



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Century 21 Lakeside Realty Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNSD

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord seeking a monetary order for damage to the unit, site or property and for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit.

The tenant and an agent for the landlord attended the hearing, and each gave affirmed testimony. The parties were given the opportunity to question each other, and all evidence provided has been reviewed and is considered in this Decision. No 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 tenant for damage to the unit, site or property?
- Should the landlord be permitted to keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlord's agent testified that this fixed term tenancy began on November 27, 2015 and reverted to a month-to-month tenancy after the first 6 months. Rent in the amount of \$1,000.00 per month was payable on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$500.00 and a pet damage deposit later in the amount of \$400.00, both of which are still held in trust by the landlord. A copy of the tenancy agreement has not been provided by either party.

The rental unit is the main floor of a house and the lower level was occupied by the landlord. The tenancy ended on April 1, 2017, after the landlord had served a 2 Month

Notice to End Tenancy for Landlord's Use of Property on January 31, 2017, and the tenant received the equivalent of one month's rent as compensation.

A move-in condition inspection report was completed at the beginning of the tenancy, and a move-out condition inspection report was completed at the end of the tenancy. A copy of both reports has been provided which are both on one form. The move-in portion shows paint splatters on the dining room floor, which were not large lumps but rather roller splatters that were very tiny. The hardwood floors are not new but were in fair condition at the beginning of the tenancy and stained at the end of the tenancy. The tenant had placed a garbage bag on the hardwood floor which left a stain that could not be cleaned up. The leak went into the wood and damaged it. The landlord has provided a copy of an estimate for sanding, staining and finishing the floor at a cost of \$761.25, including GST, but the landlord's agent is not certain if the landlord has repaired it.

The landlord's agent further testified that the tenant did not leave the remote control for the garage at the rental unit, and the landlord claims \$106.40 for replacing it, and a copy of an email from the contractor has been provided to corroborate that claim.

The landlord received the tenant's forwarding address in writing on April 1, 2017 which is contained in the move-out portion of the condition inspection report.

The tenant testified that while finishing cleaning the tenant moved a garbage bag, which was not leaking, onto the dining room floor so she could mop floors, and about 10 or 15 minutes later noticed the leak.

The floors are oak, and it didn't look like it was damaged, and the landlord's property manager said it was wear and tear. If the tenant had known that it wasn't treated as wear and tear, the tenant would have had someone, perhaps her father, sand and stain it for less than the estimate provided by the landlord.

When the tenant moved into the rental unit, she understood the landlord was going to replace the floor. There were samples of flooring left in the dining room and none of the baseboards were there. When the tenant was moving out, the tenant was told the landlord was doing renovations. The tenant also believes the house was built 30 years ago and that was the original flooring.

The tenant does not deny the missing remote control for the garage and agrees the landlord should keep \$106.40 of the security deposit.

Analysis

Where a landlord makes a monetary claim for damages, the onus is on the landlord to satisfy the 4-part test:

1. that the damage or loss exists;
2. that the damage or loss exists as a result of the tenant's failure to comply with the *Residential Tenancy 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.

I have reviewed the move-in/move-out condition inspection reports, and I note that the hardwood floor in the dining room at move-in showed paint splatters and at move-out was stained.

I refer to Residential Tenancy Policy Guideline #40 – Useful Life of Building Elements, which places the life of a parquet hardwood floor at 20 years, and the parties agree that the flooring is old, and the tenant suggests about 30 years old. The landlord's agent submitted that the claim is not for replacing the floor but repairing it. The landlord's agent doesn't know if the landlord will actually incur that cost by repairing the floor, and I find that to order the tenant to pay for it when it is just as likely that the owner will be replacing it anyway, would put the landlord in a better financial situation, and I dismiss that portion of the landlord's application.

The tenant does not dispute the cost of the remote control for the garage door, and I find that the landlord is entitled to retain \$106.40 of the security deposit.

Since the landlord has been partially successful with the application the landlord is entitled to recovery of the \$100.00 filing fee.

I refer to Residential Tenancy Policy Guideline #17 – Security Deposit and Set-Off, which states, in part:

1. The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:
 - ☐ a landlord's application to retain all or part of the security deposit; or
 - ☐ a tenant's application for the return of the deposit.unless the tenant's right to the return of the deposit has been extinguished under the Act¹⁴. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for dispute resolution for its return.

Therefore, I order the landlord to return the \$400.00 pet damage deposit and \$293.60 of the security deposit to the tenant, and I grant a monetary order in favour of the tenant in the amount of \$693.60.

Conclusion

For the reasons set out above, I hereby order the landlord to keep \$206.40 of the security deposit as recovery of the cost of the remote control for the garage door and recovery of the filing fee, and I grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$693.60.

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: June 22, 2017

Residential Tenancy Branch