



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LOW TIDE PROPERTIES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFL MNDL-S
 FFT MNDCT MNSD

Introduction

This hearing was convened by way of conference call concerning applications made by the landlord and by the tenant which have been joined to be heard together. 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 for the cost of the application. The tenant has applied for a monetary order for return of all or part of the pet damage deposit or security deposit; a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and to recover the filing fee from the landlord.

The tenant and an agent for the landlord company attended the hearing and each gave affirmed testimony. The parties were given the opportunity to question each other.

No issues with respect to service or delivery of documents or evidence were raised and all evidence provided by the parties 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?
- Should the landlord be permitted to keep a portion of the security deposit in full satisfaction of the landlord's claim?
- Has the tenant established a monetary claim as against the landlord for return of all or part of the security deposit?

- Has the tenant established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for interest earned on the security deposit?

Background and Evidence

The landlord's agent testified that this fixed-term tenancy began on April 1, 2013 and reverted to a month-to-month tenancy after March 31, 2014 which ultimately ended on August 30, 2019. Rent in the amount of \$2,150.00 per month was originally payable under the tenancy agreement, on the 1st day of each month, and was raised from time-to-time. The landlord's agent does not know what the rental amount was at the end of the tenancy, however there are no rental arrears. The landlord at the time collected a security deposit from the tenant in the amount of \$1,075.00, which is currently held in trust by the current landlord, and no pet damage deposit was collected. The rental unit is an apartment in a complex, and a copy of the tenancy agreement has been provided as evidence for this hearing.

The landlord's agent further testified that a move-out condition inspection report was completed by a previous landlord, and the same form was used for the move-out condition inspection report. A copy has been provided and it shows that the tenant disagreed with the report at move-out. The move-out portion is dated August 30, 2019 and the landlord's agent testified that the tenant provided a forwarding address in writing on that report the same day.

The landlord has provided a Monetary Order Worksheet setting out a claim of \$204.75 for cleaning the rental unit and \$288.75 for preparation work for painting, for a total of \$493.50.

The landlord has also provided photographs of the rental unit after the tenant vacated, as well as Invoices for the preparation work for painting and for cleaning fees, along with some other photographs. The landlord's agent testified that the apartment was left by the tenant very dirty as laid out in photographs, requiring a deep cleaning. Preparation work for the painting was due to the unclean walls and residual markings; the contractor had to put some substance on the walls because paint didn't cover what appeared to be marks from a felt marker by a child, and had to return the next day after compound dried. The rental unit has not been painted during this 6 year tenancy.

The landlord's agent also testified that having reviewed the evidence provided by the tenant respecting flooding, there was not a single incident of flooding in that rental unit in the last year.

The landlord has not returned any portion of the security deposit to the tenant, waiting for this hearing to be concluded. The landlord seeks an order permitting the landlord to keep \$493.50 of the security deposit, as well as \$100.00 for the filing fee, and the landlord will return the balance to the tenant.

The tenant testified that he and his wife and his wife's friend thoroughly cleaned the apartment at move-out. Photographs have also been provided by the tenant.

While moving out, another agent of the landlord was being very difficult, and his inspection lasted 10 minutes at the very most. He kept saying that everything was "not acceptable." It was not a complete inspection and he was very unprofessional. When he walked into a room he pointed out 2 tiny nail holes and said, "That's \$30.00," and "This is not acceptable," and that he had too many inspections to complete that day.

The photographs provided by the landlord show wall damage from a 2018 flood. The drywall was wet and water was coming out of the drywall, and carpets were so wet they were splashing. That was the condition of the rental unit for several months. The black marks mentioned by the landlord's agent could have been mold.

The tenant asked for return of the security deposit 10 days after move-out and received an email from the landlord's agent stating that she received the fob for the storage area, and that paperwork was sent to the tenant. The tenant believed it would be the security deposit, but it was the landlord's Application for Dispute Resolution.

During the tenancy, the new landlord told the tenant that he was to pay \$75.00 per month for parking and \$25.00 for storage. The tenant disputed it and received back \$100.00 at Arbitration. The new landlord also raises rent each year, and the tenant has never been late. The new landlord operates as a money-grab for everything they can and even threatened to tow the tenant's car.

The tenant seeks recovery of the \$1,075.00 security deposit, interest and recovery of the \$100.00 filing fee.

Analysis

Firstly, with respect to the landlord's claim for damages, the onus is on the landlord to establish the 4-part test:

1. that the damage or loss exists;

2. that the damage or loss exists as a result of the tenant'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 landlord made to mitigate any damage or loss suffered.

The landlord has provided invoices for the claims for cleaning and preparation for painting, and therefore I am satisfied that the landlord has established element 3 in the test for damages.

With respect to element 2, the *Residential Tenancy Act* requires a tenant to leave a rental unit reasonably clean and undamaged except for normal wear and tear, and also states that the move-in and move-out condition inspection reports are evidence of the condition of the rental unit at the beginning and end of the tenancy. I have reviewed the landlord's evidentiary material, and particularly the photographs, inspection reports and Invoice of the painter. Considering the oven and outside of the fridge were not cleaned as evidenced in the photographs, I accept the testimony of the landlord's agent that deep cleaning was required and I accept the landlord's \$288.75 claim for cleaning.

I refer to Residential Tenancy Policy Guideline # 40 – Useful Life of Building Elements, which puts the useful life of painting at 4 years. I accept that the landlord is claiming preparation only for painting and not the painting itself, however I am not satisfied that the tenant failed to comply with the *Act* or the tenancy agreement causing the preparation work to be completed, and I dismiss that portion of the landlord's claim.

The tenant claims interest on the security deposit, but there is no interest payable under the regulations currently, and none is payable between 2009 and 2020. However, the *Act* requires a landlord to return a security 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 an Application for Dispute Resolution claiming against the deposit within that 15 day period. If the landlord fails to do either, the landlord must repay the tenant double the amount.

In this case, the tenancy ended on August 30, 2019 and the landlord received the tenant's forwarding address in writing the same day. The landlord filed the Application for Dispute Resolution on September 12, 2019 which is within 15 days.

However, the landlord retained far more of the security deposit than the landlord claimed from the tenant. The *Residential Tenancy Act* specifies that (underlining added):

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.

That means that a landlord must return any portion of the security deposit that the landlord is not claiming against the tenant. Withholding a portion that is not claimed is prejudicial to the tenant. I find that the landlord had an obligation to return the portion of the security deposit that the landlord did not claim and had an obligation to do so within 15 days of the end of the tenancy. The landlord did not do so, and I find that the tenant is entitled to double recovery of that portion. The security deposit was \$1,075.00 and the landlord claimed \$493.50 in addition to the \$100.00 filing fee, for a total claim of \$593.50. I find that the difference of \$481.50 should be doubled to \$963.00, and the landlord holds that amount as well as \$593.50 for a total of \$1,556.50.

Having found that the landlord has established a claim of \$288.75, I set off that amount from \$1,556.50, and I grant a monetary order in favour of the tenant for the difference of \$1,267.75.

Since both parties have been partially successful with the application I decline to order that either party recover the filing fees.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,267.75.

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: January 20, 2020

Residential Tenancy Branch