



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1298 WEST 10TH LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FF MND MNSD

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the Act") for: a monetary order for unpaid rent and for damage to the unit pursuant to section 67; authorization to retain the tenant's security deposit pursuant to section 38 of the Act; and authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. Both parties confirmed receipt of the other's evidentiary submissions for this hearing.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent and for damage to the unit?
Is the landlord entitled to retain the tenant's security deposit towards any monetary order?
Is the landlord entitled to recover the filing fee for this application?

Background and Evidence

This tenancy began on December 1, 2014 as an 11 month fixed term. The tenant paid \$975.00 monthly in rent and a security deposit of \$487.50 at the outset of the tenancy. The landlord sought to retain the tenant's security deposit towards a monetary order for damages, loss by the landlord.

The landlord testified that, after the tenant moved out on February 29, 2016, a condition inspection was completed in the absence of the tenant. The landlord testified that, prior to the tenant's move-out, the tenant was given three separate opportunities to complete

the condition inspection. The landlord testified that, on the move-out day, the tenant was approached at the scheduled time and twice afterwards regarding a condition inspection. The landlord testified that, each time, the tenant indicated that she was not finished emptying and cleaning the rental unit. The landlord testified that the tenant ultimately left the keys in the rental unit and did not remain for a condition inspection.

The landlord testified that the rental unit was not left clean: the refrigerator had not been cleaned and the curtains were “disgusting”. He testified that, after the tenant moved out, the property manager was required to spend a whole day to clean the rental unit. He testified that, after inspecting the rental unit, he found that the bathroom medicine cabinet would need to be replaced. The landlord provided undisputed sworn testimony that the cabinet had been stained by hair dye. The landlord also testified that the tenant left furniture behind that had to be removed at his cost.

The landlord also submitted a letter from the next tenant moving into the rental unit. She wrote that the couch and mattress left in the rental unit smelt of urine; that the refrigerator had old dried food inside and neither the refrigerator nor stove had been cleaned. The letter stated that the bathroom vanity was ruined and there were scratches all over the hardwood floor. The letter stated that the previous tenant left garbage outside the windows of the unit.

The landlord sent an email to the tenant on March 12, 2016 indicating the rental unit was left filthy and that the tenant would receive \$112.37 from her \$975.50 security and pet damage deposit amount. The tenant responded that she would agree to this reduction in the return of her deposits and that no condition inspection reports were completed.

The tenant testified that, after the first appearance of the landlord at the originally scheduled inspection time, the tenant attempted to reach the landlord by phone. She testified that she was unable to reach the landlord to conduct an inspection and, eventually, she had to leave. The tenant testified that she cleaned the rental unit and that the furniture items left behind were in the rental unit when she moved in and therefore not her responsibility to remove.

The tenant testified that the medicine cabinet was marked or stained with hair dye but that she felt that the cabinet could have been painted as a remedy and that it was not necessary to replace the medicine cabinet.

A witness testified candidly on behalf of the tenant. He stated that there was merely wear and tear at the end of the tenancy – a few small holes and floor scratches. He did

acknowledge the hairy dyed medicine cabinet but suggested it could have been painted instead of being replaced. As well, he testified that he understood the bed was a murphy bed that was part of the rental unit at the tenant's move in. He says that photographs were taken at the end of the tenancy but not submitted and that things could have been handled better, in all of the circumstances.

Analysis

38(1) of the *Act* requires a 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 security and pet damage deposit in full or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. With respect to the return of the security and pet damage deposit, the triggering event is the latter of the end of the tenancy (February 29, 2016) or the tenant's provision of the forwarding address (March 28, 2016). In this case, the landlord was informed of the forwarding address in writing on March 28, 2016 and therefore the landlord had 15 days after March 28, 2016 to take one of the actions outlined above. The landlord applied on April 11, 2016 (14 days after the provision of the tenant's forwarding address) to retain all or a portion of the tenant's security and pet damage deposit.

While the tenant testified that she was not present for a condition inspection report, I accept the evidence of the landlord that several opportunities were provided to the tenant to attend for a condition inspection. I also accept the landlord's documentary evidence in the form of a completed move-out condition inspection report and photographic with respect to the state of the rental unit at the end of the tenancy. For the landlord to be successful with a claim for compensation, he needs to provide evidence that shows he suffered a loss; that the tenant caused the damage/loss; the quantification of that loss; and that he took steps to mitigate or minimize the loss. Evidence might include photos, witness statements, receipts, or other evidence including a copy of the condition inspection reports from move-in and move-out.

The landlord submitted photographic evidence to show that the rental unit was left unclean at the end of tenancy including photographs of dirty and damaged countertops, cabinets, doors and floors as well as the appliances, behind the appliances and a bathtub. The photographs showed a bed and couch left within the rental unit as well as photographs of the removal of the bed and couch. The landlord's testimony that hair dye had stained the medicine cabinet was undisputed. The landlord's photographic evidence and documentary submissions (including a letter from the next tenant moving in to the rental unit) support the landlord's testimony that the unit was very dirty and that

the medicine cabinet required replacement. I find that the landlord is entitled to recover the cost of the replacement of the medicine cabinet totalling \$222.88.

I accept the testimony of the landlord supported by the photographic and documentary evidence that the tenant did not leave the rental unit clean at the end of the tenancy. I find that the landlord is entitled to recover \$200.00 for cleaning costs to the rental unit.

With respect to painting of the rental unit, the landlord provided evidence that the rental unit renovations and upgrades are approximately 4 years old (including paint). Pursuant to the Residential Tenancy Policy Guideline No. 40, the useful life of residential tenancy interior paint is approximately 4 years. As the landlords had not painted the residence in a 4 year time span, I find that the landlords are not entitled to the cost of painting the rental unit: it would have required painting regardless of the tenant's alleged damage to the walls.

The landlord submitted an invoice in the amount of \$173.25 for damage to the rental unit. While I accept the evidence of the landlord that repairs were required, I accept the tenant's witness evidence and I find that the nature of the damage was as a result of normal wear and tear and is not the responsibility of the tenant.

The landlord submitted that he incurred cost related to the removal of the couch and mattress as well as a dump fee. I accept the testimony of both the tenant and her witness that the items were provided to the tenant at the outset of the tenancy for her use and that it was not her obligation to remove the items at the end of the tenancy. Therefore, I find that the landlord is not entitled to recover the dump fee and labour costs as they would have been incurred prior to the tenancy if the tenant had not agreed to use the items.

The landlord submitted that, although he had previously agreed to waive the lease breaking fee in negotiating the end of this tenancy and the return of any deposits, he now requests to recover that fee. He refers to the residential tenancy agreement that states,

If a tenant ends the fixed term tenancy before the end of the original term as set out in section 2(b) of the Residential Tenancy Agreement [the length of the fixed term], the sum of \$275.00 shall be paid by the tenant to the landlord to cover the administration costs of re-renting the said premises....

The tenancy agreement and the addendum submitted by the landlord as evidence and signed by the tenant provides a clear indication that the tenant agreed to a fixed term

with a “lease break fee” if that term was not met. The residential tenancy agreement submitted by the landlord also shows that the tenant agreed to a charge of \$275.00 if the tenancy terminated before the expiry of the fixed term.

The landlord also provided sworn and undisputed testimony (as well as supporting documentary evidence) to prove that the landlord incurred costs related to the early end to this tenancy. He provided testimony that the landlord spent time and money in advertising to re-rent, interviewing prospective tenants and other administrative costs related to a new tenancy.

Given the undisputed testimony of the landlord and the supporting evidence submitted, I find the landlord is entitled to \$275.00 from the tenants for failing to meet the terms of the fixed term tenancy agreement.

I find that the landlord should be compensated as follows, with the consideration of the tenant’s security and pet damage deposit held by the landlord.

Owed to the landlord to be deducted from tenant’s deposits	Amount
Cleaning of Unit	\$200.00
Replacement of Bath Vanity	222.88
Lease Breaking Fee	275.00
Less Security and Pet Damage Deposit (\$487.50 + \$487.50)	-975.00
Recovery of Filing Fee for this Application	100.00
Total Monetary Amount Owed to the Tenant	(\$177.12)

The landlord has testified that he continues to hold a \$487.50 security deposit and a \$487.50 pet damage deposit paid by the tenants at the outset of the tenancy. The landlord is authorized to retain a portion of the tenant’s deposits towards his monetary award. As the landlord was successful in his application, he is entitled to a further \$100.00 to recover the filing fee for this application.

Conclusion

I allow the landlord to retain \$797.88 of the tenant’s deposits totaling \$975.00.
I order the landlord to return \$177.12 to the tenant.

I provide the tenant with a monetary order in the amount of \$177.12.

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, 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: September 27, 2016

Residential Tenancy Branch