



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNSD, MNDCT, FFL, FFT

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”).

The Landlord applied on November 14, 2019 for:

1. A Monetary Order for damage to the unit - Section 67;
2. An Order to retain the security deposit - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Tenants applied on November 19, 2019 for:

1. An Order for the return of double the security deposit - Section 38;
2. A Monetary Order for compensation - Section 67; and
3. An Order to recover the filing fee for this application - Section 72.

The Tenants and Landlords were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Parties confirmed receipt of the other Party's evidence.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Is the Tenant entitled to the monetary amounts claimed?

Background and Evidence

The following are agreed facts: The tenancy under written agreement started on May 1, 2018 and ended on October 31, 2019. Rent of \$1,895.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected \$947.50 as a security deposit. The tenancy agreement addendum provides that having pets, additional to the cat, requires the Landlord's approval. The Tenants brought a dog into the unit during the tenancy without the Landlord's knowledge or approval. The Parties mutually conducted both a move-in and move-out inspection with a completed report copied to the Tenants.

The Landlord states that the Tenants left the walls dirty with a couple of nicks on the lower part of a wall. The Landlord states that these areas of the walls required light sanding and touch-ups. The Landlord states that the door frames also required painting as they were damaged by nicks and marks. The Landlord states that the walls were last painted two tenancies prior to this tenancy and estimates this time to be July 2015. The Landlord claims \$548.10 for the cost of repairs to the wall paint and provides an invoice for this cost. The Tenant states that there were no damages left on the walls that were all wiped down before move-out. The Tenant states that the paint was definitely older than the prior tenancy. The Tenant does not recall causing any nicks on the walls.

The Landlord states that the Tenants left the carpet damaged by stains and a strong urine odor and claims \$2,497.76 as the cost of the replacement carpet and underlay plus \$1,792.89 for the cost of installation. The Landlord states that the odor in the carpet was not detected until after the move-out inspection when the unit was being shown. The Landlord states that the carpets are original to the unit built in 2003.

The Landlord claims and the Tenant does not dispute the cost of \$22.14 to replace lightbulbs in the unit.

The Landlord states that the Tenants left the exterior and uncovered deck dirty and with stains. The Landlord claims \$168.00 as the cost to power wash the deck. The Tenant states that they moved out of the unit a week early and since they agreed to allow the Landlord to show the unit for this week during the evening the Tenants did not have opportunity to clean the deck.

The Landlord states that the Tenants left the unit unclean with dirty walls and unclean appliances, both inside and out and unclean countertops. The Landlord states that the person hired to clean the unit "did an overall cleaning" and that the Tenant is responsible for all the costs of the cleaning. The Landlord claims \$175.00 and provides a receipt. There are no cleaning details set out on the receipt. The Landlord refers to photo #11 as evidence of the state of one appliance. The Tenant states that they left the unit clean, including the appliances and that they hired a cleaner for the kitchen and bathroom. The Tenant provides a cleaning receipt. The Tenant does not recall the appliance being left unclean as depicted in the photos. It is noted that the only item noted as unclean in the move-out report, other than the walls and carpet, was the stove top elements.

The Tenants state that they had to move out of the unit as the Landlord did not provide a copy of form k referencing strata rules to the Tenants. The Tenant states that as a result they did not know that having the dog was contrary to the strata rules. The Tenant states that the Landlord gave them a choice to either remove the dog or move out of the unit. The Tenant states that this was not a reasonable choice and that the Landlord therefore caused the Tenants to move out of the unit. The Tenants claim \$4,860.00 in compensation for the loss of enjoyment of the unit, \$620.00 in moving expenses and additional damages of \$1,895.00 for the Landlord's breach.

The Tenant claims return of double the security deposit but is unsure whether they are entitled to it since they made their application before receipt of the Landlord's application.

Analysis

Section 37 of the Act provides that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. Section 7 of the Act provides that where a tenant or landlord does not comply with the Act, regulation or tenancy agreement, the tenant or landlord must compensate the other for damage or loss that results. Policy Guideline #40 sets the useful life of interior paint at 4 years and the useful life of carpet at 10 years. Based on the Landlord's evidence of the age of the paint and the carpet I find that these items in the unit were beyond its useful life at the end of the tenancy and that the Landlord therefore has not substantiated that the Tenants caused a loss of useful life for the paint and the carpets or the costs to paint or replace the carpet. Given the photos of the nicks on the wall, I consider that these were minor and reasonable wear and tear. I find therefore on a balance of probabilities that the Landlord has not substantiated the costs claimed to repair the walls and to replace the carpet. However, given the undisputed evidence that the Tenants brought a dog into the unit without permission as required by the tenancy agreement and as this evidence reasonably supports that the dog left the carpet with odors, I find that the Landlord has substantiated a nominal award of **\$100.00** for the Tenants' breach of the tenancy agreement.

Given that the Tenant does not dispute the cost of **\$22.14** to replace lightbulbs in the unit, I find that the Landlord has substantiated an entitlement to that cost.

As a landlord is responsible for the maintenance of the exterior of the unit and given the Landlord's evidence that the deck is exterior to the unit, I find that the Landlord has not substantiated that the Tenants breached their obligations to leave the unit reasonably clean. I dismiss the claim for cleaning the deck.

Section 21 of the Residential Tenancy Branch Regulations provides that a duly completed inspection report is evidence of the condition of the rental property, unless

either the landlord or tenant has a preponderance of evidence to the contrary. The Landlord's evidence is that the cleaning costs claimed were for overall cleaning however the only evidence of an unclean unit as set out in the move-out inspection report is in relation to the appliances and nicks on the one wall that the Landlord states were painted. This claim for the nicks has already been dealt with above. The Landlord also provides several copies of what appears to be the same wall however the photos are blurry with shading, and no wall is noted to be unclean in the move-out report. The Landlord provided no photos of any other unclean areas. Given the Tenants' evidence that the unit was left clean I find that the Landlord has not substantiated on a balance of probabilities that the costs claimed for cleaning the unit is all related to damage left by the Tenants. Given the photo and the move-out report I find on a balance of probabilities that the Tenants did fail to leave the stove reasonably clean. However, as the Landlord's invoice does not detail the work done for the costs claimed I am unable to determine any allocation of the costs claimed to the cleaning of the stove top. For these reasons I find on a balance of probabilities that the Landlord has not substantiated the cleaning costs claimed and I dismiss the claim.

Nothing in the Act requires a landlord to provide a copy of the strata rules to tenants. There is no evidence that the tenancy agreement carries this requirement. There is no evidence that the Landlord acted either negligently or otherwise to cause the tenancy to end. The Tenants made that choice. As the Tenants have not provided any evidence of any breach of the Act or the tenancy agreement by the Landlord, I dismiss the Tenants' claims for damages and compensation in relation to the end of the tenancy.

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. Given the undisputed evidence that the Landlord received the Tenants' forwarding address on

October 31, 2019 and made its application on November 14, 2019 I find that the Landlord made its application within the required time and that the Tenants have not substantiated an entitlement to return of double the security deposit.

As the Landlord's application has met with minor success, I find that the Landlord is entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$222.14**. Deducting this entitlement from the security deposit plus zero interest of **\$947.50** leaves **\$725.36** owed to the Tenants. As the Tenants' application has met with some success, I find that the Tenants are also entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$825.36**.

Conclusion

I Order the Landlord to retain **\$222.14** from the security deposit plus interest of \$947.50 in full satisfaction of the claim.

I grant the Tenant an order under Section 67 of the Act for **\$825.36**. If necessary, this order may be filed in the Small Claims 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 Act.

Dated: April 15, 2020

Residential Tenancy Branch