



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNRL-S, FFT

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, monetary compensation for unpaid rent, to retain the security deposit towards compensation owed and for the recovery of the filing fee paid for the Application for Dispute Resolution.

The Landlord and Tenant were both present for the duration of the teleconference hearing. The Tenant confirmed receipt of the Notice of Dispute Resolution Proceeding package and a copy of the Landlord’s evidence. The Landlord confirmed receipt of a copy of the Tenant’s evidence. Neither party brought up any issues regarding service.

The 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.

Issues to be Decided

Is the Landlord entitled to monetary compensation for damages?

Is the Landlord entitled to monetary compensation for unpaid rent?

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

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

Background and Evidence

While I have considered the relevant documentary evidence and testimony of both parties, not all details of the submissions are reproduced here.

The parties were in agreement as to some of the tenancy details. The Tenant signed a tenancy agreement to begin the tenancy on July 1, 2018 but moved in early in mid-June 2018. Monthly

rent of \$1,000.00 was due on the first day of each month and a security deposit of \$400.00 was paid at the outset of the tenancy. The tenancy agreement and tenancy agreement addendum were submitted into evidence.

The Landlord stated that the Tenant moved out on November 18, 2018 while the Tenant stated that she moved out on November 17, 2018.

The Landlord testified that the rental unit was a three-bedroom home with the Tenant and the Tenant's child occupying two of the rooms and the Landlord's son occupying the third bedroom. The Landlord stated that she did not stay at the home during the tenancy but would come and go due to her son residing on the residential property.

The Landlord has claimed a total of \$2,726.02. This includes compensation for cleaning in the amount of \$675.00 as well as cleaning supplies in the amount of \$85.62. The Landlord testified that her son was unable to clean the common areas as much as he would like due to harassment and intimidation from the Tenant. The Landlord further stated that the Tenant had 2 additional people who would stay in the rental unit regularly.

The Landlord stated that there was no inspection completed at move-in as she was not aware of this requirement. At move-out, the Landlord stated that she filled out the Condition Inspection Report for the Tenant to sign, but the Tenant did not show up at the scheduled time. The Landlord submitted the Condition Inspection Report into evidence, which was not signed by the Tenant on move-in or move-out.

The Landlord stated that the rental unit was in good condition at the start of the tenancy. The move-in section of the Condition Inspection Report was filled in after the start of the tenancy and only signed by the Landlord. The Landlord also submitted photos of various areas of the rental unit at the end of the tenancy as well as photos that she stated were taken on May 26, 2018, prior to the start of the tenancy.

The Landlord stated that she was not sure about how much her son cleaned the common areas but stated that she was aware that he cleaned some areas such as the stairs. She stated that at one point there was water entering her son's bedroom due to an issue caused by the uncleanness of the bathroom. The Landlord submitted receipts for the purchase of cleaning supplies.

The Tenant stated that she had short notice to move due to being evicted and therefore although she could have cleaned better, she did the best she could. She noted that she swept, took out the garbage and other general tidying. She stated that there was no formal arrangement for cleaning with the Landlord's son residing in the rental unit, but that it was not her place to tell him what to do. She noted that she did the majority of the cleaning, although the son was aware where the vacuum and other cleaning supplies were. The Tenant submitted photos of the rental unit that she stated were taken at the end of the tenancy.

The Landlord has claimed \$79.08 for new mats and \$22.36 for a new shower curtain which she stated needed to be replaced at the end of the tenancy. She stated that they were used by everyone in the home, including her son. The Landlord submitted the receipts for the new mats and curtain.

The Tenant stated that the shower curtain was already stained when they move in as it was already being used by the Landlord's son. She also noted that the mats were already worn out when she moved in.

The Landlord also claimed \$13.96 for paint remover to remove paint platters from the sunroom floor, as well as \$590.00 for repair of a door and the sunroom floor. The Landlord stated that there were various colours of paint splattered on the sunroom floor from the Tenant's art projects. She noted that the paint remover was the first attempt to fix the issue but when it did not work they received a quote for repair of the floor. The Landlord noted that one of the doors was damaged with cat scratches and other marks.

The Tenant stated that any damage to the sunroom floor was not caused by her. She also noted that the cats rarely went outside and did not cause any damage to the door. The Tenant stated that the rental unit was very well live-in before she moved in.

The landlord also claimed \$100.00 for junk removal due to items left behind from the Tenant. The Tenant stated that the majority of the items in the photos were not hers, but confirmed that a heater, snow boots and chair were hers and provided verbal permission for the Landlord to dispose of those items. The Tenant stated that the remainder of the items in the Landlord's photos were there when she moved in or belonged to the Landlord's son.

The Landlord has claimed \$160.00 for replacement lights. She testified that she noticed that one of the lights in the sunroom was broken at the end of the tenancy. As there were two matching lights, the Landlord noted that the amount claimed is the quote for replacement of both lights as she was unable to find a matching light for replacement. The Landlord also stated that the amount claimed included electrician costs.

The Tenant testified that she did not notice the broken light and that it could have been anyone that broke it, including the Landlord's son.

Lastly, the Landlord has claimed \$1,000.00 for unpaid rent for November 2018. The Landlord stated that she served the Tenant with a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice") on October 31, 2018. The Landlord stated that she told the Tenant to pay November 2018 rent and not pay December 2018 rent as compensation for the Two Month Notice. The Two Month Notice was submitted as evidence and states that the Tenant was to move out by December 31, 2018.

When the Tenant did not pay November 2018 rent, the Landlord served her with a 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice"). The 10 Day Notice dated November 2, 2018 was also submitted as evidence and states that the Tenant must move out by November 15, 2018.

The Tenant stated that she sent a text to the Landlord providing authorization for the Landlord to retain the \$400.00 security deposit towards any expenses. The Tenant confirmed at the hearing that she had agreed that the Landlord may keep the entire security deposit amount.

Analysis

The parties were in agreement that the Tenant shared the rental unit with the Landlord's son. While the bedrooms were separate, I find that the common living areas were shared and therefore the responsibility of all occupants of the residential property, which includes cleaning. As such, I find that I am not able to determine that the Tenant is solely responsible for cleaning costs, the cost of cleaning supplies, replacement mats, a new shower curtain, paint remover, replacement lights or repairs to the floor and/or door. The Landlord did not submit sufficient evidence to establish that these costs are only the Tenant's responsibility and not a shared responsibility between all occupants of the home.

I also note that as the Landlord did not complete a Condition Inspection Report at move-in in accordance with Section 23 of the *Act*, instead filling out the move-in portion during or at the end of the tenancy.

As stated in Section 23 of the *Act*, the landlord and tenant must inspect the condition of the rental unit on or before the start of the tenancy. As the parties did not agree to the condition of the rental unit at the start of the tenancy, I cannot establish whether damage or other issues occurred during the tenancy. As stated by rule 6.6 of the *Residential Tenancy Branch Rules of Procedure*, the onus to prove a claim, on a balance of probabilities, is on the party making the claim which in this matter is the Landlord.

The parties were not in agreement as to whether the home was in good condition when the tenancy began. When two parties to a dispute resolution proceeding provide conflicting testimony, it is up to the party with the burden of proof to submit sufficient evidence over and above their testimony to establish their claim.

However, I accept the testimony and text message evidence that establishes that the Tenant agreed that the Landlord may retain the full security deposit of \$400.00 towards costs incurred in accordance with Section 38(4) of the *Act*. As the Tenant agreed that she may not have cleaned as thoroughly as she could have, the Landlord may put part of the security deposit amount towards cleaning costs incurred.

I decline to award any additional compensation for cleaning, repairs, throw mats, new lights or a new shower curtain. I find that the Landlord did not meet the burden of proof to establish that condition of the rental unit at the start of the tenancy or to establish that the Tenant is solely responsible for shared common areas.

As for the Landlord's claim for junk removal costs in the amount of \$100.00, the Landlord stated that she kept items that she believed were the Tenant's and has stored them on the property. The amount claimed by the Landlord is the estimated cost to dispose of these items.

A party claiming a loss must establish the value of their loss, and in this matter, I do not find that the Landlord has done so due to providing an estimate for disposal and not the actual cost of a monetary loss. I also find that the Landlord did not provide sufficient evidence that the items belonged to the Tenant and not another occupant of the residential property. Therefore, I decline to award compensation for junk removal costs.

However, at the hearing the Tenant has advised the Landlord as to which items are hers and provided permission for the Landlord to dispose of them. As the Tenant has authorized the Landlord to retain the security deposit of \$400.00, the Landlord may put this towards any costs incurred with disposal of the Tenant's items.

As for the Landlord's claim for unpaid rent for November 2018, I accept the evidence before me that a Two Month Notice was served to the Tenant on October 31, 2018 in accordance with Section 49 of the *Act*. As stated in Section 51(1) of the *Act*, a tenant who receives a Two Month Notice is entitled to compensation equivalent to one month of rent.

Although I have no evidence before me that the Tenant provided proper notice to end the tenancy earlier than the date of the Two Month Notice, I still find that she was entitled to one month of compensation due to receiving a Two Month Notice.

However, I also find that the Tenant still owed rent for November 2018 and should have paid the rent as due on November 1, 2018, in accordance with Section 26 of the *Act* and did not have authorization to withhold rent.

Therefore, as the Tenant was to pay November 2018 rent and the Landlord owes one month of rent compensation due to serving the Tenant with a Two Month Notice, I find that the amounts owed to each party are offset. Therefore, I decline to award any unpaid rent to the Landlord as I find that the rent owed will be considered compensation under Section 51(1) of the *Act*.

As the Landlord was not successful with the application, I decline to award the recovery of the filing fee.

Conclusion

The Landlord's Application for Dispute Resolution is dismissed, without leave to reapply. As agreed to by the Tenant, the Landlord may retain the security deposit of \$400.00.

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: April 25, 2019

Residential Tenancy Branch