



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S

Introduction

The landlords seek to recover the cost of a repairman's bill for various work done in the rental unit after the tenancy ended.

One landlord, her daughter and the tenant attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing and only if referred to by a party.

Issue(s) to be Decided

Did the tenant fail in her obligation to leave the premises reasonably free of damage but for reasonable wear and tear? If so, what is the reasonable cost for the damage?

Background and Evidence

The rental unit is a two bedroom basement suite in a home owned by the landlords. They lived upstairs.

The tenancy started in December 2018. The monthly rent started at \$1300.00 and was \$1500.00 at the end of the tenancy. The landlords received and still hold a \$650.00 security deposit.

In January 2020 the landlords gave the tenant a two month Notice to End Tenancy as the home had been sold and the new purchaser(s) wanted to occupy it. In mid-February the tenant exercised her right to end the tenancy earlier and gave notice that the tenancy would end March 2. Rent was payable on the fifteenth of each month and

so, on February 16, the tenant paid rent of \$850.00 for the period February 15 to March 2. She vacated in the evening of March 1.

The landlords had not conducted a move-in inspection and did not prepare the report required of them under s. 23 of the *Residential Tenancy Act* (the “Act”). At the end of the tenancy the landlords failed to comply with s. 35 of the *Act* by giving the tenant two, or any, opportunities to attend for a move-out inspection. The landlords did not prepare the required report

The landlords’ monetary worksheet lists only a repairman’s bill in its request for compensation. That bill, dated March 10, charges repairs to: a) repair a broken sink and tap, b) installing a missing smoke alarm, c) replacing a broken door, d) touch-up painting, e) the cost of two privacy locks, f) the cost a deadbolt, and g) installing the locks and deadbolt. The total charge is \$1235.00 plus tax for a total of \$1296.75, the amount claimed in this application.

The bill gives the address of the home but does not specify that the work was in the lower suite.

Ms. J.D. for the landlords adduced photographs of the premises taken by a realtor during the latter part of the tenancy and photos taken after the tenant left. She also attempted to adduce a video of the inside of the premises, however she had not filed the video, only a snapshot of it. Her photos from the realtor show a modern, clean suite. Her “after” photos show a suite with a drooping sink, vermin droppings and dust on the floor, some marking on a closet wall and perhaps on a hallway wall.

The tenant adduced a video taken the night she left. It is a thorough examination of the premises. It shows the suite to be clean, indeed a woman is sweeping the kitchen floor during the video. It is inconsistent with the landlords’ photos of dust and vermin droppings on the floor. The sink is shown at various times. The sink does not appear to be drooping as in the landlords’ photo. All doors are recorded. None appear damaged. No markings are on the walls but for a scuffed wall at the back of two closets.

Analysis

Damage to the Premises

The landlords have put themselves in a very difficult position by failing to perform their statutory obligation to conduct move-in and move-out inspection and prepare reports.

One of the central purposes of a move-out inspection is to permit the parties an opportunity to agree or disagree about the state of the premises. Often, a departing tenant will be given the opportunity to repair or clean to the landlord's satisfaction. Of primary importance, where there is disagreement, each side has the opportunity to collect objective evidence, in the form of photographs or videos, recording the true circumstances.

That opportunity was denied to this tenant.

In these circumstances, on the conflicting evidence, I find the landlords have failed to substantiate any of the damage claims set out in their repairman's bill. I dismiss the landlords' application.

The Tenant's Security Deposit

As a result of the dismissal the tenant is entitled to recover her \$650.00 security deposit. Residential Tenancy Policy Guideline 17 "Security Deposit & Set off [*sic*]" provides that an arbitrator is to order return of a security deposit or any balance remaining after deductions permitted by the *Act* (like an award to the landlord) on a landlord's application to retain the deposit, as here.

It follows that even though the tenant has not made her own application, she is entitled to recovery her deposit on this application. I award the tenant the deposit amount of \$650.00.

Double the Deposit

The Guideline also provides that unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, an arbitrator will order the return of double the deposit (under s. 38 of the *Act*) if the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the *Act*.

By ss. 24 and 36 of the *Act* a landlord who fails to perform the required move-in inspect and a landlord who fails to perform the required move-out inspection and report procedure loses her right to claim against the tenant's deposit money for damage to the premises.

In this case the landlords' sole claim was for damage, not for rent or cleaning. Their right to claim against the deposit money in that regard was extinguished. The tenant did

not decline the doubling. The tenant is entitled to the deposit doubling penalty imposed by s. 38 and so I award her an additional \$650.00.

Two Month Notice Compensation

Under the *Act*, a tenant who receives a notice to end tenancy for landlord's use under s. 49, as here, is entitled to receive from the landlord, on or before the effective date of the landlord's notice, an amount that is the equivalent of one month's rent payable under the tenancy agreement. The circumstances of this case indicate the tenant has not received that compensation.

I can find no direction in the *Act* or guidelines directing me to award this money to the tenant on a landlord's application and so I decline to do so. The tenant is free to make her own application to recover that sum.

Conclusion

The landlords' application is dismissed. The tenant will have a monetary award against the landlords in the amount of \$1300.00; double the deposit amount.

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: July 27, 2020

Residential Tenancy Branch