



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDCL-S, MNRL-S, MNDL-S, FFL**

MNSDS-DR, FFT

Introduction

This hearing dealt with crossed applications filed by the landlord and the tenant pursuant to the Residential Tenancy Act ("Act").

- The landlord applied for:
 - A monetary order for damages or compensation and authorization to retain a security deposit pursuant to sections 38 and 67;
- A monetary order for rent and/or utilities and authorization to retain a security deposit pursuant to sections 38 and 67;
- A monetary order for damages to the rental unit and authorization to retain a security deposit pursuant to sections 67 and 38; and
- Authorization to recover the filing fees from the tenant pursuant to section 67.

The tenant applied for:

- A monetary order for a return of a security deposit by direct request, pursuant to sections 38 and 67; and
- Authorization to recover the filing fees from the landlord pursuant to section 67.

The tenant and the landlords both attended the hearing. The landlords were represented by JK ("landlord"). As both parties were present, service of documents was confirmed. Each party acknowledged being served with one another's Application for Dispute Resolution Proceedings Packages and stated they had no issues with timely service of documents.

Issue(s) to be Decided

Is the landlord entitled to compensation for the tenant ending the fixed term tenancy early?

Is the tenant responsible for the damages as claimed by the landlord?

Should the tenant's security deposit be returned?

Should either party's filing fee be recovered?

Background and Evidence

At the commencement of the hearing, pursuant to rules 3.6 and 7.4, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony. In accordance with rule 7.14, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The landlord gave the following testimony. This tenancy involves a separate, self-contained rental unit within her home. The fixed, one year tenancy began on August 1, 2019 set to expire on July 31, 2020. Rent was set at \$1,375.00 per month payable on the first day of each month. A copy of the signed tenancy agreement was provided as evidence. The landlord pointed out clause 4 of the tenancy agreement which states that the tenant shall pay \$1,375.00 to the landlord as liquidated damages, and not as a penalty to cover the administration costs of re-renting the unit if the tenant ends the fixed term tenancy before the end of the original term.

At the commencement of the tenancy, the landlord collected a full month's rent, \$1,375.00 as a security deposit. The landlord testified that the reason she collected more than a half month's rent was because the rental unit was furnished with higher end furnishings. The landlord testified she always collects a full month's rent as a security deposit for furnished suites.

When the tenancy commenced, the landlord did not conduct a condition inspection report with the tenant. The landlord testified that the previous tenant was a friend of this tenant from their workplace. A condition inspection report was done with the previous tenant at the beginning of that tenant's tenancy and that previous tenant received her full security deposit back. A copy of the move-in condition inspection report for the previous tenancy was provided by the landlord. No move-out condition inspection report with that tenant was provided. According to the landlord, the tenant involved in this hearing moved in knowing full well what the condition of the unit was like.

On June 18, 2020 at 6:17 p.m., the landlord received a notice to end tenancy by email from the tenant. In that email, not provided as evidence, the tenant advises the landlord that the last day of his tenancy would be July 1st. According to the landlord, she responded to the tenant's email asking him whether he 'looked at the lease'. During the hearing, the landlord was unable to point to that evidence in her documents as she did not have any of her documents before her.

The landlord acknowledges she received the tenant's forwarding address by email at some point, but didn't realize it was sent until she reviewed old emails sometime later.

The landlord claims the tenant left the rental unit unclean and damaged at the end of the tenancy. She describes herself as "fussy" and maintains a very clean and tidy home, a different standard from that of the tenant. The landlord testified that it took her housekeepers 7 hours at \$25.00 per hour to clean the tenant's rental unit. Photos of the house, taken on August 22, 2020 were provided as evidence to demonstrate the present condition of the home.

The landlord also claims \$225.00 for painting and repairing the unit and provided an invoice for the work. According to the landlord, the tenant left the walls scuffed and damaged from bringing his bicycle into the rental unit. The kitchen cupboards were damaged with chips missing. She also alleges that the walls were damaged from chairs being placed close to the walls. The landlord did not direct my attention to any photos of the wall damage from the chairs during the hearing.

The landlord seeks to recover the cost of a replacement shower curtain and liner at a cost of **\$72.75**. The tenant acknowledged the curtain was moldy and agreed to compensate the landlord for this expense. The tenant also acknowledged a glass shelf in the refrigerator broke during his tenancy and agreed to compensate the landlord with the **\$25.00** she paid to replace it.

The landlord seeks one month's rent from the tenant as liquidated damages for ending the tenancy before the end date stated on the tenancy agreement. The landlord acknowledges that although the tenancy agreement states liquidated damages are meant to cover the administration costs of re-renting the premises, she did not re-rent the unit due to her apprehension of having another tenant residing in her house during the covid-19 pandemic.

The tenant gave the following testimony. The previous tenant was not a friend of his, she was a colleague from work who moved out. His tenancy agreement with the landlord had no correlation to the previous tenant. The landlord did not offer him any opportunity to attend for a condition inspection report at the commencement of the tenancy or at the end. The only thing the landlord would commit to was a handwritten note which reads, “[tenant’s name] moved out July 1, 2020 mid day. Apt mt requires some cleaning painting and laundry. [landlord’s name]”

When he advised the landlord he was going to move out, the landlord said it was okay. He had previous discussions with the landlord, and she told him that when he moved out, she wasn’t going to get a new tenant. He was under the impression it wasn’t going to be an issue with her that he was moving out. He thought she was happy he was ending the tenancy early. When he left, he felt the rental unit was clean. The landlord sent him a text asking if he wanted her housekeepers come and do additional cleaning for \$50.00 and he agreed with that. He disputes the landlord’s assertion that it took them 7 hours for them to clean his ‘already clean’ unit.

Regarding the landlord’s claim for painting and repair, the tenant testified the damages were already there when he moved in. He points to the June, 2017 condition inspection report done with the previous tenant when she moved in that indicates the counters in the livingroom/bedroom are marked with ‘*paint chips exist*’. The landlord’s remaining claims for damages can be attributed to normal wear and tear.

The tenant testified he sent the landlord his forwarding address on July 5, 2020 at 9:42 a.m. This email was provided as evidence. The tenant argues the landlord collected too much for a security deposit and didn’t return it to him at the end of the tenancy. He points to the tenancy agreement, specifically clause 6(a)(i) which states the landlord agrees that the security deposit must not exceed one half of the monthly rent payable for the residential premises. He testified he did not agree to allow the landlord to keep any amount of his security deposit during or at the end of the tenancy.

Analysis

- Tenant’s claim to have his security deposit returned

At the commencement of the tenancy, the landlord did not pursue a condition inspection of the suite with the tenant, as required by section 23 of the *Act*. Pursuant to section 24, the landlord’s right to claim against the security deposit is extinguished if the landlord does not offer the tenant at least two opportunities for inspection.

Section 38(5) and (6) of the Act state that when the landlord's right to claim against the security deposit is extinguished, the landlord may not make a claim against it and must pay the tenant double the amount of the security deposit or pet damage deposit, or both, as applicable within 15 days of receiving the tenant's forwarding address. The tenancy ended on July 1, 2020 and I am satisfied the landlord received the tenant's forwarding address on July 5th. The landlord was required to return the tenant's security deposit by July 20th at the latest, in accordance with section 38. The landlord has testified she has not returned the tenant's security deposit.

Residential Tenancy Branch Policy Guideline PG-17 which states, in part C-3:

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, the arbitrator will order the return of double the deposit 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;

In this case, section 38(6) requires that the tenant's security deposit of \$1,375.00 be doubled to \$2,750.00. The tenant is awarded this amount in accordance with sections 67 and 38 of the Act.

- Landlord's claim for damages to the rental unit

During the hearing, the tenant agreed that he would compensate the landlord for replacing the bathroom shower curtain and liner at a cost of \$72.75. He also agreed that the glass in the refrigerator was damaged during his tenancy and he agreed to pay for the replacement cost of \$25.00. Pursuant to section 67 of the Act, the landlord is awarded **\$97.75**.

The remainder of the landlord's claim is a claim for housekeepers' cleaning at \$175.00 and wall repair/painting at \$225.00.

Section 37(2)(a) states that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

This notion is further elaborated in Residential Tenancy Branch Policy Guideline PG-1 which states:

the tenant must maintain "reasonable health, cleanliness and sanitary standards" throughout the rental unit or site, and property or park. The tenant

*is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard. The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. **The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises), or for cleaning to bring the premises to a higher standard than that set out in the Residential Tenancy Act or Manufactured Home Park Tenancy Act (the Legislation).** (emphasis added)*

The tenant's legal obligation is "reasonably clean" and this standard is less than "perfectly clean" or "impeccably clean" or "thoroughly clean" or "move-in ready". Oftentimes a landlord wishes to turn the rental unit over to a new tenant when it is at this higher level of cleanliness; however, it is not the outgoing tenant's responsibility to leave it that clean. If a landlord wants to turn over the unit to a new tenant at a very high level of cleanliness that cost is the responsibility of the landlord.

The landlord provided neither a condition inspection report for me to determine the cleanliness of the rental unit at the beginning and end of the tenancy, nor photographs of the unit to corroborate her testimony that the rental unit was left unclean immediately after the tenant vacated it. Section 21 of the Regulations states:

In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

Without a condition inspection report signed by the parties acknowledging the pre-existing conditions of the rental unit, the landlord has put herself in a position where she cannot prove, on a balance of probabilities, the existence of the damages caused by the tenant when the tenancy ended. For example, as the tenant pointed out, the condition inspection report completed at the commencement of the *previous* tenant's tenancy indicated existence of missing paint chips on the counters. Though her testimony bears some weight, she has not met the burden of proof to show me the difference in condition between move-in and move-out. The landlord's claim for cleaning, wall repair and painting is therefore dismissed.

The landlord's claim was unsuccessful and the tenant's claim was successful. As such, the landlord's filing fee will not be recovered and the tenant's filing fee will. The tenant is awarded an additional \$100.00.

Item	Amount
Security deposit (doubled)	\$2,750.00
Less shower curtain and liner	(\$72.75)
Less glass shelf in refrigerator	(\$25.00)
Filing fee	\$100.00
Total	\$2,753.25

Conclusion

I issue a monetary order in the tenant's favour in the amount of **\$2,753.25**.

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