



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL MNDL-S

Introduction

This hearing was convened by way of conference call concerning an application made by the landlords seeking a monetary order for damage to the unit, site or property; an order permitting the landlords to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenant for the cost of the application.

One of the landlords attended the hearing and also represented the other landlord. The tenant also attended. The parties each gave affirmed testimony, and the tenant called 1 witness who also gave affirmed testimony. The parties were given the opportunity to question each other and the witness, and to give submissions.

The tenant provided a 4-page letter as evidence for this hearing but did not provide a copy to the landlord. Any evidence that a party wishes to rely on must be provided to the other party as well. Since the tenant didn't do so, I decline to consider that evidence. The parties agree that the landlords have given the landlords' evidence to the tenant, and all of the landlords' evidence has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Have the landlords established a monetary claim as against the tenant for damage to the unit, site or property?
- Should the landlords be permitted to keep the security deposit and pet damage deposit in satisfaction of the claim?

Background and Evidence

The landlord testified that this fixed term tenancy began about 2 years ago and reverted to a month-to-month tenancy after June 30, 2017. The tenant gave notice to end the

tenancy, and the tenancy ultimately ended on April 30, 2018. Rent in the amount of \$1,500.00 per month was originally payable on the 1st day of each month, however after the fixed term expired, the landlords reduced rent to \$1,300.00 per month, and there are no rental arrears. At the outset of the tenancy the landlords collected a security deposit from the tenant in the amount of \$650.00 as well as a pet damage deposit in the amount of \$600.00, both of which are still held in trust by the landlords. The rental unit is a single family dwelling and a written tenancy agreement exists but a copy has not been provided as evidence for this hearing.

The landlord further testified that a move-in condition inspection report had been completed at the beginning of the tenancy, and a copy of a portion of it has been provided for this hearing. The first page has places to fill in the date the tenancy began and when the report was completed, but both have been left blank. The report was not completed at move-out, but the parties looked through the rental unit and it looked great and smelled like Pine Sol. It was incredibly clean and tidy but the landlord could still smell cat urine. The tenant signed the report and said she hoped the smell would go away. Only the last page of the move-out portion of the report has been provided for this hearing.

The landlords removed carpet and replaced it and decided to paint. The landlord is a home inspector. The new tenant, a nurse was supposed to move in on May 15 and she was expecting a baby so the landlords had to address the smell which got worse as the cleaner wore off.

On May 5, 2018 the tenant's son met with the landlord to discuss the damage. He acknowledged that the basement smelled bad, and the landlord also showed him damage to the master bedroom carpet and the subfloor. The other bedroom had mold staining on the carpets and smelled very bad. There were no issues with the living room carpet, only the 2 bedrooms and the basement.

On May 12 the landlord told the nurse that it couldn't be rented because the smell was overwhelming. The landlords found a sealer that was supposed to neutralize the smell in the basement. The landlord also put in new subfloors and neutralizer on them. One of the carpets in the bedroom was about 8 years old and the other about 4 years old.

The rental unit was re-rented for June 15, and new tenants informed the landlords about the smell. They moved out on July 14, 2018, and the landlord returned their rent and security deposit due to the smell. The landlords have lost revenue as a result, but only seek to keep the security deposit and pet damage deposit.

The landlord also contacted a restoration company and was told that the landlords will have to neutralize and then “de-fog” for 16 hours, which consists of a product to penetrate into ducting and walls. The landlords doubt they will be able to re-rent for August.

The landlord visited the rental unit rarely during the tenancy, but went to check sump pumps while the tenant was in Calgary and noticed cat litter all over the floor, which had spilled over and had not been cleaned for months. The tenant was a hoarder. The basement floor was in good condition at the beginning of this tenancy; a hockey rink was painted on it when the landlords purchased the rental home.

The tenant’s cats also damaged a shelving unit. Photographs have been provided for this hearing.

The landlord also testified that he received the tenant’s forwarding address in writing on April 30, 2018, and the tenant has not served the landlord with an Application for Dispute Resolution claiming the security deposit and pet damage deposit.

The landlords have provided a worksheet setting out the following claims:

- \$1,150.00 for replacement of carpets
- \$70.99 for neutralizer;
- \$70.99 for neutralizer;
- \$41.09 for grey concrete paint;
- \$41.09 for grey concrete paint;
- \$41.09 for grey concrete paint; and
- \$53.99 for replacing the shelf unit.

The amounts total \$1,470.23, and receipts and a carpet replacement estimate have been provided for this hearing. Also, the landlords have provided their labor costs of \$210.00 for 7 hours to neutralize and paint the basement floor and areas several times @ \$30.00 per hour; and 2 hours @ \$30.00 per hour trying to get stains and smells out of one bedroom and neutralizing the 2 bedroom floors, for a total of \$270.00 of labor costs.

The landlords claim a total of \$1,740.23 as against the tenant.

The landlords also ask for an order that the tenant pay the outstanding water bill to prevent it from being added to the landlords’ property tax account.

The tenant testified that all was fine at move-in, however the landlord left the move-in condition inspection report for the tenant to fill out and the notes for each room on pages 1,

2 and 3 were completed by the tenant. On the last page, a signature of the tenant is not the tenant's signature on move-out. The landlord completed it. It also contains a forwarding address of the tenant, which the tenant did not write on the form. The tenant did not give the landlord a forwarding address in writing unless possibly by text message. There was no move-out condition inspection report and the landlord said everything looked fine when they completed a walk-through on April 29, 2018. The tenant returned the key expecting to get the deposits back.

The tenant denies telling the landlord that she hoped the smell would go away; the tenant didn't smell anything. The tenant had 3 cats and litter boxes only filled if the tenant was away. The smell was mixing of chemicals or something, but cat urine does not cause mold, and at move-in, mold was on the basement ceiling.

The tenant also testified that her husband made the shelving unit, and the landlord told the tenant not to worry about taking it out of the rental unit at move-out.

The tenant's witness is the tenant's son and testified that when the walk-through was done on April 29, 2018 at the end of the tenancy, the tenant initialed the section of the report that said "will monitor" beside a notation. The tenant did not fill out anything respecting giving up the security deposit or pet damage deposit. Nothing was signed at move-out. Later, the witness received an email from the landlord with a photograph of the final report in color and the pen marks are different colors. It was received by the witness in May and he replied to the landlord that he had forged the document.

The witness returned on May 5, 2018 to walk through the rental unit with the landlord because the landlord wanted the witness to check out a smell in the basement. The witness went through each room with the landlord. The landlord pointed out black mold on the floor saying it was cat urine, but the tenant disagreed because urine has ammonia and doesn't mold. Also, that room was for the tenant's crafts and was entirely covered with shelving units and things.

Photographs of the landlord, including underlay, cannot be put on the witness' mom. It smelled but not of cat urine and there were no cats in there. The witness saw the landlord was putting laminate in.

Analysis

The *Residential Tenancy Act* specifies that the onus is on the landlord to ensure that move-in and move-out condition inspection reports are completed, and the regulations go into great detail of how that is to happen. The *Act* also specifies that the reports are

evidence of the condition of the rental unit at move-in and move-out, and that if the landlord fails to ensure that they are completed in accordance with the regulations, the landlord's right to claim against the security deposit or pet damage deposit is extinguished.

The landlord testified that the move-in condition inspection report was done, and a copy of a portion of that has been provided for this hearing, but the landlord did not dispute the tenant's testimony that the landlord left it for the tenant to complete, contrary to the regulations. Further, there is nothing noted on the report for the condition of any thing or room at move-out; also contrary to the *Act* and the regulations. Therefore, I find that the landlords' right to make a claim against the security deposit and pet damage deposit for damages is extinguished.

However, the landlords' right to make a claim for damages is not extinguished. In order to be successful, 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 *Act* or the tenancy agreement;
3. the amount of such damage or loss; and
4. what efforts the landlords made to mitigate any damage or loss suffered.

The test is also meant to put the landlord in the same financial situation that the landlord would be had no damage been caused. I have reviewed the evidentiary material, and having found that the move-in and move-out condition inspection reports were not completed in accordance with the *Act* and the regulations, I find that they cannot be relied upon as evidence.

The tenancy lasted 2 years, and a certain amount of wear and tear is expected, however I accept that the tenant's cats damaged the carpets, considering the photographs provided by the landlord and the testimony. The landlords have provided an estimate for the cost of replacement in the amount of \$1,150.00, including installation and carpet removal for both rooms. The landlord testified that one of the carpets was about 8 years old and the other about 4 years old. The expected useful life of carpets is 10 years, and I find that half of the cost be depreciated by 8 years and the other by 4 years.

Calculation:

From Invoice: $\$694.02 / 2 = 347.01$ is the cost of each carpet/materials;
 $\$347.01 / 10 \times 2$ years remaining on life expectancy = \$69.40
 $\$347.01 / 10 \times 6$ years remaining on life expectancy = \$208.20

$\$69.40 + \$208.20 + \text{Service of } \$392.16 + \$10.00 \text{ miscellaneous charges} + \$54.81 \text{ GST} = \$734.57.$

I am satisfied that the landlords have established a claim of \$734.57 for the cost of replacing carpets. I also find that the landlords have satisfied the 4-part test respecting the \$270.00 claim for labour.

Similarly, the claims for the cost of neutralizer and concrete paint have been established and I grant the landlords monetary compensation in the amount of \$265.25.

I do not accept that the tenant should pay to replace a shelf unit that belonged to her in the first place, and I dismiss the \$53.99 claim.

Since the landlords have been partially successful with the application the landlords are also entitled to recovery of the \$100.00 filing fee.

The landlord testified that he received the tenant's forwarding address in writing on April 30, 2018, but the tenant testified that although it's written on the report, the tenant did not write it there or provide a forwarding address in writing. That is particularly important because a landlord is required to return the deposits in full or apply for dispute resolution claiming against them within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing. If the landlord does neither, the landlord must repay the tenant double. The landlord applied for dispute resolution claiming against the deposits for damages, but having found that the landlord's right to claim against them for damages is extinguished, the landlord would be liable to repay double the deposits to the tenants. However, I am not satisfied of when or if the landlord received the forwarding address of the tenant in writing and therefore I find that the doubling provision in the *Act* does not apply.

The landlords currently hold deposits in trust on behalf of the tenant, and despite my finding that the landlords' right to claim against them is extinguished, I find that they should be set off as against the amounts owed to the landlords. Having found that the landlords are owed \$1,369.82 for damages, I set off that amount by the amount of the deposits of \$1,250.00, and I grant the landlords a monetary order for the difference in the amount of \$119.82.

The landlords also ask for an order that the tenant pay the outstanding water bill to prevent it from being added to the landlords' property tax account. I order the tenant to do so, and if the tenant fails to, the landlords will be at liberty to make an Application for Dispute Resolution.

Conclusion

For the reasons set out above, I hereby order the landlords to keep the \$650.00 security deposit and the \$600.00 pet damage deposit, and I grant a monetary order in favour of the landlords as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$119.82.

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: July 26, 2018

Residential Tenancy Branch