



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT MNSD
 MNDL-S FFL

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord as against 1 tenant and an application made by 2 tenants as against the landlord. The tenants have applied for a monetary order for return of the security deposit or pet damage deposit and to recover the filing fee from the landlord for the cost of the application. The landlord has applied for a monetary order for damage to the rental unit or property, 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.

An agent for the landlord and one of the tenants attended the hearing and each gave affirmed testimony. The tenant also represented the other tenant. The parties were given the opportunity to question each other and give submissions.

At the commencement of the hearing the tenant indicated that she had not received the landlord's evidentiary material. The landlord's agent called a witness to testify as to what was served, and the witness gave affirmed testimony. The parties were given the opportunity to question the witness. There was no testimony to satisfy me that any of the landlord's evidentiary material was provided to the tenant except for photographs, and I decline to consider any of the other evidence of the landlord.

It was also unclear to me what exactly the landlord received from the tenant's evidentiary material, other than the move-in/out condition inspection reports. The landlord's agent seemed confused about what exactly was received from the tenants, and what documents in her possession were documents of the landlord. The parties agree that the move-in/out condition inspection report has been provided and the only evidence of the tenants that I consider is that report.

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 security deposit in full or partial satisfaction of the claim?
- Have the tenants established a monetary claim as against the landlord for return of all or part or double the amount of the security deposit?

Background and Evidence

The tenant testified that this fixed-term tenancy began on July 7, 2018 and expired on July 7, 2019. The tenants vacated the rental unit on July 6, 2019. Rent in the amount of \$2,300.00 per month was payable on the 7th day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$1,150.00 as well as a pet damage deposit in the amount of \$1,150.00. The rental unit is a condominium apartment.

The tenant further testified that a move-in condition inspection report was completed at the beginning of the tenancy and a move-out condition inspection report was completed at the end of the tenancy, on July 6, 2019. At move-out, the landlord, the landlord's agent and both tenants were present, and the landlord's agent was preparing the report. Everything was checked off as being "Good," and the landlord sent a copy by email to the tenant on July 9, 2019. The copy received by the tenant had a change, crossing off the checkmark beside the bathroom sink and a notation added that the sink was cracked.

The tenant provided a forwarding address to the landlord on July 6, 2019 during the move-out condition inspection. The landlord returned the pet damage deposit, less a deduction that the tenants had agreed to in writing, but has not returned any portion of the security deposit.

The landlord's agent testified that there is a notation on the bottom of the move-out condition inspection report mentioning damage to the sink, which was in the report before the tenant signed the report. The tenants pointed out the sink to the landlord's agent at the time and mentioned that water flow was a problem. Photographs have

been provided, one of which has a measuring tape showing a large crack. The crack was bigger than originally thought.

The landlord claims the following compensation from the tenant:

- \$4.86 for an outstanding BC Hydro bill;
- \$13.17 for covering a blue mark from Downey on the bathroom cabinet;
- \$31.92 for missing light bulbs;
- \$695.20 for installation and purchase of a new bathroom sink;
- \$16.87 for a light cover that was missing from a chandelier;
- \$44.74 for granite repair to the kitchen counter;
- \$495.60 for cleaning;
- \$14.85 for a new fan filter over the stove.

The landlord's agent testified that the landlord believed the Downey blue mark could be washed, so it is not noted on the move-out condition inspection report, but it couldn't be removed so the landlord purchased a covering for the mark so that it was not noticeable. Also, the light cover missing from the chandelier was missed during the move-out condition inspection, and the landlord found that it was missing when the light was turned on after the report was completed. The same applies to the chip in the granite kitchen counter, fan filter and cat feces on the balcony. Although the report does not mention that the rental unit required cleaning at the end of the tenancy, photographs have been provided showing the cleaning required. The photographs were taken by the cleaning company on August 7, 2019. The landlord didn't want to make a claim for cleaning so it was not mentioned on the report, but the tenant made a claim against the landlord.

The landlord claims a total of \$1,317.21 as well as recovery of the \$100.00 filing fee and an order permitting the landlord to keep the \$1,150.00 security deposit in partial satisfaction.

In rebuttal, the tenant submits that there was no mention of a crack in the sink at all during the move-out condition inspection..

Analysis

The *Residential Tenancy Act* requires a landlord to return a security deposit and pet damage deposit to a tenant within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing, or must make a claim against the deposit(s) within that 15 day period. If the landlord fails to do either, the landlord must repay double the amount.

In this case, the tenancy ended on July 6, 2019 and the landlord received the tenant's forwarding address the same day. The landlord returned a portion of the pet damage deposit, which is not in issue. However, the landlord did not return any part of the \$1,150.00 security deposit and made the claim on October 9, 2019, which is clearly beyond 15 days. Therefore, I find that the tenants are entitled to double the amount, or \$2,300.00.

Where a party makes a monetary claim against another party 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.

Also, the *Act* specifies that the move-in and move-out condition inspection reports are evidence of the condition of the rental unit at move-in and move-out.

In this case, the landlord didn't make any notation on the move-out condition inspection report that cleaning was required, and altered the report after the tenants had signed it. The landlord's agent testified that things were missed and noticed after the tenants had vacated. The landlord had an obligation at that time to ensure that the tenants were notified to come back and inspect again and sign or initial any changes to the report. The landlord did not do so. Also, the only evidence of the landlord that I can consider are photographs taken by a cleaner a full month after the report was completed.

In the circumstances, I am not satisfied that the landlord has established any of the elements in the test for damages, and I dismiss the landlord's application in its entirety.

Since the tenants have been successful with the application the tenants are also entitled to recovery of the \$100.00 filing fee.

Conclusion

For the reasons set out above, the landlord's application is hereby dismissed.

I hereby grant a monetary order in favour of the tenants as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$2,400.00.

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: November 14, 2019

Residential Tenancy Branch