



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, MNDL-S

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord seeking a monetary order for unpaid rent or utilities; a monetary order for damage to the rental unit or property; and an order permitting the landlord to keep all or part of the pet damage deposit or security deposit.

The landlord and the tenant attended the hearing, and the landlord was also accompanied by his spouse who is also a landlord. The landlord and the tenant each gave affirmed testimony, however the landlord's spouse did not testify or take part in the hearing. The parties were given the opportunity to question each other and give submissions.

All evidence provided by the parties has been exchanged and is considered in this Decision.

Issues to be Decided

- Has the landlord established a monetary claim as against the tenant for unpaid rent?
- Has the landlord established a monetary claim as against the tenant 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 June 1, 2017 and ended on August 15, 2020. Rent in the amount of \$1,150.00 was payable on the first day of each month, which was increased over time to \$1,225.00 effective June 1, 2019. The tenancy

agreement, a copy of which has been provided for this hearing also includes \$60.00 per month for utilities.

At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$575.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a basement suite, and the landlords reside in the upper level of the home.

The landlord further testified that the tenant gave notice to end the tenancy by email on July 15, 2020, and also placed a copy at the landlord's front door. A copy has been provided for this hearing and it is dated July 15, 2020 and contains an effective date of vacancy of August 15, 2020. The tenant's notice should have been effective at the end of August, and the tenant paid no rent at all for August. The landlord seeks a monetary order for unpaid rent in the amount of \$1,225.00, and does not claim utilities.

Move-in and move-out condition inspection reports were completed, and a copy of the combined report has been provided for this hearing. It is dated May 31, 2017 at the beginning of the tenancy and August 8, 2020 at the end of the tenancy, and is signed by the landlord and the tenant. It states that at the end of the tenancy the tenant did not agree to the report. The landlord testified that the Security/Pet Damage Deposit Statement was crossed out by the tenant. It shows \$1,225.00 for unpaid rent and an estimate of \$4,000.00 for damages.

The landlord testified that at the beginning of the tenancy there were some scratches on the floor of the master bedroom and a few very small scratches in the living room/kitchen area, but nothing significant. There are now several deep gouges. The reports show that the kitchen counter was "satisfactory" at the beginning of the tenancy and "damaged" and burned at the end of the tenancy. The dining area floor was "Satisfactory" at move-in and "damaged – gouges" at the end of the tenancy. The same applies to the floor of the 2nd bedroom. The landlord's written documentation which contains estimates for repairs states:

"To be fair, the flooring had a few places of slight unevenness, and the one or two of the other "boards" could be moved along their length (in some places) a fraction of an inch (sometimes creating a "gap" of a fraction of an inch). These boards are not the ones that this tenant damaged. The floor could be moved with your foot to "close the gap" if desired or needed (required a bit of effort). Due to a section of tile flooring separating the living room from the Masterbed (and this tenant did not damage the MB floor), we did not include that in these calculations even though now the floors are the same throughout (where laminate was used)."

The landlord claims damages in the amount of \$2,979.00 for new flooring and installation to the kitchen/living room area and the 2nd bedroom, and has provided a written calculation. Also claimed is replacement of the kitchen countertop in the amount of \$761.60. That repair will also require removing the sink and taps, and a plumber estimated a cost of \$280.00, garbage removal and dump fees of \$392.00, and the landlord estimates \$336.00 for labour to remove flooring and countertops.

The landlord has not provided any receipts because the work has not yet been done, but the landlord went to Home Depot and got quotes. There were about 30 different laminate floorings to choose from and the landlord has estimated the damage for laminate at the 3rd lower quality and price.

There were 3 prior tenancies since the landlord purchased the home, and at least 1 prior to that. There was no damage to floors in the kitchen/living room or 2nd bedroom, and other tenants did not leave any additional marks or damage. Photographs have also been provided as evidence for this hearing which the landlord testified were taken on August 8, 2020 during the move-out condition inspection.

The tenant testified that she moved in while previous tenants were moving out.

The tenant was notified in March, 2020 that the landlord's son would be moving home. The tenant tried to stay but then had to share common space with him, using the tenant's stairs and gate. The tenant disagreed, wanting privacy, however he would keep blinds open, wave at the tenant each time she went by the window. The tenant had nowhere to go to have any privacy. Confrontations increased after July 15, 2020 while the landlords were away. He was timing how long it took to move the tenant's vehicle from the time she left the house and said it had to be within 45 seconds. Noise increased after the tenant gave notice to end the tenancy, and he purposely put a garbage can in front of the tenant's vehicle.

The tenant would not have moved out if the landlord's son hadn't moved in, and the tenant had to sell everything in order to move out, having lost her job and revenue.

The landlord also entered the rental unit while the tenant was away, due to a power outage. Emails have been provided for this hearing.

The tenant has also provided photographs, and testified that the countertop has not lifted, and any damage is purely esthetic. The landlord knew about the burn on December 20, 2019 during a visit.

The tenant disputes that she should have to pay for the entire floors to be re-done or to pay for the landlord's renovations. On July 28, 2020 the tenant took photographs which have been provided for this hearing, showing what the tenant described as gaps exposed, and when the tenant went back the gaps were closed. The flooring was old, separated and was not installed correctly.

Analysis

The *Residential Tenancy Act* specifies that any notice to end a tenancy given by a tenant must be given to the landlord before the date rent is payable under the tenancy agreement, and must be effective on the last day of the rental period. In this case, the tenant gave notice to end the tenancy on July 15, 2020 which cannot be considered effective until August 31, 2020 because rent was payable on the 1st day of each month. Further, a tenant must pay the rent even if the landlord fails to comply with the *Act* or the tenancy agreement, and therefore, the tenant's testimony about loss of privacy once the landlord's son moved in is not relevant to the landlord's claim for unpaid rent, nor can I reduce the rent to punish the landlord or enrich the tenant. I accept the undisputed testimony of the landlord that the tenant did not pay any rent for the month of August, 2020 and I find that the landlord has established a claim of **\$1,225.00** for unpaid rent.

With respect to the landlord's claim for damages, I have reviewed all of the evidentiary material of both parties, including emails and photographs. In order to be successful in a claim 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 refer to Residential Tenancy Policy Guideline #16 – Compensation for Damage or Loss which explains that 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. In other words, to award monetary compensation for flooring as claimed would result in the landlord having new flooring. The landlord testified that the rental unit had been rented several times prior to this tenancy, and judging by the photographs provided by both parties, I am very satisfied that the flooring was old, separating and peeling, which is purely wear and tear. Therefore, I dismiss the landlord's application for new flooring.

With respect to the landlord's claim for the burn on the countertop, there is no evidence to establish the age of the counters, but given that the burn is on one small countertop, and

no sink is attached, I cannot justify the amount claimed of \$761.60. Given the size and location of the burned countertop, I find that even if the exact counter color cannot be obtained, to replace all countertops, remove the plumbing fixtures and other miscellaneous claims in relation to that would put the landlord in a better position than if the damage or loss had not occurred. I find that the landlord has failed to establish that the countertops all needed replacing at the tenant's expense, and I dismiss the landlord's application to replace countertops.

Since the landlord has been partially successful with the application, the landlord is also entitled to recovery of the \$100.00 filing fee. Having found that the landlord has established a claim for unpaid rent in the amount of \$1,225.00, I order the landlord to keep the \$575.00 security deposit in partial satisfaction and I grant a monetary order in favour of the landlord for the difference of \$750.00 ($\$1,225.00 + \$100.00 = \$1,325.00 - \$575.00 = \750.00).

Conclusion

For the reasons set out above, I hereby order the landlord to keep the \$575.00 security deposit and I grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$750.00.

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: December 01, 2020

Residential Tenancy Branch