



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 landlord seeking 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 tenants for the cost of the application.

The landlord and both tenants attended the hearing, during which the tenants applied to adjourn the hearing to allow more time to file evidentiary material. One of the tenants indicated that the parties were in negotiations and the tenants did not believe the landlord intended to proceed with the hearing, due to emails and conversations, and the tenants received additional evidentiary material from the landlord at the end of September, 2020. As a result, the tenants have not had sufficient time to provide evidence.

The landlord opposed the adjournment request and submitted that the tenants were provided with the additional evidentiary material by registered mail on September 12, 2020 which was received by the tenants individually on September 15, 2020.

The Rules of Procedure require an applicant to provide evidentiary material to the Residential Tenancy Branch and to the respondent no later than 14 days prior to the hearing, and I found that the landlord has done so. The respondent is to provide evidence at least 7 days prior to the hearing. I do not agree that the tenants had no time to provide evidence and I declined to adjourn.

The tenants confirm that all of the landlord's evidence has been received, and all evidence provided has been reviewed and is considered in this Decision.

The landlord and both tenants gave affirmed testimony and the parties were given the opportunity to question each other and to give submissions.

Issues to be Decided

- Has the landlord established a monetary claim as against the tenants 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?

Background and Evidence

The landlord testified that this month-to-month tenancy began on August 1, 2017 and ended on August 1, 2020. Rent in the amount of \$1,750.00 was payable on the 1st 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 \$850.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is the top floor of a house and the landlord resided in the lower level. A copy of the tenancy agreement has been provided as evidence for this hearing.

The landlord further testified that the landlord received a notice to end the tenancy from one of the tenants on June 28, 2020 effective on July 31, 2020 and a copy has been provided for this hearing. It also contains the tenant's forwarding address in writing. However, the landlord's application was filed with the Residential Tenancy Branch on July 20, 2020, prior to the end of the tenancy.

All parties participated in a move-in condition inspection and a report was completed. A copy has been provided for this hearing and it is dated August 1, 2017.

During the tenancy one of the tenants advised the landlord that the tenants were separating and she wanted to take over the tenancy. The landlord advised that she needed to hear that from the other tenant, and then a new lease would be drawn up. It was also during the COVID-19 period so the landlord asked to complete another inspection alone and the parties would discuss it together. No new tenancy agreement was prepared, however the landlord completed another inspection report on May 6, 2020 and a copy has been provided for this hearing.

The tenants both participated in a move-out condition inspection but on different days. A copy of the report was provided to the first tenant, who participated on August 1, 2020, but did not receive a copy until served with the landlord's evidence. The other tenant who participated on August 2, 2020 received a copy that day.

The tenant had the carpet professionally cleaned at move-out, however, the landlord claims **\$294.00** for repair to the carpet, and an estimate dated September 3, 2020 has been provided.

The landlord also claims **\$70.75** for repair to the patio screen door, which was completely destroyed, and there was no damage at the beginning of the tenancy and not documented in the move-in condition inspection report. An Invoice dated August 26, 2020 has been provided for this hearing.

The landlord also claims **\$92.78** for a broken bi-fold door in the laundry room. The landlord thought it could be repaired, but a new track was also required. An Invoice has been provided for this hearing.

After the tenants had vacated, the landlord noticed a massive stain to the sofa, and an Invoice in the amount of \$260.00 has been provided, however only **\$133.00** relates to this tenancy and the sofa.

The tenants left gouges, nicks, scrapes and chunks out of the walls, and the landlord has provided an email estimate from a painting company showing a cost of **\$367.50** for the repairs. No claim is made for painting.

The landlord has also provided a receipt dated 08/07/20, in the amount of **\$225.00** for cleaning.

The landlord's total claim is \$1,173.03, and numerous photographs have been provided as evidence for this hearing.

The tenants have not served the landlord with an Application for Dispute Resolution claiming the security deposit.

The landlord was quite evasive during cross examination and indicated a refusal to answer certain questions.

The first tenant (RGG) testified that the tenants are responsible for bleach on the carpet, the door in the laundry room, the patio screen door and cleaning. Anything else would be unfair. The landlord knew that the other tenant was no longer residing in the rental unit and knew he didn't have a key.

The tenant also testified that she did not agree to another move-in condition inspection in May, 2020, and did not know the landlord intended the inspection to be a move-in condition inspection for a new tenancy; that's not what the landlord told the tenant.

Actually, the landlord sent an email to the tenant indicating that the names on the tenancy agreement could stay the way they were, and no new tenancy agreement was signed.

When the tenant was looking for a new place to live, she asked the landlord for a reference, and the landlord replied by email stating that she would give a reference if the tenant signed the May 6, 2020 inspection report.

The second tenant (FD) testified that the tenants are not from Canada, and are continuously bullied by the landlord. The tenant feels that the landlord ordered things be done because she's the landlord, and the tenants didn't know what to do. It is also the first time the tenant has rented.

The condition of the rental unit was not bad. The tenant had agreed to \$400.00 or \$500.00 because he wanted this to stop.

The wind blows hard, and it's impossible that the screen door wouldn't have some wear and tear. There had previously been posters on walls and the tenant didn't think he had to specify all of them on the move-in condition inspection report. If he had known, it would have been documented. The home wasn't perfect at move-in and after 3 years of wear and tear, it was very good at move-out; natural wear and tear.

Analysis

Where a party makes a monetary claim for damages as against another party, 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.

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. The condition inspection report made on May 6, 2020 was not at the beginning or end of the tenancy, and I do not consider it relevant to the condition at the end of the tenancy.

I have reviewed all 148 pages of evidence provided by the landlord, including all of the photographs. There are no photographs of the condition of the rental unit at the beginning of the tenancy, and I rely on the move-in and move-out condition inspection reports.

The move-in condition inspection report shows a small stain in the living room carpet near the TV outlet, and appears to be signed by a tenant and a landlord in different sections of the report on August 1, 2017.

The landlord made the application on July 20, 2020 and filed amendments, which change addresses and the amount claimed, which is far more than the landlord testified to. The first is signed and dated by the landlord July 22, 2020, which amends the amount claimed to \$7,796.19, which appears to have been submitted to the Residential Tenancy Branch on July 23, 2020. Another amendment request signed by the landlord on July 27, 2020 was received by the Branch on July 31, 2020, which appears to correct an address for the tenants.

The tenant testified that the tenants are responsible for the damaged carpet, the bi-fold door in the laundry room, the patio screen door and cleaning. The landlord has provided estimates/Invoices in the amount of \$294.00 for repair to the carpet, \$92.78 for a broken bi-fold door in the laundry room, \$70.75 for repair to the patio screen door, and \$225.00 for cleaning. Although the tenants don't necessarily agree to the amount claimed for cleaning, the amount of the landlord's claim for the items that the tenant agrees with totals \$682.53.

Although the tenants did not sign the move-out condition inspection report, that doesn't mean that it isn't an accurate report. Several items in the report show that cleaning was required after the tenants had vacated, which is a tenant's responsibility. The photographs of the landlord dated August 1, 2020 also show that the tenants did not leave the rental unit reasonably clean, and I find that the landlord has established the cleaning claim of **\$225.00**.

The tenants do not agree with \$133.00 for the sofa cleaning; and \$367.50 for the wall repairs. The move-out condition inspection report dated August 1 and August 2, 2020 shows that the walls in the entry were not clean, or in the kitchen, living room, dining room, main bathroom, or master bedroom, but there is nothing indicating any damage to the walls. Therefore, I dismiss the landlord's application regarding repair to the walls.

The landlord has also provided evidence of the cost to clean the sofa as well as a notation on the move-out condition inspection report. There is no such notation on the move-in condition inspection report and I find that the landlord has established the **\$133.00** claim.

In summary, I find that the landlord has satisfied the 4-part test with respect to:

- \$294.00 for repair to the carpet;
- \$70.75 for repair to the patio screen door;
- \$92.78 for a broken bi-fold door in the laundry room;

- \$225.00 for cleaning; and
- \$133.00 for the sofa cleaning.

That totals \$815.53. The landlord also claims a filing fee, but did not pay a filing fee, and I dismiss the landlord's claim for recovery of the \$100.00 filing fee.

I order the landlord to keep the \$815.53 of the security deposit and I grant a monetary order in favour of the **tenants** for the difference in the amount of **\$34.47**.

Conclusion

For the reasons set out above, I hereby order the landlord to keep \$815.53 of the security deposit and I 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 **\$34.47**.

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: October 15, 2020

Residential Tenancy Branch