



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DELANEY PROPERTIES LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCL-S, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord filed under the *Residential Tenancy Act* (the “Act”), for a monetary order for damages or compensation for losses under the *Act*, permission to retain the security deposit and for the return of their filing fee. The matter was set for a conference call.

The Landlord and the Tenant attended the conference call hearing and were each affirmed to be truthful in their testimony. Both parties were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Is the Landlord entitled to monetary compensation for damages under the *Act*?
- Is the Landlord entitled to retain the security deposit for this tenancy?
- Is the Landlord entitled to the return of their filing fee for this application?

Background and Evidence

While I have turned my mind to all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The tenancy agreement shows that this tenancy began on July 1, 2011, as a month-to-month tenancy. The parties agreed that by the end of this tenancy the rent in the amount of \$1,160.00 was payable on the first day of each month, and the Tenant had paid a security deposit of \$500.00 and a pet damage deposit of \$250.00 (the “deposits”) at the outset of this tenancy. The Landlord submitted a copy of the tenancy agreement and move-in inspection report into documentary evidence.

The parties agreed that this tenancy ended on June 30, 2020, and that the move-out inspection had not been completed for this tenancy. The Landlord submitted 11 pictures, taken of the rental unit at the end of tenancy into documentary evidence.

The Landlord testified that the Tenant did not return the keys for the rental unit June 30, 2020. That they attempted to contact the Tenant to get the keys back but that after five days, on July 5, 2020, they determined that they had to change the locks for the security of the property. The Landlord submitted a copy of the receipt for their cost to have the locks changed into documentary evidence.

The Tenant testified that they returned the keys to the Landlord on July 6, 2020 and should not be responsible for the cost to change the lock, as the Landlord got the keys back. When asked by this Arbitrator why they returned the keys late and if they had communicated the late return to the Landlord, the Tenant testified that they had not advised the Landlord that they would be returning the keys late and that they had been too busy to return the keys on time.

The Landlord testified that at the end of tenancy, they discovered that a door to one of the bedrooms had been damaged and had to be replaced. The Landlord is requesting the recovery of their costs in the amount of \$417.20 for the purchase and installation of a new door. The Landlord submitted a copy of the receipts for their costs to buy and install the new door into documentary evidence.

The Tenant agreed that the door had been damaged during their tenancy but that the door was very old and that they should not be responsible for buying the Landlord a

brand-new door. The Tenant testified that a used door could have been purchased much cheaper.

When asked by this Arbitrator, the Landlord testified that they did know the age of the bedroom door, as it was there when they purchased the house. The Landlord also testified that this door might have been part of the original build for this property that was built in 1968.

The Landlord testified that at the end of tenancy, they discovered that the carpets in the living room and bedroom of the rental unit had been damaged and had to be replaced. The Landlord is requesting the recovery of their costs in the amount of \$3,297.67 for the purchase and installation of a new carpet. The Landlord submitted a copy of the receipts for their costs to buy and install the new carpet into documentary evidence.

The Tenant testified that their pet had damaged the carpet in the bedroom but that the entire carpets in the rental unit did not need to be replaced. The Tenant argued that the damage in the bedroom could have been patched and that what the Landlord is claiming as damage was just normal wear and tear in the living room. The Tenant also testified that their tenancy was 10 years long and that the Landlord should not be entitled to new carpets.

When asked by this Arbitrator, the Landlord testified that the carpets had been replaced about six months before this tenancy began in 2010.

Analysis

Based on the above, testimony and evidence, and on a balance of probabilities, I find as follows:

The Landlord is claiming to recover their costs to have the locks changed at the end of this tenancy. I accept the testimony of both parties that the keys to the rental unit were not returned to the Landlord until July 6, 2020, six days after this tenancy had legally ended. I accept the Landlord's testimony that they had to have the locks changed to the rental unit, in order to secure the property, at the cost of \$132.88, due to the Tenant's failure to return the keys on time.

Section 37 (2) of the Act states the following regarding keys to the rental unit:

Leaving the rental unit at the end of a tenancy

37 (2) *When a tenant vacates a rental unit, the tenant must*

- (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and*
- (b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.*

I find that the Tenant breached the Act when they failed to return the keys to the rental unit to the Landlord on June 30, 2020, the date this tenancy ended.

Awards for compensation due to damage are provided for under sections 7 and 67 of the *Act*. A party that makes an application for monetary compensation against another party has the burden to prove their claim. The Residential Tenancy Policy Guideline #16 Compensation for Damage or Loss provides guidance on how an applicant must prove their claim. The policy guide states the following:

“The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To determine whether compensation is due, the arbitrator may determine whether:

- A party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- Loss or damage has resulted from this non-compliance;
- The party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- The party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

I have reviewed the documentary evidence and testimony provided by the Landlord, and I find that the Landlord has provided sufficient evidence to show that the Landlord suffered a loss due to the Tenant's breach of the *Act* and the value of that loss. I also find that the Landlord took reasonable steps to try and minimize their loss. Therefore, I find that the Landlord is entitled to the recovery of the costs associated with having the locks changed to the rental unit at the end of this tenancy, in the amount of \$132.88.

The Landlord has also claimed for \$417.20 to purchase and install a new door to one of the bedrooms in the rental unit. I accept the agreed-upon testimony of these parties that the bedroom door had been damaged during this tenancy and required replacing. Section 37(2) of the Act requires that a Tenant return a rental unit undamaged at the end of a tenancy. I find that the Tenant breached the Act when they returned the rental unit to the Landlord with a damaged door, at the end of this tenancy.

However, when determining a suitable award due to damage, I must refer to the Residential Tenancy Branch guideline (the "guideline") #40 Useful Life of Building Elements, and factor in the age of the item being repaired or replaced. The guideline sets the useful life of interior doors at 20 years. During these proceedings, the Landlord was unable to testify to the age of the door in question, stating that the door came with the property when I bought it, and it could have been original to the build date of this property, which was 1968.

In the absence of evidence to the contrary, I find that it is reasonable to conclude that this bedroom door was at least 20 years old at the end of this tenancy, and as per the guideline, it was at the end of its life expectancy. Consequently, I find that the Landlord is not entitled to the replacement costs for this door, and I dismiss this portion of the Landlord's claim.

Nevertheless, I find that this door, although old, was in serviceable condition during this tenancy and that it was damaged during this tenancy. Accordingly, I find that the Landlord is entitled to a Nominal award, in the amount of \$100.00, for the damage caused, by the Tenant, to this door during their tenancy.

Finally, the Landlord is claiming for \$3,298.67 in the recovery of their costs to have the carpets replaced at the end of this tenancy. I accept the agreed-upon testimony of these parties supported by the picture evidence that there were pulls in the carpet in the Livingroom and that a section of carpet had been torn and pulled up in the bedroom at the end of this tenancy. Again, section 37(2) of the Act requires that a Tenant return a rental unit undamaged at the end of a tenancy. I find that the Tenant breached the Act when they returned the rental unit to the Landlord with damaged carpets, at the end of this tenancy.

As stated above, when determining a suitable award due to this damage, I must refer again to the guideline and factor in the age of the item being repaired or replaced. The guideline sets the useful life of carpets at 10 years. During these proceedings, the Landlord testified that the carpets had been replaced in the rental unit in 2010.

Therefore, I find that the carpets in the rental unit were 10 years old at the end of this tenancy, and as per the guideline, the carpets were at the end of their life expectancy. Consequently, I find that the Landlord is not entitled to the replacement costs for these carpets, and I dismiss this portion of the Landlord's claim.

However, I find that these carpets, although past their life expectancy, would have been in serviceable condition at the end of this tenancy, and I find that the Landlord is entitled to a Nominal award due to the damage caused by the Tenant to these carpets during their tenancy. In determining the amount of the Nominal award, I have reviewed the testimony provided by these parties as well as the picture evidence submitted by the Landlord. After this review, I find that there was clear damage to the carpets in the bedroom of the rental unit, but that the pictures of the living room carpet show a worn yet serviceable carpet.

As I have determined that the Landlord has only proven damage to the carpet in the bedroom; I find that it was unreasonable to award the Landlord a Nominal award for replacing the damaged section of the aged carpet in the bedroom. Accordingly, I find that the Landlord is entitled to a Nominal award, in the amount of \$100.00, for the damage caused, by the Tenant, to the carpet in the bedroom during their tenancy.

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord has been successful in their application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this hearing.

I grant the Landlord permission to retain \$432.88 of the security deposit they are holding for this tenancy in full satisfaction of the amounts awarded above.

I order the Landlord to return the remaining \$317.12 the security deposit that they are holding for this tenancy to the Tenant within 15 days of receiving this decision.

If the Landlord fails to return the security and pet damage deposits to the Tenant as ordered, the Tenant may file for a hearing with this office to recover their deposits for this tenancy. The Tenant is also granted leave to apply for the doubling provision pursuant to Section 38(6b) of the *Act* if an application to recover their security deposit is required.

Conclusion

I grant permission to the Landlord to retain \$432.88 from the deposits they are holding for this tenancy.

I order the Landlord to return the remaining \$317.12 of the Tenant's deposits to the Tenant within 15 days of receiving this decision.

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 4, 2020

Residential Tenancy Branch