



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL MNDCL-S MNDL-S

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 damage or compensation pursuant to section 67 of the *Act*;
- authorization to retain all or a portion of the tenant's security/pet deposit in partial satisfaction of the monetary order requested pursuant to section 67 of the *Act*, and
- recovery of the filing fee from the tenant pursuant to section 72 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

As both parties were present, service of documents was confirmed. The tenant testified that she was in receipt of the landlord's application and evidentiary materials, and the landlord confirmed receipt of the tenant's evidence. Based on the undisputed testimonies of the parties, I find that both parties were served in accordance with section 89 of the *Act*.

Preliminary Issue – Amendment to Landlord's Application

The landlord made a typographical error in the spelling of his last name on his application. Pursuant to my authority under section 64(3)(c) of the *Act*, I amended the landlord's application to correct the landlord's last name.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for damage or compensation?

Is the landlord entitled to keep all or part of the security deposit in full or partial satisfaction of their claim?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The two parties in this matter presented divergent versions of events and there was very little common ground found where the parties agreed on the facts. While I have turned my mind to the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. The relevant aspects of this matter and my findings are set out below.

A written tenancy agreement was submitted into documentary evidence. Both parties confirmed the following information about the tenancy agreement. The tenancy began on August 27, 2016 as a six-month fixed term tenancy, which subsequently converted to a month to month tenancy. The tenancy came to an end on November 30, 2017. Monthly rent of \$875.00 was due on the first of the month. A security deposit of \$437.50 was paid by the tenant at the beginning of the tenancy and continues to be held the landlord. The rental unit included furnishings and utilities in the monthly rent.

Both parties agreed that a condition inspection report was completed at move in and signed by both parties. A copy of the report was submitted into documentary evidence. The tenant denied receiving a copy of the report after it was completed, and the landlord was not sure if the tenant had been provided with a copy of the report.

The tenant stated that no one contacted her to schedule a condition inspection at move out, however she then acknowledged that the landlord invited her to attend for a move-out condition inspection by messaging her through a social media website on December 2, 2017. The landlord stated that he had phoned the tenant on November 29, 2017 and did not receive a response back from the tenant.

The tenant stated that she mailed her forwarding address to the landlord, however the landlord stated that he received the tenant's forwarding address in writing on December 5, 2018 as it was attached to the landlord's agent's door.

The landlord claimed that after the tenant moved out, he was unable to rent the unit for a month in order to clean the unit due to the smell of marijuana and the dirty condition in which the tenant left the unit. Further to this, the landlord stated that he had allowed the tenant to arrange showings of the rental unit directly with prospective tenants. This resulted in the tenant arranging showings weeks later, delaying re-renting the unit. The landlord alleged that the tenant's failure to arrange showings of the rental unit in a timely manner resulted in a delay of finding a new tenant.

The landlord testified that items were missing from the furnished rental upon the tenant moving out, specifically: a glass countertop valued at \$252.00; a bed frame valued at \$150.00; and seven pillows valued at \$70.00.

The landlord claimed that a light fixture had to be replaced as one of the bulb covers on the fixture was mismatched and that he had to replace the locks as he believed that the tenant possibly had a second set of keys cut, which were not returned to him.

In summary, the landlord claimed the costs of the following supplies, labour and replacement of items damaged or removed by the tenant:

| Item | Amount Claimed |
|---|-----------------------|
| Cleaning labour: 13 hours at \$20.00/hour (no receipt provided) | \$260.00 |
| Cleaning supplies (receipt provided) | \$40.96 |
| Carpet cleaning (no receipt provided as landlord used his own carpet cleaner) | \$30.00 |
| Replace locks and a light fixture (receipt provided) | \$67.18 |
| Missing items requiring replacement (no receipts for any of these items as they were not replaced) | \$472.00 |
| Loss of rental revenue during repair (December 2017) | \$875.00 |
| Total | = \$1,745.14 |

The tenant stated that she cleaned the carpets with the steam cleaner at the rental unit and thoroughly cleaned the unit before moving out. She acknowledged smoking marijuana in the rental unit once. The tenant testified that the light fixture had one unmatched bulb cover when she moved in.

The tenant stated that she did not take any items from the rental unit. The tenant testified that the bed frame and glass countertop claimed missing by the landlord were still at the rental property but had been stored away in the closets or storage area, and that there were never as many pillows in the rental unit at the beginning of the tenancy as claimed by the landlord.

The tenant testified that she experienced considerable anxiety having to deal with showing the rental unit to prospective tenants, therefore she only did one showing before the landlord's agent took over responsibility for the showings.

Analysis

Section 67 of the *Act* provides that, where an arbitrator has found that damages or loss results from a party not complying with the *Act*, regulations, or tenancy agreement, an arbitrator may determine the amount of that damage or loss and order compensation to the claimant. The claimant bears the burden of proof. The claimant must show the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* by the other party. If this is established, the claimant must provide evidence of the monetary amount of the damage or loss. The amount of the loss or damage claimed is subject to the claimant's duty to mitigate or minimize the loss pursuant to section 7(2) of the *Act*.

In this case, the landlord has claimed for compensation due to damages and due to loss of rental revenue. I have addressed my findings on each of these claims below.

Claim for Damages

Section 37(2) of the *Act* sets out the requirements for a tenant to fulfill when vacating the rental unit, as follows, in part:

- 37(2) When a tenant vacates a rental unit, the tenant must
 - (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear,...

A condition inspection report was completed with the tenant, and signed by the tenant at move in, however it was unclear whether or not the tenant was provided with a written copy of the report after it was completed. Regardless, I find that this report, submitted into documentary evidence, provides a reasonable indication of the condition of the rental unit at move in as both parties signed the report.

The landlord did not complete a move-out condition inspection report with the tenant, and did not follow the Residential Tenancy Regulation section 17 which requires a landlord to offer a tenant two opportunities for inspection, as follows:

- 17 (1) A landlord must offer to a tenant a first opportunity to schedule the condition inspection by proposing one or more dates and times.
- (2) If the tenant is not available at a time offered under subsection (1),
 - (a) the tenant may propose an alternative time to the landlord, who must consider this time prior to acting under paragraph (b), and
 - (b) the landlord must propose a second opportunity, different from the opportunity described in subsection (1), to the tenant by providing the tenant with a notice in the approved form.

This regulation further specifies that the tenant must be provided with notice of the second opportunity in the approved form. Residential Tenancy Branch Form #RTB-22 Notice of Final Opportunity to Schedule a Condition Inspection is available on the Residential Tenancy Branch as an approved form.

Therefore, I have not referred to the move-out condition inspection report but instead I have only relied on the move-in condition inspection report, the testimony presented by both parties at the hearing and the photographic evidence and receipts submitted.

The tenant claimed that she thoroughly cleaned the rental unit and steam cleaned the carpets before moving out; and the tenant submitted a witness statement in support of this testimony but no other documentary evidence to support her claim. However, the tenant acknowledged she had smoked marijuana in the rental unit on one occasion and that over the course of residing in the rental unit with her family, it was possible that some stains could have been left in the carpet requiring more cleaning and that she might not have finished cleaning all the walls.

The landlord's photographic evidence depicted several carpet stains and what appeared to be drawing marks on the wall. The landlord testified that extra cleaning was needed due to the smell of marijuana. The landlord submitted that the windows and curtains were left "dirty/smelly".

I find that the carpet stains and drawing on the wall to be damages in excess of "reasonable wear and tear", and therefore the responsibility of the tenant. It is also reasonable that smoking marijuana in the rental unit resulted in the smell saturating

textiles such as curtains and bedding. Based on these factors, I give more weight to the landlord's evidence and testimony that some extra cleaning was required. Therefore, I find the tenant responsible for any extra cleaning required as a result of cleaning required in excess of "reasonable wear and tear".

Residential Tenancy Policy Guideline 16. Compensation for Damage or Loss provides direction in determining an amount for compensation when damages have been claimed, as follows:

An arbitrator may award monetary compensation only as permitted by the Act or the common law. In situations where there has been damage or loss with respect to property, money or services, the value of the damage or loss is established by the evidence provided.

An arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward:

- *"Nominal damages" are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.*

I award the landlord the costs for the cleaning supplies in the amount of \$40.96 as this damage was established by the receipt submitted into documentary evidence. I also award the landlord nominal damages for the carpet cleaning in the amount of \$30.00 and the extra cleaning required for the walls, windows, curtains and bedding in the amount of \$150.00. The landlord failed to provide a receipt to establish the actual cost of these damages, however, the damage was established by the landlord's photographic evidence and the testimony of the parties.

The landlord claimed that one of the bulb covers on a light fixture was different than the other bulb covers and therefore required replacement. The light fixture was still in good working order, rather it was a décor issue and not a functional issue. The landlord submitted a receipt for a new light fixture as he stated it was more cost effective to replace the entire light fixture than replace the one bulb cover that did not match the others. As the landlord failed to provide any photographic evidence to support his claim, and further I find that this is not an issue of damage affecting the function of the light fixture, I decline the landlord's request for reimbursement of this expense.

The landlord claimed that the tenant had received permission to make an extra set of keys. The tenant denied having made the extra set of keys, however, the landlord was concerned about the tenant potentially having access to the rental unit after she moved out, so he bought a new lock for the rental unit and has sought compensation from the tenant for this cost.

Section 25 of the *Act* sets out that it is the landlord's responsibility regarding rekeying locks, as follows:

Rekeying locks for new tenants

- 25 (1) At the request of a tenant at the start of a new tenancy, the landlord must
- (a) rekey or otherwise alter the locks so that keys or other means of access given to the previous tenant do not give access to the rental unit, and
 - (b) pay all costs associated with the changes under paragraph (a).
- (2) If the landlord already complied with subsection (1) (a) and (b) at the end of the previous tenancy, the landlord need not do so again.

This is further explained in Residential Tenancy Policy Guideline 1. Landlord & Tenant – Responsibility for Residential Premises, which sets out the responsibilities for landlords and tenants regarding maintenance, cleaning, and repairs of residential property. Paragraph 6, under the section titled “Security”, states:

6. *The landlord is responsible for providing and maintaining adequate locks or locking devices on all exterior doors and windows of a residential premises provided however that where such locks or locking devices are damaged by the actions of the tenant or a person permitted on the premises by the tenant, then the tenant shall be responsible for the cost of repairs.*

In this case, the tenant did not damage the lock, rather the landlord took it upon himself to replace the lock at the end of the tenancy due to his concerns regarding the tenant's access to the rental unit. The *Act* and Policy Guideline 1 are clear that in cases other than damage caused by the tenant, the landlord is responsible for all costs related to rekeying or otherwise altering the locks so that keys given to the previous tenant do not

give access to the rental unit. Therefore, I decline the landlord's request for reimbursement for this expense.

The landlord has requested compensation for missing items allegedly taken by the tenant. The tenant has denied these allegations and stated the items were left stored at the rental unit or were never provided. The landlord has not replaced any of these items, and therefore he has not submitted any receipts into documentary evidence in support of his claim. I find that the landlord has failed to establish the value of the loss related to these items as insufficient evidence has been submitted to support this claim. Therefore, I decline the landlord's request for reimbursement for this expense.

Therefore, I find, on a balance of probabilities, that the landlord is entitled to a monetary award for compensation due to losses incurred as a result of cleaning labour and supplies, and carpet cleaning in a total amount of \$220.96. The breakdown is provided below:

| Item | Amount Allowed |
|---|-----------------|
| Cleaning supplies | \$40.96 |
| Cleaning labour | \$150.00 |
| Carpet cleaning | \$30.00 |
| Total Monetary Award to Landlord for Damages | \$220.96 |

Claim for Loss of Rental Revenue

Residential Tenancy Policy Guideline 3. Claims for Rent and Damages for Loss of Rent provides the following guidance regarding claims for loss of rent:

Even where a tenancy has been ended by proper notice, if the premises are un-rentable due to damage caused by the tenant, the landlord is entitled to claim damages for loss of rent. The landlord is required to mitigate the loss by completing the repairs in a timely manner.

In this case, the landlord is claiming for one month of loss of rental revenue due to additional cleaning required. The landlord testified that the tenant left the rental unit dirty, which required 13 hours of cleaning. He further stated that the smell of marijuana in the rental unit was difficult to remediate. The landlord also alleged that the tenant obstructed showings of the rental unit to prospective tenants.

The landlord did not provide any evidence that the rental unit had to undergo repairs that prevented the rental unit from occupation once the tenant vacated the premises. Therefore, I find that the landlord provided insufficient evidence to prove that any additional cleaning required to remediate the smell in the rental unit or deficiencies in cleaning resulted in a rental loss of one month's rent.

Further to this, it was the landlord's decision to allow the tenant to become involved in the showings of the rental unit. Section 29 of the *Act* sets out the provisions allowing a landlord access to a rental unit for reasonable purposes, such as showing the unit to prospective tenants. Therefore, the landlord could have undertaken to schedule the showings himself, in a timely manner, by providing the tenant with notice in accordance with the *Act*.

I find that the landlord has failed to establish that a one month loss of rental revenue was caused by the tenant, as insufficient evidence has been submitted to support this claim. Therefore, I decline the landlord's request for reimbursement for this expense.

Set-off of Landlord's Claim Against Security Deposit

The landlord continues to retain the tenant's \$437.50 security deposit, and has requested to retain this deposit or a portion of it, in satisfaction of the claims for loss of rental revenue and damages. No interest is payable on the deposit during the period of this tenancy.

In summary, I find that the landlord is entitled to a monetary award for compensation for damages and loss in the amount of \$220.96.

Further to this, as the landlord was successful in retaining a portion of the security deposit through this application, I find that the landlord is entitled to recover the \$100.00 filing fee from the tenant.

In accordance with the offsetting provisions of section 72 of the *Act*, I set-off the \$220.96 of compensation owed by the tenant to the landlord, and the recovery of the \$100.00 filing fee to be paid by the tenant to the landlord, against the tenant's \$437.50 security deposit held by the landlord.

As such, I issue a Monetary Order in the tenant's favour in the amount of \$116.54, as explained in the following breakdown:

| Item | Amount |
|---|-----------------|
| Return of security deposit to tenant (currently held by landlord) | \$437.50 |
| LESS: Monetary Award to landlord for compensation (cleaning costs) | (\$220.96) |
| LESS: Recovery of filing fee awarded to landlord | (\$100.00) |
| Total Monetary Order in Favour of Tenant | \$116.54 |

Conclusion

I issue a Monetary Order in the tenant's favour against the landlord in the amount of \$116.54 for the return of the remaining amount of the security deposit currently held by the landlord.

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: July 17, 2018

Residential Tenancy Branch