



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 landlord seeking a monetary order for damage to the rental unit or property; for an order permitting the landlord 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.

The landlord attended the hearing with her spouse who acted as the landlord's agent. The landlord's agent gave affirmed testimony, and provided evidentiary material in advance of the hearing. However, the line remained open while the telephone system was monitored for 10 minutes prior to hearing any testimony, and no one for the tenant joined the call.

The landlord's agent testified that the tenant was served with the Application for Dispute Resolution, evidence and notice of this hearing by registered mail on July 6, 2019 at the forwarding address provided by the tenant on the inspection report, and has provided a Canada Post tracking document substantiating that testimony and showing that the package was unclaimed by the tenant and returned to the landlord on July 30, 2019. The *Residential Tenancy Act* states that documents served in that manner are deemed to have been received 5 days after mailing. I am satisfied that the tenant has been served in accordance with the *Residential Tenancy Act*.

All evidence of the landlord has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Has the landlord established a monetary claim as against the tenant for damage to the rental unit or property?

- Should the landlord be permitted to keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlord's agent testified that this fixed term tenancy began on February 1, 2018 and expired on January 31, 2019, and ultimately ended on June 25, 2019. Rent in the amount of \$2,350.00 per month was payable on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$1,175.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is an apartment suite, and the landlord does not reside in the rental building. A copy of the tenancy agreement has been provided as evidence for this hearing.

A move-in condition inspection report was completed by the parties at the beginning of the tenancy, and a move-out condition inspection report was completed by the parties at the end of the tenancy. A copy has been provided as evidence for this hearing showing the condition at the beginning and end of the tenancy. At move-out the tenant agreed in the report that the landlord could keep the security deposit to cover damages. The tenant provided a forwarding address on the report, and has not served the landlord with an Application for Dispute Resolution claiming the security deposit.

On April 19, 2019 the building manager of the apartment building called an emergency proclaim company, and its personnel knocked on the door of the rental unit but no one answered. A notice to enter was posted. It had rained a lot in April, 2019 and on April 20, 2019 the landlord received an email from the owner of the apartment below the rental unit saying that water was seeping down to their unit which started on April 18 and the tenant wasn't responding to their emergency call. The tenant hadn't cleaned the downspout and water gathered on the deck and over-flowed due to garbage packing up on the drain. Something was blocking the drain, and the emergency personnel who attended said that water was about 1 ½ inches built up on the deck, but as soon as the opening was cleared with his hand, the water drained quickly. Even after the tenant saw water seeping into the living room, the tenant never notified the property manager or the landlord and didn't respond to the caretaker about the emergency.

The rental unit suffered water damage caused by the tenant's failure to unblock the drain on the patio, resulting in water entering into the rental unit through the patio door. The cost to repair the damage amounted to \$9,977.65. The landlord attempted to claim the damage

through the insurance company, however was denied. A copy of the insurance company denial letter has been provided for this hearing as well as an invoice for the work performed dated April 26, 2019 and a receipt for that invoice dated June 13, 2019. The work performed includes cleaning, drywall, wood floor covering, finish carpentry/trimwork, finish hardware, insulation, painting and overhead and profit, as well as GST. The landlord claims \$9,977.65 for that invoice.

The landlord also claims the cost for repairing damaged caused by the tenant totaling \$661.50 and cleaning services amounting to \$892.50. Invoices have been provided. The repair invoice is dated 03/07/2019 and includes repairing nail/hook holes on walls in all rooms; priming and painting holes; screen door re-screening, new filter for the kitchen range hood and re-fastening a mirror, as well as GST. The cleaning invoice also includes GST and specifies detail cleaning in the kitchen, including fridge, stove and oven, detailed cleaning of bathrooms, laundry, doors, baseboards, closet doors, windows, window frames and window sills, cleaning blinds and washing the balcony door from inside and outside.

The landlord has also provided photographs which the landlord's agent testified were taken on April 25, 2019 showing water damage, and the other photographs of other damages were taken on June 26, 2019.

Analysis

Where a party makes a monetary claim for damage or loss, the onus is on the claiming party 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 other party's failure to comply with the *Residential Tenancy Act* or the tenancy agreement;
3. the amount of such damage or loss; and
4. what efforts the claiming party made to mitigate any damage or loss suffered.

I have reviewed all of the evidentiary material, and specifically the move-in and move-out condition inspection reports. The reports are evidence of the condition of the rental unit at move-in and move-out, and I am not satisfied that the rental unit wouldn't have needed painting at the beginning of the tenancy. I also note that at the beginning of the tenancy there were stains on cabinets in the kitchen and the exterior of the stove was not clean. Walls in the living room were not clean and there were scratches above the fireplace. The same applied to the dining room, stairwell and hall. A claim for damages must put the

landlord in the same position the landlord would be in financially if the damage had not occurred. I am not satisfied that the landlord has established the claims for cleaning and painting. I am satisfied, however that the landlord has established the claim for re-screening the door and the new filter for the kitchen range hood and for re-fastening the mirror. The invoice is broken down in the service description, and I accept the claim of the landlord for repairs totalling \$255.00 and \$75.00 respectively as well as 5% GST of \$16.50, for a total of **\$346.50**.

With respect to the water damage, I refer to Residential Tenancy Policy Guideline #1 – Landlord & Tenant – Responsibility for Residential Premises, which states that unless there is an agreement to the contrary, the tenant is responsible for removal of garbage during and at the end of a tenancy. It also states that the landlord is responsible for major projects, such as tree cutting or pruning, but the tenant is responsible for routine yard maintenance. A tenant also has a duty to inform the landlord of issues that could affect the maintenance or integrity of the rental unit or surrounding units.

The *Residential Tenancy Act* states:

32 (2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

I accept the undisputed testimony of the landlord's agent that the tenant was neglectful in failing to ensure that the water drained off the patio even after water started to enter into the rental unit. I find that the tenant failed to comply with the tenancy agreement and the *Act* and the landlord has established the claim of **\$9,977.65**.

Since the landlord has been partially successful with the application the landlord is also entitled to recovery of the \$100.00 filing fee.

I order the landlord to keep the \$1,175.00 security deposit in partial satisfaction of the claim and I grant a monetary order in favour of the landlord as against the tenant for the difference in the amount of **\$9,249.15**.

Conclusion

For the reasons set out above, I hereby order the landlord to keep the \$1,175.00 security deposit and I grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of **\$9,249.15.**

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: October 15, 2019

Residential Tenancy Branch