



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's pet damage and security deposits (the deposits) in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover their 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, to make submissions, to call witnesses and to cross-examine one another.

As the tenant confirmed that they received a copy of the landlord's dispute resolution hearing package sent by the landlord by registered mail on July 11, 2018, I find that the tenant was duly served with this package in accordance with section 89 of the *Act*. Since both parties confirmed that they had received one another's written evidence, I find that the written evidence was served in accordance with section 88 of the *Act*.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for damage and losses arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenant's deposits in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

On August 3, 2017, the parties entered into a six-month tenancy agreement for a tenancy that was to run from August 15, 2017 until February 28, 2018. At the expiration of this initial term, the tenancy continued as a month-to-month tenancy. Monthly rent was set at \$1,600.00, payable in advance by the first of each month, plus utilities. The landlord continues to hold the tenant's \$800.00 pet damage deposit and \$800.00 security deposit, paid on August 13, 2017.

The parties agreed that the tenant approached the landlord before the end of March 2018, to advise that they were planning to end this tenancy by May 1, 2018. Although no written notice to end this tenancy was provided at that time, the landlord accepted the tenant's oral notice to end this tenancy. The tenant vacated the premises on May 1, 2018.

Although the parties inspected the premises prior to the tenant renting the premises, the tenant gave undisputed sworn testimony that no formal move-in inspection was conducted at the time that the tenant took possession of this rental unit. No move-in condition inspection report was produced by the landlord. The landlord did not request or schedule a joint move-out condition inspection for this tenancy, asking instead that the tenant leave the keys to the premises on the counter inside the rental unit. The landlord did not prepare a move-out condition inspection report for this tenancy.

The tenant provided evidence that they gave the landlord their forwarding address on May 20 and May 30, 2018, followed by a text message request for the return of the deposits on June 9, 2018. The landlord testified that she received the tenant's forwarding address on June 21, 2018.

In the landlord's July 6, 2018 application for a monetary award of \$1,600.00, the landlord outlined the following elements of their claim:

| Item | Amount |
|------------------------------|---------------|
| Replacement of Broken Window | \$905.00 |
| Duct Blow Out | 420.00 |
| Missing Smoke Detector | 50.00 |
| Missing Shower Curtain | 40.00 |
| Cleaning | 100.00 |
| Yard Work | 150.00 |

| | |
|--|-------------------|
| Replacement of Bonsai Juniper | 75.00 |
| Replacement of Garden Shrub | 50.00 |
| Cost of Dump Trips | 50.00 |
| Replacement of 4 Missing Screens | 106.00 |
| Outstanding Water/Garbage Bill (January to March 2018) | 92.00 |
| Outstanding Water/Garbage Bill (April to June 2018) | 82.10 |
| Mould Treatment and Cleanup | 50.00 |
| Total of Above Items | \$1,600.00 |

In addition, the landlord requested the recovery of the filing fee for their application.

In written evidence and sworn testimony, the landlord maintained that the tenant allowed a number of other people to stay at the rental unit and that they may have been responsible for some of the damage to the rental unit during this tenancy. Although the landlord said that most of the work claimed has now been completed, the only actual bills for completed work presented by the landlord in support of the application were the water and garbage bills. The landlord believed that she had submitted an actual bill for the replacement of the window, but neither the tenant nor the Residential Tenancy Branch had copies of that bill. The landlord did provide a number of estimates for the items included in their monetary claim. The landlord also maintained that the Addendum to the Agreement required the tenant to look after the yard and garden and to water when required.

The tenant objected to many of the landlord's claims, maintaining that without a written record of the condition of the premises at the beginning and end of this tenancy, it was difficult to ascertain what occurred during this tenancy and whether the tenant should be held responsible for the damages claimed by the landlord.

Analysis

While I have turned my mind to all the documentary evidence, including photographs, miscellaneous documents, invoices, estimates and text messages, and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the landlord's claim and my findings around each are set out below.

Analysis - Landlord's Application for Damage and Losses Arising out of this Tenancy

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

There was conflicting evidence from the parties with respect to whether the tenant should be held responsible for the broken window, which the landlord said was replaced at a cost of \$905.00 on May 23, 2018. The landlord maintained that because this damage occurred during this tenancy, the tenant should pay for the window replacement. The tenant provided undisputed written evidence that the window crack appeared to have been some type of pressure crack as there was no visible sign of impact on this window. Under the circumstances, I find that the landlord has supplied insufficient evidence to demonstrate that this damage arose as a result of actions by the tenant or those visiting or living with the tenant or on the basis of any negligence on the tenant's behalf. As I find that the landlord has not met the burden of proof to demonstrate entitlement to a monetary award for this item, I dismiss this element of the landlords' claim.

There was also conflicting evidence regarding the landlord's claim for \$420.00 in duct cleaning, which the landlord said had just recently been completed within the past two weeks. While the landlord maintained that previous tenants did not have a dog, the tenant provided written evidence that the landlord had told them that there had been a dog living in the rental unit prior to the beginning of this tenancy. The landlord did not enter into written evidence any receipt for duct cleaning to support this aspect of the claim, only presenting an undated text message to support the estimate for the cost of this work. Without proper move-in or move-out condition inspection reports, it is difficult to assess the extent to which the tenant's actions or those of his roommates or sub-tenants were responsible for any expense incurred by the landlord for this item. I dismiss the landlord's claim for this item as the landlord has submitted little evidence to substantiate entitlement to an award for reimbursement for duct cleaning expenses.

In considering the landlord's claim for a missing smoke detector, I note that the tenant said that they were unaware as to whether there was a smoke detector in the rental unit when the tenancy began. The tenant said that one of his roommates actually moved into the rental unit before the tenant, so he was not totally certain as to whether there ever was a smoke detector present at the beginning of this tenancy. In this case, I find the landlord's evidence was more credible than the tenant's, who did not know whether there was or was not a smoke detector present at the beginning of this tenancy. As I accept the landlord's photographic evidence that no smoke detector was in place by the end of this tenancy, I allow the landlord's claim for a monetary award for the replacement of this item, which the landlord had estimated at \$50.00.

At the hearing, the tenant said that until they received the landlord's claim, the tenant was under the impression that the shower curtain was one that one of his roommates/sub-tenants had purchased. As the tenant did not dispute the landlord's claim that the shower curtain was hers and had been removed from the rental unit, I allow the landlord's \$40.00 claim for the replacement of the shower curtain for this rental unit.

Paragraph 37(2)(a) of the *Act* establishes that when a tenant vacates a rental unit the tenant must "leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear." Without a joint move-in or joint move-out condition inspection report or photographs taken by the parties when both were in attendance, it is difficult to assess the extent to which the premises were properly cleaned at the end of this tenancy. The tenant's written evidence maintained that the premises were left in a very clean condition and the tenant was uncertain as to which parts of the rental unit were not cleaned to the landlord's satisfaction. The landlord testified that they hired two cleaners for two hours each at a rate of \$25.00 per hour to clean the rental unit following the end of this tenancy. The landlord did not supply any receipt for this cleaning or any written evidence from the cleaners. I find that the landlord has not supplied sufficient evidence to warrant entitlement to a monetary award for the general cleaning included in the monetary claim.

While the landlord said that family members were enlisted in performing \$150.00 in yard work at the end of this tenancy, I find that the landlord's claim for this item was unclear as it did not specify what this work entailed and whether the tenant was truly responsible for any of this work. I dismiss this element of the landlord's claim as there is insufficient evidence to support a monetary award for this item.

The landlord's claim also included amounts for the replacement of a bonsai juniper and a garden shrub. I find merit in the tenant's written evidence submission in which the tenant asserted that there are many reasons other than a basic lack of water that could cause shrubs and a juniper to die, many of which could not be the responsibility of a tenant in a rented home. I dismiss this aspect of the landlord's claim, noting that these items have still not been replaced. I find that the tenant's responsibility to look after the yard and water plants does not extend to ensuring that all plants and shrubs on the property remain healthy.

Although the landlord claimed for the recovery of fees for dump trips, the landlord said that no receipts were submitted to support this element of the claim and that these trips were mainly undertaken during the course of other trips. Under these circumstances and without adequate detail to document the nature of these trips and whether the tenant's actions were at all responsible for expenses claimed, I dismiss this element of the landlord's claim.

There was conflicting evidence from the parties with respect to the landlord's claim for one broken screen and three missing screens. The landlord said that these screens have been on order for some time but have still not been replaced. The tenant said that he was unaware of any screens in the rental unit when this tenancy began, as he would have liked to have had screens in place during this tenancy but they were not present. Since the tenant's knowledge of what was and was not in place at the beginning of this tenancy was fragmentary, I accept the landlord's claim for one broken screen. I allow the landlord a monetary award of \$26.50, one quarter of the total claimed by the landlord. In the absence of a joint move-in condition inspection report, I am unable to allow a monetary award for the other screens, which may or may not have been present at the beginning of this tenancy.

As the tenant did not dispute the landlord's claim for a monetary award of \$92.00 for the unpaid portion of the water and garbage bill for the period from January to March 2018, I allow the landlord's claim for this item.

While the tenant agreed that amounts were owing to the landlord for the water and garbage bill for the period from April 1, 2018 to June 30, 2018, the tenant asserted that the landlord's calculations for the amount owed by the tenant for this period was not \$82.10, but should have been \$39.90. In reviewing the landlord's water and garbage bill, I find that the landlord divided the bill amount of \$246.26 by three months as the tenant was only responsible for one-third of this period, as he vacated after the end of the first month of this period. I find that the landlord's method of calculating the tenant's

responsibility for this item is appropriate. For that reason, I allow the landlord's claim for \$82.10, one third of the three-month cost for this item.

At the hearing, the tenant did not dispute the landlord's sworn testimony, written and photographic evidence with respect to the landlord's claim for addressing the problems of mould on the carpet and cleaning associated with this mould. In this regard, the tenant said that he was not contesting the landlord's claim for the \$50.00 cleanup of problems arising out of one of the tenant's roommates/sub-tenants actions regarding a hose that they misdirected to cause leakage problems for the carpet and sub-flooring. I allow the landlord's claim for a monetary award of \$50.00 for the cleanup of problems associated with these mould problems, for which I find the tenant responsible.

Since the landlord has been partially successful in this application, I allow the landlord to recover their \$100.00 filing fee from the tenant.

Analysis - Landlord's Application to Retain the Deposits

When disputes arise as to the changes in condition between the start and end of a tenancy, joint move-in condition inspections and inspection reports are very helpful. The parties agreed that other than the tenant's initial inspection of the premises prior to the signing of the Agreement, no joint move-in condition inspection was conducted, nor did the landlord produce any report of a joint move-in condition inspection. Similarly, no joint move-out condition inspection was requested by the landlord nor conducted, and no move-out inspection report was issued by the landlord.

Sections 23, 24, 35 and 36 of the *Act* establish the rules whereby joint move-in and joint move-out condition inspections are to be conducted and reports of inspections are to be issued and provided to the tenant. These requirements are designed to clarify disputes regarding the condition of rental units at the beginning and end of a tenancy.

Section 23 of the *Act* reads in part as follows:

23 (1) *The landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.*

(2) *The landlord and tenant together must inspect the condition of the rental unit on or before the day the tenant starts keeping a pet or on another mutually agreed day, if*

- (a) the landlord permits the tenant to keep a pet on the residential property after the start of a tenancy, and*
- (b) a previous inspection was not completed under subsection (1).*

(3) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.

(4) The landlord must complete a condition inspection report in accordance with the regulations.

(5) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.

(6) The landlord must make the inspection and complete and sign the report without the tenant if

(a) the landlord has complied with subsection (3), and

(b) the tenant does not participate on either occasion...

Section 24(2) of the Act reads in part as follows:

Consequences for tenant and landlord if report requirements not met

24 *(2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord*

(a) does not comply with section 23 (3) [2 opportunities for inspection],

(b) having complied with section 23 (3), does not participate on either occasion, or

(c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations...

Sections 36 and 37 of the Act establish similar provisions regarding a joint move-out condition inspection and the report to be produced by the landlord regarding that inspection.

Section 38 of the Act requires the landlord to either return all of a tenant's deposits or file for dispute resolution for authorization to retain a deposit within 15 days of the end of

a tenancy or a tenant's provision of a forwarding address in writing. If that does not occur or if the landlord applies to retain the deposits within the 15 day time period but the landlord's right to apply to retain the tenant's deposits had already been extinguished, the landlord is required to pay a monetary award pursuant to section 38(6) of the *Act* equivalent to the value of the deposits. However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the deposits to offset damages or losses arising out of the tenancy.

In this case, while the landlord may have filed the application to retain the deposits within 15 days of receiving the tenant's forwarding address, the landlord's right to retain the deposits were extinguished at the beginning of this tenancy in accordance with section 24(2) of the *Act*. Although the landlord's right to claim against the deposits had already been extinguished, I also note that the landlord failed to meet any of the requirements relating to the joint move-out condition inspection and report, which also extinguished the landlord's right to apply to retain the deposits. As there is undisputed evidence that the tenant has not given the landlord written authorization to retain the tenant's deposits in full, I find that the tenant is entitled to a monetary award equivalent to the value of the deposits, totaling \$1,600.00. This monetary award is issued pursuant to section 38(6) of the *Act*. This award is in addition to the \$1,600.00 in deposits the landlord has retained from the tenants.

Conclusion

I allow portions of the landlord's application for a monetary award of \$440.60. As the landlord has retained the tenants' deposits totaling \$1,600.00, and the tenant is also entitled to a monetary award of a further \$1,600.00 for the landlord's failure to abide by the requirements of section 38 of the *Act*, I issue a monetary Order in the tenant's favour under the following terms,

| Item | Amount |
|--|-------------|
| Missing Smoke Detector | \$50.00 |
| Missing Shower Curtain | 40.00 |
| Replacement of 1 Broken Screen | 26.50 |
| Outstanding Water/Garbage Bill (January to March 2018) | 92.00 |
| Outstanding Water/Garbage Bill (April to June 2018) | 82.10 |
| Mould Treatment and Cleanup | 50.00 |
| Return of Pet Damage & Security | (-1,600.00) |

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|---|----------------------|
| Deposits (\$800.00 + \$800.00= \$1,600.00) | |
| Monetary Award for Landlords' Failure to Comply with s. 38 of the <i>Act</i> (\$800.00 + \$800.00 = \$1,600.00) | (-1,600.00) |
| Recovery of Landlord's Filing Fee | 100.00 |
| Total Monetary Award | (-\$2,759.40) |

The tenant is provided with these Orders in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: October 25, 2018

Residential Tenancy Branch