



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 8828 HOLDINGS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S, FFL

Introduction

On June 14, 2018, the Landlord made an Application for Dispute Resolution seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the “Act”), seeking to retain the pet damage deposit in partial satisfaction these debts pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Landlord and Tenant attended the hearing. All in attendance provided a solemn affirmation.

The Landlord advised that the Notice of Hearing package and evidence was served to the Tenant by registered mail on June 20, 2018 and the Tenant signed to accept receipt of this package. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenant was served with the Notice of Hearing package and evidence.

The Tenant did not submit any evidence for consideration.

All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to compensation?
- Is the Landlord entitled to apply the pet damage deposit towards this debt?

- Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

Both parties agreed that the tenancy started on June 1, 2017 and that the tenancy ended on May 31, 2018. Rent was established at \$2,800.00 per month, due on the first of each month. A security deposit of \$1,400.00 and a pet damage deposit of \$1,400.00 were paid.

The Landlord stated that a move-in inspection report was conducted with the Tenant and the Tenant signed the report, agreeing to the condition. This report was submitted into evidence. She stated that the rental unit was a year old and there were no significant problems documented.

The Landlord submitted that on the day of the move-out inspection, she came to the unit and did not have the chance to document the condition of the rental unit as the Tenant was difficult to deal with. At that time, the Landlord pointed out the deficiencies and the Tenant advised that she had the rental unit cleaned but did not have a receipt. As well, the Landlord stated that the rental unit was so dirty that she was not able to see all the damage. The Tenant agreed in writing to have \$160.00 deducted from the security deposit and provided a forwarding address in writing on May 31, 2018. The Landlord sent a letter to the Tenant on June 13, 2018 advising that \$126.00 would be deducted from the security deposit and that a cheque for the balance was enclosed. The Landlord then made their Application on June 14, 2018 to claim against the pet damage deposit.

She is seeking compensation in the amount of **\$3412.50** because the Tenant smoked in the rental unit contrary to the tenancy agreement. She advised that when the Tenant lived alone, she did not notice any odour of smoke. However, when the Tenant's boyfriend moved in sometime in 2017, she noticed the smell of smoke, but she did not issue a warning to the Tenant. She stated that the rental unit needed to be repainted due to the smoke damage, she provided a letter from the construction company confirming that there was an odour of smoke detected in the rental unit, and she submitted into evidence a copy of the receipt for the cost of the re-painting to rectify this issue.

She is also seeking compensation in the amount of **\$945.00** because the laminate floor had scratches in it and was soiled by pet urine. She stated that the damage is so bad that the floors must be replaced, and she provided a letter from the construction

company corroborating this damage. She advised that this is an estimate of the cost, and the repairs have not been made yet as matching flooring has not been found.

Finally, she is seeking compensation in the amount of **\$315.00** because the Tenant's pet appears to have chewed and damaged the window sill. She provided a letter from the construction company confirming that their assessment is that this damage was caused by a pet. She advised that this is an estimate of the cost and that there is no invoice as the repair has not been made yet.

The Tenant submitted that after the move-in inspection report was completed, the Landlord wanted to paint the rental unit; however, the Tenant declined this offer as she did not feel comfortable, so she advised the Landlord not to bother. The Tenant stated that the walls were already damaged with many nail holes. With respect to the cleanliness of the rental unit at the end of tenancy, she stated that she hired a cleaner; however, she acknowledged that this person did not do a good job. She submitted that there was no damage to the floors at the time of the move-out inspection, that she never noticed or recalled any damage to the window sill, and that she had a small seven-pound dog. She suggested that the noted damage was caused after the Landlord took back possession of the premises.

The Tenant advised that she attempted to contact the construction company that provided the invoices and quotes to the Landlord; however, this company would not return her call. She stated that this company had no online presence and she speculated that this was not a legitimate business. She also acknowledged receiving the balance of her security deposit, which she deposited.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

Section 38(1) of the *Act* requires the Landlord, within 15 days of the end of the tenancy or the date on which the Landlord receive the Tenant's forwarding address in writing, to either return the deposits in full or file an Application for Dispute Resolution seeking an Order allowing the Landlord to retain the deposits. If the Landlord fails to comply with Section 38(1), then the Landlord may not make a claim against the deposit, and the

Landlord must pay double the deposit to the Tenant, pursuant to Section 38(6) of the *Act*.

Furthermore, Section 38(5) of the *Act* states that the right of the Landlord to claim against a security deposit or pet damage deposit is extinguished if the Landlord does not complete the condition inspection reports pursuant to Section 24(2) and Section 36(2) of the *Act*.

As the undisputed evidence is that the Landlord had the Tenant's written consent to keep a portion of the security deposit and that the Landlord returned the balance of it within 15 days of the tenancy ending and the forwarding address in writing being provided, I am satisfied that the Landlord complied with dealing with the security deposit pursuant to Section 38. However, as the undisputed evidence before me is that the Landlord failed to complete a move-out inspection report, I find that the Landlord has extinguished their right to claim against the pet damage deposit. Therefore, pursuant to Section 38(6) of the *Act*, the Landlord must pay to the Tenant double the pet damage deposit in the amount **\$2,800.00**.

With respect to the Landlord's claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

Regarding the Landlord's claim for re-painting the rental unit due to smoke damage, the Landlord has provided evidence that the rental unit smelled so heavily of smoke that the walls needed to be repainted. She also provided evidence from a contractor confirming that there was a smell of smoke present in the rental unit and the invoice outlining the required repairs and repainting of the rental unit. When weighing this evidence against the Tenant's testimony, I do not find the Tenant's suggestion that the smell of smoke in the rental unit came from people smoking outside to be realistic or plausible.

Furthermore, the Tenant advised that the Landlord wanted to paint after she moved in; however, as the rental unit was only a year old before the Tenant moved in, I do not find this statement to be likely or logical and it causes me to be doubtful of the credibility of the Tenant's testimony. Based on a balance of probabilities, I find the Landlord's evidence to be more compelling than the Tenant's. However, as there is evidence in the move-in inspection report of existing deficiencies in the walls, and as the Landlord had

the benefit of the paint for a few years, I am reducing the monetary award of this claim to be commensurate with an appropriate value. As such, I find that the Landlord has substantiated a claim in the amount of **\$2,400.00** as compensation for the cost to repaint the rental unit due to the Tenant's actions.

Regarding the Landlord's claim for the damage to the hardwood floors and damage to the window sill, the Landlord has provided evidence of damage to the flooring and window sill. As well, she has provided evidence from a contractor confirming that there were deep scratches in the flooring and that it was soiled by pet urine, and evidence from the same contractor confirming that it appears as if the window sill was chewed by the pet. When weighed on a balance of probabilities, I find the Landlord's evidence more compelling compared to the Tenant's simple testimony that there was no damage and that she does not "recall" there being damage. Furthermore, I find her speculation that any damage that was referred to was caused after the tenancy ended to be unlikely and dubious. In addition, given that the Tenant had a pet in the rental unit, I am satisfied that the damage was more likely than not caused by the Tenant's negligence. As such, I find that the Landlord has established that they are entitled to a monetary award of **\$945.00** to rectify the issue of the hardwood flooring and **\$315.00** to fix the window sill.

As the Landlord was successful in her Application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this Application.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Landlord a Monetary Order as follows:

Calculation of Monetary Award Payable by the Tenant to the Landlord

Doubling of the pet damage deposit	\$2,800.00
Repainting	-\$2,400.00
Repair to hardwood floors	-\$945.00
Repair to window sill	-\$315.00
Recovery of the filing fee	-\$100.00
TOTAL MONETARY AWARD	\$960.00

Conclusion

The Landlord is provided with a Monetary Order in the amount of **\$960.00** in the above terms, and the Tenant must be served with **this Order** as soon as possible. Should the

Tenant 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: October 4, 2018

Residential Tenancy Branch