



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 attended the hearing with another person assisting with translation. Both tenants also attended. The landlord's translator was affirmed to well and truly interpret the proceedings from the English language to the landlord's Native language and from the landlord's Native language to the English language to the best of the person's skill and ability. The landlord and each of the tenants gave affirmed testimony and the parties were given the opportunity to question each other and to give submissions.

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

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 or pet damage deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlord testified that this fixed-term tenancy began on June 1, 2019 and expired on June 30, 2020, which ultimately ended at the end of July, 2020. Rent in the amount of \$1,550.00 was payable on the 1st day of each month and there are no rental arrears. On May 18, 2019 the landlord collected a security deposit from the tenants in the amount of

\$775.00 as well as a pet damage deposit in the amount of \$775.00, both of which are still held in trust by the landlord. The rental unit is a basement suite, and the upper level of the home was also tenanted about a month after this tenancy began. A copy of the tenancy agreement has been provided for this hearing.

The landlord further testified that no move-in condition inspection report was completed at the beginning of the tenancy; the landlord forgot. The parties completed the move-in condition inspection report on February 18, 2020 and a copy has been provided by both parties for this hearing. A move-out condition inspection report was completed on July 31, 2020, and the tenants provided a forwarding address in writing on that report that day.

The landlord has provided a Monetary Order Worksheet setting out the following claims, totaling \$2,225.00:

- \$378.00 for move-out and carpet cleaners;
- \$420.00 to repair holes in the walls;
- \$156.94 for a broken fridge;
- \$735.00 for broken tiles;
- \$472.5 for a broken glass door and frame; and
- \$63.00 to repair door frame damage.

The rental unit had been painted in 2018 because the landlord listed the home for sale. Photographs have been provided for this hearing. During the tenancy the tenants left lots of holes in the walls in all rooms. The landlord has not yet repaired the walls, however the tenants have provided a quote for the cost in the amount of \$420.00, referring to a previous case sample that the tenants have provided for this hearing.

The landlord also testified that \$150.00 is for cleaning carpets only and the clean fee would normally be higher, to do them together will be \$378.00 including taxes.

The tenants also damaged the fridge crisper and door rack cover. Photographs have been provided for this hearing.

The landlord further testified that a quote was received to replace broken tiles in the entry. It was difficult to find the same ones and the landlord had to replace 50 pieces, but only claims for the 3 broken ones.

The entry door was broken when the tenants moved in and the tenants repaired it but used incorrect colours and the type of door was not the same. The landlord wants to replace it again. The landlord referred to the tenants' evidentiary material which includes an email

from a glass company showing that the glass and with glass frame both sides tempered, including labor is \$475.00.

When asked about damage caused by a pet, the landlord testified that the tenants had a turtle, and the back yard was damaged by the pet pool. A photograph of the pool has been provided for this hearing, and the landlord testified that the tenants didn't clean very well after the pet.

The first tenant (JL) testified that the landlord's claim is unfair. The move-in was not done at the time of move-in, but 9 months later. The tenants have provided a recording wherein the landlord stated that she forgot to do the move-in condition inspection report and asked if it could be done at that moment. The broken fridge is mentioned in the recording as well. It worked and did not interfere with the functionality and the cracks in the floor were there prior to the move-in condition inspection report was completed. The crack wasn't noticed because the tiles were covered by 2 rugs. Photographs have been provided, and the tenant testified they were taken in November, prior to the inspection. The tenants were shocked to find out now that the landlord is trying to make the tenants pay for such things. The house is old and the damages are normal wear and tear. The landlord wants to sell for more money.

The tenant further testified that no carpet cleaners were available in July due to the Pandemic, and no hardware stores were renting equipment at that time.

The tenants mounted pictures and shelves with wall anchors and when they moved out, they spackled, dried and sanded the walls, and were repaired to extreme professionalism except for repainting. The tenants have also provided photographs.

The tenant also testified that the glass in the door broke during move-in, and the tenants accepted accountability. The tenant contacted the landlord's repair man who replaced the frame and double pane window and the tenants paid for it. Nothing was said by the landlord during the landlord's visits to the house; the landlord is just unhappy that the frame is not the same as the 15 year old ones upstairs. The quote for the repair of \$472.00 says in the description that if the frame is changed again, it may not be able to be the same as the old one in any event. There would be no improvement to the door and frame. The frame is a plastic frame that holds the glass in. The quote in the tenants' evidence is the quote obtained by the landlord, and the tenants paid \$420.00 to have the work done to begin with. The parties agreed on a company that the landlord chose to do the work, who the landlord is familiar with.

The turtle caused no damage. The turtle had its own habitat and was never brought out except placed in the bathtub during cleaning of the habitat. Uncleanliness or damage caused by a turtle is absurd.

The tenants had agreed on move-out to give the landlord \$140.00 for cleaning, and the same day the landlord called a contractor. The house has not yet been cleaned and is a lot different now.

The second tenant (JC) testified that the photograph of the door is the old frame. The landlord thinks that the tenants got a different one but the tenants had sent a photograph of the old frame to the company who made the repair so that the colour could be matched.

The landlord put the house up for sale while the tenants still lived there and wants to get more money. The tenants are willing to pay \$140.00 for cleaning because they could not find anyone to do it due to the Pandemic. It's been months and the cost to clean will be a lot more now.

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

Analysis

The *Residential Tenancy Act* specifies that a landlord must ensure that the move-in and move-out condition inspection reports are completed at the beginning and end of a tenancy when the rental unit is empty of the tenant's possessions unless the parties agree on a different time, and the regulations go into detail of how that is to happen. In this case, the landlord did not dispute the tenant's testimony that the landlord asked if the move-in condition inspection report could be done at that time, which was not scheduled and was 9 months after the tenancy began.

The *Act* also states that a landlord may only claim against a pet damage deposit for damages caused by a pet. I do not accept that a turtle caused any damage to the rental unit. The landlord has provided photographs, some of which show dead grass likely from the pool for the turtle, but the landlord makes no claim for the grass. The landlord has not made a claim for damages caused by a pet. Therefore, I find that the landlord ought to have returned the pet damage deposit to the tenants.

A landlord required to return a security deposit or pet damage deposit to a tenant in full within 15 days of 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 for Dispute Resolution claiming against the deposit(s) within that 15 day period. If the landlord fails to

do either, the landlord must repay double the amount. In this case, the tenancy ended on July 31, 2020 and the landlord received the tenants' forwarding address in writing the same day. The landlord made the Application for Dispute Resolution on August 3, 2020, which is within the 15 days. However, the landlord has not made a claim for damages caused by the pet. The landlord testified that the tenants didn't clean up after the pet very well, but there is no evidence of damage caused by the turtle, and I find that the landlord simply did not want to return any deposit to the tenants. Therefore, I find that the landlord must repay double the amount of the \$775.00 pet deposit, or \$1,550.00.

With respect to the landlord's damage claim, where a party makes a monetary 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 *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.

I have reviewed all of the evidentiary material provided by the parties. The landlord has not provided any evidence to substantiate the cost for any repairs claimed by the landlord. Therefore, I dismiss the landlord's claims for carpet cleaners and for repairs to the holes in the walls.

The tenants have provided evidence of the parties discussing the cracks in the fridge during the move-in condition inspection, and I am not satisfied that the landlord has established that the damage was caused by the tenant's failure to comply with the *Act* or the tenancy agreement.

Because the landlord waited so long to conduct the move-in condition inspection, the tenants' belongings were already throughout the rental unit. I have also reviewed the photographs of the tenants, and I accept the undisputed testimony of the tenant that 2 rugs were covering the tiles in the entry. I am not satisfied that the landlord has established that the tiles were broken due to the tenants' failure to comply with the *Act* or the tenancy agreement, and has not provided any evidence of the cost.

The *Act* requires a tenant to repair any damage caused by the tenant. In this case, the tenants repaired the broken door and frame, and it's questionable whether or not the landlord would still be able to get the matching frame or door. The tenants have repaired them using a contractor provided by the landlord, and I dismiss the landlord's claim for a new glass door, frame and repair to the door frame.

The tenants agreed that the landlord is entitled to compensation for cleaning in the amount of \$140.00, and I am not satisfied that the landlord has established any more than that. Since the tenants have agreed, I decline to order that the landlord recover the filing fee.

The landlord currently holds a security deposit in the amount of \$775.00, and having found that the landlord must repay double the pet damage deposit, or \$1,550.00, I order the landlord to return \$2,185.00 to the tenants ($\$775.00 + \$1,550.00 = \$2,325.00 - \$140.00 = \$2,185.00$).

Conclusion

For the reasons set out above, I hereby 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 \$2,185.00.

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: November 30, 2020

Residential Tenancy Branch