



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes O

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Landlords for “Other” issues.

The male Landlord appeared for the hearing and provided affirmed testimony as well as documentary evidence prior to the hearing. There was no appearance by the Tenant for the 15 minute duration of the hearing or any submission of evidence prior to the hearing. Therefore, I turned my mind to the service of documents by the Landlord for this hearing.

The Landlord testified that he had served the Tenant with a copy of the Application, the Notice of Hearing documents, and his documentary evidence to the Tenant’s forwarding address by registered mail on October 20, 2016. The Landlord provided a copy of the Canada Post tracking receipt as evidence to verify this method of service. The Landlord testified that the Canada Post website shows that the documents had been received and signed for on October 22, 2016.

Based on the undisputed evidence before me, I find the Tenant was served with notice of this hearing pursuant to Section 89(1) (c) of the *Residential Tenancy Act* (the “Act”). The hearing continued to hear the undisputed evidence of the Landlord.

The Landlord explained that he had applied for a Monetary Order against the Tenant for which a previous hearing had been conducted on September 19, 2016, the file number for which appears on the front page of this Decision. In that hearing, the Landlords were granted a Monetary Order and permission to keep the Tenant’s security deposit. However, after the decision and Monetary Order dated September 19, 2016 were issued to the Landlord he realized that he had made a spelling error in the Tenant’s last

name. As a result, the Landlord applied to have the matter re-heard in the correct spelling of the Tenant's name.

Issue(s) to be Decided

- Are the Landlords entitled to a Monetary Order for damages to the rental unit?
- Are the Landlords permitted to keep the security and pet damage deposits in partial satisfaction of their monetary claim?

Background and Evidence

The Landlord testified that this tenancy originally started in April, 2014 with two tenants, one of whom was the Tenant. A new tenancy agreement was entered into on May 1, 2015 for a fixed term of six months which was due to end on October 31, 2015. The male tenant was later removed from the tenancy agreement and the tenancy continued in the Tenant's name only.

The tenancy ended on or about July 1, 2015. Rent for this unit was payable by the Tenant in the amount of \$1,600.00 on the first day of each month. The Tenant paid a security deposit of \$800.00 and a pet deposit of \$200.00 on or about April 1, 2014; these two amounts are herein referred to as the "Deposits".

The Landlord testified that the Tenant caused extraordinary damage to the rental unit. The Landlords had insurance for vandalism but the insurance company only paid out for the items they considered to be vandalised and not all the damage. The insurance company paid for the damage to the dishwasher, stove, fridge, washer, six broken doors that had been ripped off their hinges, and for three damaged light fixtures. The Landlords had to pay an insurance deductible of \$1,000.00 and they seek to recover this from the Tenant. A copy of the insurance document was provided into evidence for this hearing.

The Landlord testified that all other damage was paid for by the Landlords and the Landlord referred to their photographic evidence. This showed that the unit at the start of the tenancy was in a good condition and the condition of the unit at the end of the tenancy was in a deplorable condition.

The Landlords hired a contractor to do much of the repair work and provided an invoice detailing the extent of the work that had to be done. The Landlord testified that this was a non-smoking rental unit pursuant to the addendum to the tenancy agreement. The Landlord testified that the Tenant and/or her children and guests smoked in the unit and everything was covered in nicotine and smelt of cigarette smoke throughout. The

Landlords' contractor had to wash all the walls, ceilings, trims, and cupboards to get rid of the nicotine stains and smells. The contractor had to apply a special product to get rid of the nicotine. The holes in the walls and woodwork caused by the Tenant had to be filled and sanded. The door frames had to be repaired and the entire rental unit had to be repainted with two coats of paint. The Landlords were charged \$8,000.00 for this work.

The contractor also had to sand and re-finish the hardwood floors as the Tenant had left the floors in the living room and small bedroom with deep gouges. Stain was then applied with two coats of varnish. The Landlords were charged \$1,500.00 for this work.

The Landlord testified that three windows were also repaired by the contractor. Two windows were left by the Tenant with cracked glass and one window had missing glass. All other interior windows had to be cleaned due to the nicotine and grease stains. The Landlords were charged \$300.00 for this work.

The Landlord testified that the Tenant abandoned all her old furniture, personal belongings and garbage in the unit. The Landlords' neighbours told the Landlords that the Tenant had held a house party for two days before she moved out. The Landlord testified that none of the abandoned belongs were worth more than \$500.00 so the Landlords' contractor removed and disposed of everything abandoned by the Tenant in the rental unit. The Landlords were charged \$500.00 for this work.

The entire unit was left unclean and the Tenant had made no attempt to clean before she vacated. The Landlords' contractor did the cleaning work and charged the Landlords \$500.00 for cleaning of two days.

The Landlord testified that the skylights in the loft bedroom were broken by the Tenant. These had to be replaced and the Landlord referred to the invoice provided in evidence for new skylights. The Landlord seeks to recover this cost of \$1,783.60. The Landlord testified that the skylights were approximately 20 years old.

The Landlord testified that the Tenant failed to return the keys to the unit and the Landlord had to have the dead bolt and the front door locks changed at a cost of \$143.55. The Landlords did not provide the invoice for this item into evidence.

The Landlord testified that they had to remove a substantial amount of rotting garbage from underneath the porch. The Tenant had left this garbage and failed to have this disposed of. The Landlord testified that the hatch to the space under the porch had been screwed shut but the Tenant must have taken the screws out to hide the garbage

in this space. This garbage was infested with maggots and the Landlords had to wear masks to bag it up into contractor bags. The garbage filled 40 contractor bags with three garbage bags in each contractor sized bag. All this garbage was then taken to the dump. The Landlords seek to recover \$500.00 for their labour in dealing with this disgusting mess.

The Landlord testified that as they had to use a process server to serve hearing documents upon the Tenant the Landlords seek to recover the fee for this work of \$120.00. The Landlords have provided the invoice in evidence to support this cost.

Analysis

The Tenant named on the Landlords' Application did not appear for this hearing or provided any evidence prior to this hearing. Therefore, am only able to consider the undisputed evidence before me.

In this instance the burden of proof is on the Landlords to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the Act on the part of the Tenant. Once that has been established, the Landlords must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the Landlords did everything possible to address the situation and to mitigate the damage or losses that were incurred. With this test in mind and assessing the evidence before me on the balance of probabilities, I find as follows.

With regard to the Landlords' claim to recover the insurance deductible of \$1,000.00, I am satisfied from the evidence before me that the Landlords had to make a claim against their insurance that covered them for vandalism. It is clear that the Tenant caused significant damage to the Landlords' property and the Landlords' belongings to the extent that the insurance company agreed it was vandalism on the part of the Tenant. I am satisfied that the Landlords had to pay the deductible of \$1,000.00. Therefore the Landlords have established a claim to recover this from the Tenant in the amount of **\$1,000.00**.

With regard to the Landlords' claim for the costs incurred for the damage repaired by their contractor for a total amount of \$10,850.00, having considered the undisputed evidence before me, I find as follows. The Landlords have provided sufficient photographic evidence showing the condition of the rental unit prior to and post occupancy. The contractor's invoice also details the damages done and the repairs

carried out. Therefore, I find the Landlords have met the burden of proof regarding the damage done by the Tenant and the Landlords' claim to recover **\$10,850.00** is granted.

With regard to the Landlords' claim for the costs to rekey the locks, I find the Landlords have not provided the invoice for this work into evidence; however, the Landlord's undisputed testimony was that the Tenant had vacated the rental unit and failed to return the keys. Considering the condition of the unit left by the Tenant and on a balance of probabilities, I am satisfied that the Tenant failed to return the keys. However, without an invoice to show the actual amount paid for the new lock and deadbolt I limit the Landlords' claim to a nominal amount of **\$100.00**.

With regard to the Landlords' claim for the repair to the broken sky lights. I have insufficient evidence before me to show the condition of the skylights at the start of the tenancy. The Landlords did not provide photographs showing these were in good working order at the time the Tenant moved into the rental unit. Furthermore, as the skylights were 20 years old I find that in accordance with the Residential Tenancy Policy Guidelines 40, which details the useful life of building elements in tenancies, the skylights were past its useful life of 15 years. Therefore, I deny this portion of the Landlords' claim as the depreciation of these skylights over their lifetime would not warrant any award.

With regards to the Landlords' undisputed claim for garbage removal, I am satisfied that the Tenants left an exceptional amount of rotting garbage under the porch which had to be removed by the Landlords. There is no way to define how long this garbage had been left under the porch but certainly long enough for it to become infested with maggots making this an unpleasant and potentially hazardous job for the Landlords to remove. I therefore find the Landlords' claim to recover **\$500.00** for this work to be a justifiable amount and accordingly award it.

With regard to the Landlords' claim to recover the fee for the process server of \$120.00, there is no provision under the Act for a fee charged for the service of hearing documents. Therefore, this portion of the Landlords' claim is dismissed.

As the Landlords' claim has merit, I find the Landlords may also recover their filing fee of **\$100.00** from the Tenant pursuant to Section 72(1) of the Act. As a result, the Landlords are awarded a total amount of **\$12,550.00**

As the Landlords already hold **\$1,000.00** in the Tenant's Deposits, I order the Landlords to retain this amount in partial satisfaction of the claim awarded, pursuant to Section

72(2) (b) of the Act. As a result, the Landlords are issued with a Monetary Order for the remaining balance of **\$11,550.00**.

Copies of this order are attached to the Landlords' copy of this Decision. This order must be served on the Tenant and may then be filed in the Small Claims Division of the Provincial Court and enforced as an order of that court if the Tenant fails to make voluntary payment. Copies of the Monetary Order are attached to the Landlord's copy of this Decision. The Tenant may also be held liable for any enforcement costs incurred by the Landlords.

Conclusion

The Tenant caused damage to the rental unit and failed to leave it reasonably clean. Therefore, the Landlords may keep the Tenant's Deposits and are issued with a Monetary Order for the remaining amount of \$11,550.00.

This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: December 09, 2016

Residential Tenancy Branch