



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, FFL

Introduction

This teleconference hearing was scheduled in response to an application by the Landlord under the *Residential Tenancy Act* (the “Act”) for monetary compensation for damages against the security deposit, and for the recovery of the filing fee paid for this application.

The Landlord and an agent for the Tenant (the “Agent”) were present for the duration of the teleconference hearing. The Agent stated that the Tenant provided her with permission to speak on the Tenant’s behalf.

The Landlord provided testimony that he sent the Notice of Dispute Resolution Proceeding package, along with his evidence package to the Tenant by registered mail. A registered mail tracking number was provided and is included on the front page of this decision. Entering the tracking number on the Canada Post website confirms the package as delivered and signed for by the Tenant on April 12, 2018.

The Agent stated that the Tenant did not receive the Notice of Dispute Resolution Proceeding and that information about the hearing was received after calling the Residential Tenancy Branch. The Agent also did not have the Landlord’s evidence before her during the hearing, and stated that the Tenant had not received it. However, I accept the evidence before me that the package was delivered and signed for by the Tenant on April 12, 2018. Therefore, I find that the documents were served in accordance with Sections 88 and 89 of the *Act*.

All parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issues to be Decided

Is the Landlord entitled to monetary compensation for damages?

Should the Landlord be allowed to retain the security deposit or pet damage deposit towards compensation owed?

Should the Landlord be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

Settlement

During the hearing, the parties were offered the opportunity to settle the dispute. In accordance with Section 63 of the *Act*, a settlement agreement may be recorded in the form of a decision.

The agent for the Tenant stated that she had permission from the Tenant to agree to a settlement decision, and agreed to the following deductions from the Tenant's security deposit:

- Carpet cleaner and supplies in the amount of \$48.20
- Air fresheners in the amount of \$23.50
- A table in the amount of \$40.00
- Touch up paint in the amount of \$6.72
- A shower curtain in the amount of \$7.83
- Cleaning in the amount of \$40.00

The total deductions agreed to are an amount of \$166.25.

The parties confirmed during the hearing that they understood the voluntary nature of a settlement agreement and that they did not feel coerced or pressured to enter into an agreement. It was explained to the parties that a settlement agreement was final and binding, the same as any other order made through an arbitration decision.

The parties were not in agreement to three of the Landlord's monetary claims, including

the repair of the entry door, repair of the shower door and 6.25 hours of labour for repairs and cleaning in the rental unit.

They confirmed their understanding that these remaining claims were not part of the settlement agreement and instead that a decision would be made for the remainder of the Landlord's application.

Background and Evidence

The Landlord provided testimony that the tenancy began on May 11, 2017 and ended on March 28, 2018. Monthly rent was \$450.00 and a security deposit of \$225.00 and a pet damage deposit of \$100.00 was paid to the Landlord.

The Landlord testified that the security and pet damage deposit was paid when the Tenant resided in a different rental building and was transferred when she moved into the rental unit on May 11, 2017. The Landlord provided further testimony that no amount of the security or pet damage deposits have been returned and that the Tenant did not agree in writing to the Landlord withholding any amount.

The Agent was in agreement as to the dates and the monthly rent amount, but stated that the Tenant was not sure that a security deposit had been paid. A tenancy agreement was submitted into evidence by the Landlord and confirms the details, including that a security deposit of \$225.00 and a pet damage deposit of \$100.00 was required.

The Landlord testified that a Condition Inspection Report at move-out was completed with the Tenant on March 29, 2018, the same date that the Tenant's forwarding address was provided. He also stated that the Tenant had participated in a move-in inspection as well.

The Agent was in agreement that the Tenant had participated in the move-out inspection, but was unsure about whether she had participated in an inspection when she moved in. The two reports were submitted into evidence, dated May 11, 2017 and March 29, 2018 and each were signed by the Landlord and the Tenant.

As noted above, the parties reached a settlement agreement regarding most of the Landlord's claims. However, there were three claims of the Landlord in which an agreement was not reached.

The Landlord has claimed compensation for the repair of the entry door in the amount of \$128.50. The Landlord provided testimony that the door pin at the bottom of the door was pulled out, causing the door to tear and warp. Photos of the door were submitted into evidence. A receipt dated April 6, 2018 was submitted into evidence for the repair of the door in an amount of \$128.50.

The Landlord also submitted four letters sent to the Tenant in February 2018 stating that the door had been damaged and needed to be repaired. The Landlord testified that the door was not repaired, causing further damage. The move-out Condition Inspection Report notes that the door is broken, although some of the notes on the move-out inspection are not legible.

The Agent testified that the Tenant was not likely to have been able to remove the pin from the door hinge. She noted that the door was old, and the frame was warped. She noted that the door needed replacing, rather than repairing due to the age and condition of the door.

The Landlord has also claimed \$47.00 for the repair of the shower door. The Landlord stated that at the end of the tenancy he had to purchase parts to repair the track for the shower door to slide properly. The Landlord submitted photos of the shower door that appear to show the door broken and off of the tracks. An invoice was also submitted, dated March 31, 2018 for \$35.00 of labour and \$12.00 of parts to repair the shower door for a total of \$47.00.

The Agent stated that she was present when the Tenant was moving out and was aware that the shower door was off its track. However, she also noted that the door was very flimsy. She attempted to put the door back into the track, but it would come out again right away. She also stated that the Tenant rarely used the shower as the door never worked properly.

The final claim of the Landlord is for 6.25 hours of labour at \$20.00 per hour, for a total of \$125.00. The Landlord testified that the work he completed included fixing the vacuum cleaner, the drapes and the wall of the shower which had been pushed right out and required repairing. He also stated that he sprayed the carpet to remove stains, replaced lightbulbs, completed the touch-up painting on the walls and washed the bathroom door and walls.

The Agent testified that she helped the Tenant move and scrubbed the walls in the bathroom, as well as helped to clean the rest of the rental unit. She noted that she

scrubbed the microwave, fridge and shower. She also stated that the rental unit was old, so many areas of the unit were worn out.

The Landlord disagreed that the rental unit was cleaned prior to the Tenant moving out. The Condition Inspection Report at move-out notes that the carpets were dirty in the main living area, as well as in the bedroom. No further dirt or areas of uncleanness are noted, although the report is difficult to read. A photo of the vacuum cleaner was submitted into evidence.

The Landlord stated that the Tenant agreed at the beginning of the tenancy that damages could be deducted from the security deposit. The following statement is included in the tenancy agreement: 'I agree that any damages done or any cleaning, etc can come out of the damage deposit'. (Reproduced as written)

Analysis

In order to determine if the Landlord was in compliance with the *Act* by retaining the security deposit, I refer to Section 38(1) which states the following:

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

As the tenancy ended on March 28, 2018 and the Tenant's forwarding address was provided on March 29, 2018, I find that the Landlord had 15 days from March 29, 2018 to return the deposits or file a claim against them. As the Landlord filed an Application for Dispute Resolution on April 9, 2018, I find that he applied within the time allowable under the *Act*. Therefore, any amount awarded to the Landlord may be deducted from the deposits.

I also note that despite the statement in the tenancy agreement, a landlord may not pre-contract to retain the security deposit as stated in Section 20(e) of the *Act*.

Door repair: The Landlord is claiming \$128.50 for repair of the entry door. In order to determine if compensation is due, the *Residential Tenancy Policy Guideline 16: Compensation for Damage or Loss* outlines a four-part test as follows:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

I also note the following from Section 21 of the *Residential Tenancy Regulation* (the "*Regulation*") regarding Condition Inspection Reports:

21 In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

As the move-in and move-out inspections were signed by the Landlord and Tenant and note no damage to the door at move in, but damage to the door at move out, I find it likely that the damage occurred during the tenancy. I also accept the photos that show some damage to the door.

As the Landlord submitted the receipt for the work completed, I find that the Landlord proved the value of his loss and also that he minimized the potential loss by repairing the door instead of replacing it. As such, I find that the four-part test has been met and the Landlord is awarded compensation for the repair of the entry door in the amount of \$128.50.

Shower door repair: The Landlord has claimed \$47.00 for the repair of the shower door. Similarly to the repair of the entry door, I find that the four part test has been met. As damage to the shower was mentioned on the move-out inspection, while the move-in report notes that the condition of the shower is "OK", I find that damage to the shower was likely to have occurred during the tenancy. I also accept the invoice of repairs completed and award the Landlord \$47.00 for repair of the shower door.

Repairs and labour: The Landlord has applied for 6.25 hours of labour at \$20.00 per hour for a total \$125.00. However, I find that other than the carpet, the move-out Condition Inspection Report does not note dirt or uncleanliness in the remainder of the rental unit.

The Landlord also noted that besides cleaning, the labour also included spraying the carpet and completing the touch-up painting, as well as the repair of the drapes and vacuum. While the Landlord provided photos of the vacuum, the photos are not clear regarding damage to the vacuum. Therefore, I do not find sufficient evidence to establish that further cleaning of the rental unit, or repairs to the vacuum or drapes were required.

However, I do find that there is evidence of the condition of the carpet and the settlement agreement outlines the Tenant's agreement to pay for the carpet cleaning supplies. Therefore, I award the Landlord one hour of cleaning for the carpet.

I also accept the evidence that the walls required some touch-up paint, as mentioned in the Condition Inspection Report and as evidenced by the agreement to pay for the paint in the settlement agreement. As such, I award one hour of labour to the Landlord for painting. The Landlord is awarded two hours of labour for a total of \$40.00.

Filing fee: As the Landlord was mostly successful in his Application, I also award the recovery of the filing fee in the amount of \$100.00, pursuant to Section 72 of the Act.

The Landlord is awarded a Monetary Order in the amount outlined below.

Settlement agreement	\$166.25
Entry door repair	\$128.50
Shower door repair	\$47.00
2 hours of labour	\$40.00
Filing fee	\$100.00
<i>Less security deposit</i>	<i>(\$225.00)</i>
<i>Less pet damage deposit</i>	<i>(\$100.00)</i>
Total owing to Landlord	\$156.75

Conclusion

Pursuant to Sections 67 and 72 of the Act, I grant the Landlord a **Monetary Order** in the amount of **\$156.75** for repairs, labour and the recovery of the filing fee, as well as to uphold the settlement agreement reached during the hearing. The Landlord is provided

with this Order 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 25, 2018

Residential Tenancy Branch