



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

AMENDED DECISION

Dispute Codes MNDL-S, FFL
 MNSDS-DR, FFT

Introduction

This hearing was convened by way of conference call concerning applications made by the landlords and by the tenant. The landlords have applied for 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. The tenant had applied by way of the Direct Request process for a monetary order for return of the pet damage deposit or security deposit and to recover the filing fee from the landlords, which was referred to this participatory hearing, joined to be heard with the landlords' application.

The tenant and one of the named landlords attended the hearing, who also represented the other named landlord. The parties each gave affirmed testimony and were given the opportunity to question each other.

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

Issues 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 security deposit in full or partial satisfaction of the claim?
- Has the tenant established a monetary claim as against the landlords for return of the security deposit?

Background and Evidence

The landlord testified that this fixed-term tenancy began on February 1, 2019 and reverted to a month-to-month tenancy after January 31, 2020, which ultimately ended on June 30, 2020. Rent in the amount of \$4,000.00 was payable on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlords collected a security deposit from the tenant in the amount of \$2,000.00 which is still held in trust by the landlords, and no pet damage deposit was collected. The rental unit is a single family house and a copy of the tenancy agreement has been provided as evidence for this hearing.

A move-in condition inspection report was completed by an agent of the landlord, but the landlord cannot recall if he was there or not. A move-out condition inspection report was completed at the end of the tenancy, but the landlord was not present; it was conducted by another agent of the landlord.

The landlords have provided a Monetary Order Worksheet setting out the following claims, which total \$2,215.00:

- \$110.00 to replace light bulbs;
- \$380.00 to repair walls;
- \$1,365.00 to clean up the garden; and
- \$360.00 to clean the garage.

An Invoice in the amount of \$110.00 dated July 10, 2020 has been provided for this hearing, which includes labor and the time that the handy-man spent on the road to attend to replacing the light bulbs. Also provided is an Invoice dated 2/7/19 in the amount of \$400.00 for replacing light bulbs prior to the tenancy. The landlord testified that the date means February 7, 2019.

The tenant tried to repair walls but the landlords had to have them sanded and repainted. The landlord does not know when the rental unit was last painted. Photographs have been provided for this hearing.

The landlords have also provided an Invoice in the amount of \$1,365.00 to clean up the garden, which is dated July 10, 2020. A string of emails has been provided as evidence for this hearing.

The tenant was told that she could not leave garbage on the rental property after moving out, but because the tenant still had a passcode, the tenant was permitted to leave the garbage bags in the garage and promised to take it away. On July 6, 2020 the landlords

received a complaint from neighbours about garbage bags being broken open by a raccoon or other animal. The landlords sent someone to the rental unit to take away the garbage, and photographs as well as an invoice in the amount of \$360.00 have been provided for this hearing, which the landlords claim as against the tenant.

The landlord also testified that after the tenant had signed the move-out condition inspection report, mistakes were made and something was added to the report. The landlord is not sure when a copy was given to the tenant. On July 13, 2020 the landlords sent a copy to the tenant which was different than the one sent to the tenant about July 6, 2020.

The landlord also believes that the tenant sent a receipt to the landlord company office from a professional cleaner that cleaned the rental unit at the end of the tenancy.

The tenant testified that she provided her forwarding address to the landlord on July 9, 2020 by email.

Due to a difficult situation, specifically a fire in the tenant's previous home, the tenant and her 4 children had to stay in hotels, and moved into this rental unit quickly.

Rent was increased to \$4,100.00 effective February 1, 2020 and rent was never late. There were 2 scheduled inspections during the tenancy as well as 3 that were not scheduled. One of those was when the tenant wasn't home and received a frantic call from her child that someone was in the back yard.

The agents of the landlord kept changing, and the landlords used very unethical means to try to keep the security deposit. The tenant received 3 versions of the move-out condition inspection report in total; all different and not what the tenant signed for on the day of the inspection. The inspection was done on July 3 and the tenant received a copy by email on July 6, which had been changed; light bulbs had been added. On July 13 the tenant received another copy which was different again; a broken drawer was added. The tenant was already upset that she didn't get the one that she signed, and sent an email immediately to the landlord saying it was fraudulent. The landlord immediately sent another saying that an error had been made.

The email received from the landlord on July 6, 2020 also included a photograph and a bill for cleaning the couch. The previous tenants left them and they were in poor condition, and the tenant had asked the landlord to have them removed, and the tenant was advised to leave them in the basement, then the tenant was charged to clean them.

The plaster on the walls shown in the landlords' photographs was not placed there by the tenant.

The tenant also testified that the move-out inspection report was completed at the end of June and it rained a lot. The tenant tried her best to take care of the landscaping but there were lots of jagged rocks and required a professional landscaper. The tenant stopped complaining of landscaping in 2019 because she was frustrated. The gardener broke the green bin and the tenant had to get another from the City. Photographs have been provided for this hearing which the tenant testified were taken at the beginning of the tenancy illustrating that the yard was never properly cleared by the landlord, which was noted in the tenancy agreement.

The tenant also testified that the rental unit was not newly painted at all at move-in. Also, on February 3 or 4, 2020 an agent of the landlord arrived to change light bulbs, but the tenant changed some herself because he didn't have LED bulbs.

The tenant hired a professional cleaning company and a receipt dated July 2, 2020 in the amount of \$567.00 has been provided for this hearing.

The tenant was told to put the garbage outside so that the entire house would be empty. The tenant asked to keep it in the garage, and the landlord's agent put it on the move-out condition inspection report, but then the tenant had no access and garbage was secured at the front of the garage. A photograph of the empty garage has been provided for this hearing.

The tenant's email to the landlords on July 13, 2020 also stated that she accidentally left a clock and a picture frame and asked for access but received no response.

SUBMISSIONS OF THE LANDLORD:

The final move-out condition inspection report which was sent to the tenant on July 13, 2020 is the original that the tenant signed. The landlord can confirm that because he noted that something had been added to the report and told the landlord's office staff that the original had to be used and sent to the tenant. Although the landlord wasn't there, he was told that.

The landlords make no claim for cleaning the couches.

SUBMISSIONS OF THE TENANT:

At the end of the tenancy the tenant went around to switch each light to ensure that bulbs were not burned out. The tenant had asked how 2 living room bulbs could be burned out

when the tenant had changed them, but the landlord's agent who did the move-out condition inspection report arrived at the rental unit prior to the tenant.

Analysis

Firstly, the *Residential Tenancy Act* specifies that a landlord must return a security deposit or pet damage deposit in full to a tenant within 15 days after 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 to keep all or some of the deposit(s) within that 15 day period, unless the tenant agrees otherwise in writing. If the landlord fails to do either, the landlord must repay double the amount of the deposit(s) to the tenant. In this case, the tenant did not agree in writing that the landlords keep any part of the security deposit.

The tenant provided the landlords with a forwarding address in an email on ~~June 9,~~ July 9, 2020, and the parties agree that the tenancy ended on June 30, 2020. The landlords filed the Application for Dispute Resolution on July 16, 2020.

The Director's Order dated March 30, 2020 states that until the declaration of state of emergency expires, Section 88 or 89 documents, which includes service of a forwarding address, can be served by email with acknowledged receipt; or by email with a response but without identifying a problem of transmission; or by email if the person served has routinely used that email address, and is deemed served on 3 days. This order expired on June 23, 2020.

The parties have provided numerous emails exchanged between them before and after the tenancy ended, and I am satisfied that the landlords have routinely used email as a method of communication and exchange of documents. Therefore, I find that the landlord received the tenant's forwarding address on June 12, 2020. The landlord did not return any portion of the security deposit ~~and did not make~~ but filed the Application for Dispute Resolution within 15 days, and therefore, I find that the tenant is not entitled to double the amount of the security deposit, ~~or \$4,000.00,~~ but is entitled to recovery of it, being \$2,000.00.

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.

There is a reason that a landlord is required to ensure that the move-in and move-out condition inspection reports are completed in accordance with the regulations, which includes a requirement that the tenant and the landlord sign the reports and the tenant receives a copy. A landlord may not change anything in a report after it is signed by a tenant, and by doing so jeopardizes the landlord's credibility. I find that it is difficult to ascertain which of the reports is accurate.

I also find that it is totally unreasonable to charge a tenant \$110.00 to change light bulbs, especially considering the tenant's undisputed testimony that she changed some herself to ensure they were LED bulbs. A landlord may not claim travel time for a handy-man to change light bulbs, and there is nothing to satisfy me what the Invoice would have amounted to without travel time. I am not satisfied that the landlord has established a claim for changing light bulbs.

The landlord was unable to provide any testimony of when the rental unit was last painted, and the tenant testified it was definitely not new paint at the beginning of the tenancy. The useful life of interior paint is generally 4 years, and I am not satisfied that the rental unit would not have required new paint in any event. The landlord has failed to establish element 2 in the test for damages.

With respect to the landlord's claim of \$1,365.00 to clean up the garden, the photographs of the tenant clearly show that the tenant was provided with a yard that was already overgrown. I accept the undisputed testimony of the tenant that she gave up in May, 2019 trying to have the landlord deal with the yard, and I dismiss the landlord's claim with respect to cleaning up the yard.

The landlords have also provided photographs and an Invoice of \$360.00 to clean up the garbage bags after the tenant vacated. The parties disagree as to what the arrangement was for picking up garbage and removing it from the property. The landlord testified that another agent of the landlord completed the move-out condition inspection and allowed the tenant to keep the bags in the garage because the tenant still had a passcode. The tenant testified that she asked to keep it in the garage until she could return but was told to put it outside so the entire house would be empty. I also note that the Invoice is dated July 3, 2020 which is the same day as the move-out condition inspection report. The landlord

testified that a complaint was received by neighbours on July 6, 2020 about a raccoon or other animal ripping open the bags. The landlord's testimony does not match the evidentiary material and I dismiss the landlord's claim for garbage removal.

Since the tenant has been successful with the application, the tenant is also entitled to recovery of the **\$100.00** filing fee.

Conclusion

For the reasons set out above, the landlords' application is hereby dismissed in its entirety without leave to reapply.

I hereby grant a monetary order in favour of the tenant as against the landlords pursuant to Section 67 of the *Residential Tenancy Act* in the amount of ~~\$4,100.00~~ \$2,100.00.

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 01 , 2020

Amended: October 19, 2020

Residential Tenancy Branch