



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNDL-S
 MNDCT, FFT

Introduction

This hearing was convened by way of conference call concerning applications made by the landlord and by the tenant. The landlord has applied for 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 tenant for the cost of the application. The tenant has applied for a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement; and to recover the filing fee from the landlord.

The landlord attended the hearing with another person identified as the co-owner of the rental property. However, the line remained open while the telephone system was monitored for 10 minutes prior to hearing any testimony from the landlord, and no one for the tenant joined the call.

The landlord testified that the tenant was served with the landlord's Application for Dispute Resolution and notice of this hearing by registered mail on September 16, 2020. The landlord was permitted to provide proof of such service after the hearing concluded. I now have a copy of a Registered Domestic Customer Receipt and a Canada Post cash register receipt bearing that date, and I am satisfied that the tenant has been served in accordance with the *Residential Tenancy Act*.

Despite making an application, which was joined to be heard with the landlord's application, the tenant did not attend the hearing, and I dismissed the tenant's application without leave to reapply.

The landlord and the co-owner each gave affirmed testimony, and all evidence of the landlord has been reviewed and is considered in this Decision.

Issues to be Decided

- 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 fixed-term tenancy began on February 1, 2019 and was to revert to a month-to-month tenancy after January 31, 2020, however the tenant vacated the rental unit on October 27, 2019. Rent in the amount of \$900.00 per month was payable on the 1st day of each month, and there are no rental arrears to the end of October, 2019. A written tenancy agreement was signed by the parties, but a copy has not been provided as evidence for this hearing. The rental unit is a condominium apartment.

At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$450.00, and no pet damage deposit was collected. The tenant made an Application for Dispute Resolution and the landlord was ordered to repay double that amount to the tenant.

No move-in or move-out condition inspection reports were completed at move-in or at move-out.

The landlord further testified that a previous tenant had passed away in the rental unit on New Years Eve in 2018, and the landlord had the entire rental unit renovated, including new paint, countertops, and toilet seat, and the landlord re-rented to this tenant effective February 1, 2019. Copies of receipts for the countertops dated January 26, 2019 have been provided as evidence for this hearing. The total cost for the supplies to replace them, not including the cost of installation is \$568.96.

The tenant left a cigarette burn on the countertop and the landlord has not yet replaced it because it will cost about \$1,200.00 now. Photographs have been provided as evidence for this hearing. The landlord claims \$568.96 to replace the countertops and explained the process of joining, laminating and adding end-caps.

Pets were not permitted according to the tenancy agreement, but the tenant had a dog and a cat. Further, the tenant did not leave the rental unit clean, and the landlord has provided a copy of a receipt in the amount of \$57.31 for rental of a carpet cleaner and purchase of carpet cleaning soap from cleaning prior to this tenancy, which the landlord

claims as against the tenant. Photographs have also been provided showing what appears to be animal fur and dust. The landlord testified that she had to clean the rental unit, fill holes in walls and re-paint, and claims \$774.00 for her labour, calculated at \$40.00 per hour for 19 ½ hours.

The landlord claims \$568.96 for new countertops, \$57.31 for carpet cleaning and \$774.00 for the landlord's labour, in addition to recovery of the \$100.00 filing fee, for a total claim of \$1,400.27.

Analysis

Firstly, the landlord seeks an order permitting the landlord to keep the security deposit, however that matter has already been heard and decided upon. I decline to deal with the security deposit at all.

Where a party makes a monetary claim as 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 *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 *Act* also specifies 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.

I have reviewed all of the evidence provided by the parties, and I find that the photograph of the countertop provided by the landlord is very blurry and appears to have been taken at such a close range that it is not identifiable as a burn. The landlord referred me to photographs provided by the tenant and there is no evidence of any marks even when increasing the size on my computer. I am not satisfied that the landlord has established any damage or loss to countertops.

Where a tenant keeps a pet that is not kept in a cage, such as a dog or a cat, the tenant must have the carpets cleaned at the end of a tenancy. I have also reviewed the landlord's other photographs, and I am satisfied that the tenants left behind pet fur, and the landlord has established a claim of \$57.31 for carpet cleaning.

I am not satisfied that the landlord has established \$40.00 per hour or a claim of \$774.00 for the landlord's time to make repairs and clean the rental unit, and I dismiss that portion of the landlord's claim.

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

Conclusion

For the reasons set out above, the tenant's application is hereby dismissed without leave to reapply.

I hereby 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 \$157.31.

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 24, 2020

Residential Tenancy Branch