



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL

Introduction

This hearing was convened by way of conference call concerning an application made by the landlords seeking a monetary order for damage to the rental unit or property; an order permitting the landlords 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.

Both landlords and the tenant attended the hearing and each gave affirmed testimony. The tenant was also accompanied by a support person who observed only and did not take part in the hearing.

The parties were given the opportunity to question each other and give submissions.

No issues with respect to service or delivery of documents or evidence were raised, and all evidence provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Have the landlords established a monetary claim as against the tenant for damage to the rental unit or property?
- Should the landlords be permitted to keep all or part of the pet damage deposit or security deposit?

Background and Evidence

The first landlord (JT) testified that this fixed-term tenancy began on May 1, 2019 and was to expire on April 30, 2020, however the tenancy ended on March 31, 2020 with the landlords' consent. Rent in the amount of \$1,100.00 was payable on the 1st day of each month and there are no rental arrears. In December, 2018 the landlords collected a

security deposit from the tenant in the amount of \$550.00 as well as a pet damage deposit in the amount of \$550.00, both of which are still held in trust by the landlords. The rental unit is a coach house, or small single family dwelling and a copy of the tenancy agreement has been provided for this hearing. The tenant actually moved into the rental unit prior to the commencement of this tenancy, as a sub-tenant of the previous tenant.

A move-in condition inspection report was completed at the beginning of the tenancy. At the end of the tenancy the landlords scheduled a move-out condition inspection but due to COVID-19 the tenant would not attend in person and wanted it conducted virtually. The tenant and the landlord's wife had a conversation, and the tenant made a video and the landlords were going to inspect with the tenant attending by video. The landlords attended from Alberta for the inspection scheduled, but the tenant did not. The landlord testified that it would not have mattered how many times the landlords tried to schedule, the tenant said she wasn't going to be there.

The tenancy agreement contains a clause requiring the tenant to weed and keep the flower beds clean, however the tenant did not do so. Further, the tenant didn't clean the house and left dents in walls and on baseboards. The landlords have provided photographs which were taken on April 6 and 7, 2020 as well as estimates for house cleaning, yard cleaning which the landlord testified that he paid. The rental unit was only a year and a half old when the tenant moved in, and the tenant left about 70 holes in the walls and cat hair everywhere. The new couch was scratched by the cat and cat hair remained all over it.

The landlord further testified that the photographs taken by the tenant hide holes in the walls with a coffee maker in one room and a couch in front of a large dent in the wall and baseboards. The tenant wanted to do the move-out condition inspection based on her video only and refused to attend in person.

The landlords have provided a Monetary Order Worksheet setting out the following claims, totaling \$1,861.50:

- \$294.00 for yard clean up
- \$367.50 for interior house cleaning
- \$100.00 for the filing fee; and
- \$1,100.00 for interior painting.

The second landlord TW) testified that after the tenant requested that the parties not meet in person for the move-out condition inspection the landlord contacted the Residential Tenancy Branch. The landlord does not recall what response she received

but the parties agreed that the tenant could do a video and the landlords would go through it later. The landlord didn't think that would cause any issues because the tenant would have a record of it. The parties agreed on March 28, 2020 as a move-out date, but the tenant had moved out and completed the video a week or 2 in advance of that. The landlords were delayed in arriving because the landlord was sick and couldn't travel.

When the landlords arrived, they noticed the yard right away had not been maintained. Walls had not been washed or baseboards and there was cat hair everywhere. The inside of the fridge was clean but it's on wheels and had not been moved out to clean underneath. The home was very dusty generally with accumulations of cat hair and dust. Some things had been cleaned, such as the bathroom and inside of the fridge and freezer.

The tenant testified that she moved into the rental unit on December 1, 2018 under a sub-lease, but entered into a tenancy agreement with the landlords for a tenancy starting May 1, 2019. The move-in condition inspection was done on April 28.

The tenant asked the landlords about a virtual inspection and one of the landlords agreed and suggested the parties not meet in person. She said she would do a walk-through by video chat, which never happened and no attempt was made to reach the tenant to do that. The tenant took videos and photographs on March 19, 2020 after her belongings had been removed and the rental unit cleaned, and sent them to the landlords.

The tenant denies that there were dents behind the coffee machine. The tenant used tacks only to hang stuff on the walls, but wasn't given any instruction about what she could hang on walls. No nails were used.

When the tenant moved out on March 28, 2020 it wasn't fully spring yet; still snowing on and off. The tenant did water the beds in dry seasons. The tenant cleaned the home in an acceptable manner at move-out. There are no damages above normal wear and tear. The tenant wiped all walls to the best of her ability, but did not pull out the fridge or the couch and agrees that she didn't clean the dust from the vents.

The landlords told the tenant in an email that they would not be charging the tenant for painting, nor should the tenant pay for it or \$390.00 for cleaning. The rental unit was left in a reasonable manner as described on the Residential Tenancy Branch website.

Neither of the deposits has been returned to the tenant, and the tenant has not made an Application for Dispute Resolution claiming them from the landlords. The tenant agrees that her forwarding address was provided to the landlords by email on March 29, 2020.

Analysis

Where a party makes a 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.

In this case, the landlords have provided estimates for the amounts claimed for specific damages and testified that those were the amounts paid, and I am satisfied that the landlords have established elements 1 and 3 in the test for damages.

The move-in and move-out inspection reports are meant to assist in establishing element 2 and creating the reports establishes element 4, at least to some extent. The *Act* states that the reports are evidence of the condition of the rental unit at the beginning and end of the tenancy. It also places the onus on the landlords to give the tenant at least 2 opportunities to schedule the completion of the inspection and report. If the landlord fails to do so, the landlord's right to claim against the security deposit and/or pet damage deposit for damages is extinguished.

In this case, the landlord testified that she contacted the Residential Tenancy Branch about completing the inspection virtually, but could not recall what they told her. Regardless, she also testified that the parties had agreed that the tenant would make a video and the landlords would go through the rental unit later. There is no provision for that, and I find that the landlords' right to claim against the security deposit and pet damage deposit for damages is extinguished.

However, the landlords' right to make a claim for damages against the tenant is not extinguished, and the tenant did not dispute the move-out condition inspection report provided by the landlords.

I have reviewed all of the evidence and I note that none of the tenant's videos or photographs show any close-up images, and the landlords' photographs show a lot. The tenant testified that she wiped all the walls to the best of her ability. The landlords'

photographs show cob-webs or spider webs, and cat hair inside the washing machine and on the shelf and stuck to a wall.

A tenant is required to leave a rental unit reasonably clean and undamaged except for normal wear and tear. I refer to Residential Tenancy Policy Guideline 1 – Landlord & Tenant – Responsibility for Residential Premises, which states that a tenant is responsible for cleaning the inside windows and tracks during and at the end of the tenancy, as well as balcony doors. The tenant is also responsible for cleaning the oven and pulling out appliances that are on rollers to clean behind and underneath. The tenant is also responsible for washing scuff marks from walls and for repairing an excessive number of nail holes, and deliberate or negligent damage to the walls. In reviewing the evidence, I find that the tenant did not properly clean the oven or wash scuff marks from walls or clean the balcony doors and tracks, nor did the tenant wipe or vacuum baseboards and vents which are also required in the Policy Guideline. I find that the landlords have established that the cleaning paid for by the landlords in the amount of \$367.50 should be recovered from the tenant.

The Policy Guideline also states that a tenant who lives in a single-family dwelling is responsible for routine yard maintenance, and if the tenancy agreement requires it, to maintain the flower beds. I find that the landlords have established a claim of \$294.00 for yard clean-up.

The videos and photographs of the tenant show a pristine and very new and attractive small home. The photographs of the landlords show some wall scratches and damage, however other than scuffs that the tenant ought to have cleaned, I am not satisfied that the landlords should re-paint the entire home at the expense of the tenant. I dismiss the landlords' claim for painting.

The parties agree that the tenant provided a forwarding address to the landlords on March 28, 2020 by email. However, until the March 30, 2020 Director's Order, documents could be served by email. Prior to that, Section 88 of the *Act* applied:

All documents, other than those referred to in section 89 [*special rules for certain documents*], that are required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways:

(a)by leaving a copy with the person;

(b) if the person is a landlord, by leaving a copy with an agent of the landlord;

(c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;

(d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;

(e) by leaving a copy at the person's residence with an adult who apparently resides with the person;

(f) by leaving a copy in a mailbox or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;

(g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;

(h) by transmitting a copy to a fax number provided as an address for service by the person to be served;

(i) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*];

(j) by any other means of service prescribed in the regulations.

I am not satisfied that the tenant has provided a forwarding address in writing in any of the ways contemplated by Section 88. If the tenant fails to provide the landlords with a forwarding address in writing within 1 year from the date the tenancy ended, the landlords may keep the security deposit and pet damage deposit. Having found that the landlords' right to claim against the deposits is extinguished, I decline to order that the landlords retain the deposits for the damages claimed.

In summary, I find that the landlords have established a monetary claim as against the tenant in the amounts of \$367.50 for cleaning and \$294.00 for yard clean-up. Since the landlords have been partially successful with the application, the landlords are also entitled to recovery of the \$100.00 filing fee, and I grant a monetary order in favour of the landlords in the amount of \$761.50.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the landlords as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$761.50.

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: August 14, 2020

Residential Tenancy Branch