour, the Landlords hired a professional exterminator to examine the extent of the problem at a cost of \$105.00. The exterminator recommended the use of an enzyme-based cleanser to deal with the dirt and smell. The cost to the Landlords of the cleaner was \$50.00.

In addition, the Landlords advised that, by agreement, the rental unit was painted by the Tenant during the tenancy. However, the Landlords' say their expectation, and the agreement between the parties, was that the rental unit would be painted with neutral colours, and would be returned to the original colour scheme at the end of the tenancy.

However, the Landlords advised that, contrary to the agreement, the rental unit was painted in bright, strong colours. Photographs submitted into evidence by the Landlords confirm dark blue/grey, lime green, bright pink paint on the walls of the rental unit. The Landlords stated the rental unit was not returned to the original colour scheme at the end of the tenancy.

As a result, the Landlords obtained a quote from a general contractor. M.D. advised that the least expensive quote to paint the rental unit was \$1,560.00, plus GST. A second quote provided with the Landlords' evidence was for \$1,800.00, plus GST. The painting was completed by the less expensive contractor as part of work being done to the entire rental property.

The tenancy agreement stipulated that yard work was the responsibility of the Tenant. However, the Landlords advised the yard was significantly overgrown at the end of the tenancy, and that bushes were growing into the siding of the house. Photographic evidence submitted by the Landlords confirms the yard was overgrown.

The Landlords also stated that the Tenant left her garbage in the yard. The Landlords submitted copies of emails they received from a by-law enforcement officer, and suggested the garbage left in the yard by the Tenants likely contributed to a rat problem (and damage) in the rental unit.

The Landlord also advised the parties had come to an agreement regarding some aspects of the damage to the rental property. M.D. advised the parties agreed the Landlords could retain \$120.00 on account of yard work and \$230.00 on account of damage to the rental unit. Documentary evidence was submitted by the Landlords to confirm the Tenants' agreement.

In reply, the Tenant advised that she suffers with Post-Traumatic Stress Disorder, agoraphobia, and panic attacks. She indicated she receives disability benefits.

While the Tenant disagrees with the Landlords' claims, she confirmed she agreed the Landlords could retain \$120.00 and \$230.00 from the security deposit as described above. However, she submitted that amount should be for everything.

The Tenant also advised that her mother and sister cleaned the rental unit at the end of the tenancy. She was unable to assist because of her disability. The Tenant stated the rental unit was cleaned thoroughly.

However, C.T., the Tenant's mother, gave evidence confirming the feces, as well as other cleaning under the fridge and stove, were missed by them.

With respect to the Landlords' claim for painting, the Tenant advised that she asked the Landlords to obtain three quotes. She indicated that she did not receive the quotes. In any event, the Tenant said she could not do the painting due to her disability.

Analysis

Based on the Landlord's affirmed testimony and documentary evidence, and on a balance of probabilities, I find as follows:

Section 37 of the *Act* requires vacating tenants to leave the rental unit reasonably clean and undamaged, except for reasonable wear and tear.

Policy Guideline #1 (the "Guideline") clarifies the responsibilities of the landlord and tenant regarding maintenance, cleaning, and repairs of residential properties. A tenant is required to maintain "reasonable health, cleanliness and sanitary standards". A tenant is generally responsible for cleaning and repair costs when the property does not meet that standard at the end of a tenancy. This includes cleaning of carpets and window coverings, and repair of walls.

I find the Tenants breached this section of the *Act* by leaving the rental unit unclean and with damage beyond reasonable wear and tear.

In addition, I find that the Tenants' request for three painting quotes supports the Landlords' claim the parties had an agreement that the rental unit would be repainted at the end of the tenancy.

In light of the above, and based on the documentary and oral evidence submitted, I find the Landlords have established a total monetary claim of \$1,893.00, which has been calculated as follows:

Claim	Amount
Painting (\$1,560.00 + GST):	\$1,638.00
Exterminator:	\$105.00
Cleaning solution:	\$50.00
Filing fee:	\$100.00
TOTAL:	\$1,893.00

However, the Landlords have indicated they wish only to retain the security and pet damage deposits in satisfaction of their claim. Accordingly, as the Landlords have waived their entitlement to any amount in excess of the deposits, I order that the Landlords are entitled to retain the security and pet damage deposits, which total \$1,125.00.

Conclusion

I order that the Landlords are entitled to retain the security and pet damage deposits in full and final satisfaction of their claim.

This decision 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: June 16, 2016

Residential Tenancy Branch