



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT
 MNDL-S, MNDCL-S, FFL

Introduction

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

The tenant and an agent for the landlord attended the hearing and each gave affirmed testimony. The parties were also 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 provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Has the tenant established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for overpayment of rent, costs for purchasing paint and recovery of the security deposit?
- Has the landlord established a monetary claim as against the tenant for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for loss of rental revenue?
- 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 tenant testified that this fixed-term tenancy began on February 1, 2014 for rent in the amount of \$950.00 per month. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$475.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is an apartment in a complex.

Every year the landlord gave the tenant a new lease to sign with the same move-out clause, the latest was for a tenancy beginning on February 1, 2020 which was to expire on January 31, 2021. A copy of the latest tenancy agreement has been provided for this hearing which specifies that at the end of the fixed term the tenant is required to vacate the rental unit, and that rent in the amount of \$1,314.00 was payable on the 1st day of each month. In December 2017, the laws changed and a term in a tenancy agreement containing a move-out clause at the end of the fixed term is prohibited. Also, rent increases are limited to the maximum allowable amount. In this case, each of the tenancy agreements increased rent to the allowable amount, but in 2018, the tenancy agreement increased the rent by \$235.00 per month, being a 23% increase to \$1,250.00 per month. The landlord's agent told the tenant that rent was lower than market rate and the increase was to assist the landlord with fees for her living expenses. The tenant tried to negotiate, which was denied and text messages showing that have been provided for this hearing. The tenant's wife was 8 months pregnant, and the tenant signed the new tenancy agreement rather than looking for a new apartment in the winter. The tenant claims recovery of the illegal rent increase from February 2018 to September 2020 in the amount of **\$6,380.00**.

The tenant gave notice to end the tenancy on August 28, 2020 effective September 30, 2020 by email, and there are no rental arrears to the end of September, 2020. The tenant has not provided the landlord with a forwarding address in writing.

A move-in condition inspection report was completed at the beginning of the tenancy, and the tenant believes a move-out condition inspection report was done at the end of the tenancy, but the tenant was not present for it. The landlord did not communicate with the tenant at all about a move-out condition inspection.

With respect to the landlord's claim, the tenant does not dispute the \$10.98 claim for light bulbs or the \$60.00 for a replacement fob. The tenant does not accept the

landlord's \$380.00 claim for cleaning and testified that he contacted cleaning services who quoted \$150.00 to \$200.00 for move-out cleaning for a 1-bedroom apartment. The landlord removed the carpet rather than cleaning it, and the tenant tasked the landlord to replace it in 2016, which was refused. The carpet was old and dirty, and in 2019 the tenant offered to pay \$1,500.00 toward replacing it, but the landlord did not accept it, wanting the tenant to pay \$3,000.00.

The tenant further testified that the landlord agreed to reimburse the tenant for purchasing paint, and the tenant claims **\$133.42** and return of the **\$475.00** security deposit. The tenant painted the rental unit in 2019, and the landlord did not have it painted at all since the tenancy began in 2014.

The tenant referred to photographs provided by the landlord and testified that the fridge and stove were about 25 years old, and well beyond their useful life. The vent for the stove didn't work, which is why grease was on the walls. The landlord must expect wear and tear.

The landlord's claim also includes rental loss and painting fees, but the landlord should have complied with the laws. The tenant ought to have reverted to a month-to-month tenancy and one month's notice by the tenant should be sufficient for moving out.

The landlord's agent testified that the tenant actually moved out on September 22, 2020; he emailed the landlord saying that he had moved out and told the landlord's agent to use his key. The landlord's agent used his key and went in on October 1, 2020 to do the move-out condition inspection. The tenant said he had left the country and left no address or phone number to call. Photographs of the rental unit at the end of the tenancy have been provided for this hearing, and the landlord's agent testified they were taken during the move-out inspection, and on October 24, 2020 after the carpet was replaced and painting done for advertisements.

The rent increase in 2018 was with the consent of the tenant. The tenant knew that it was over the amount allowed, and if he accepted it that would be fine, but if not, the owner would move back in because she could not afford her expenses in the home she was staying at. The tenant moved out but did not make any claim until 2020. Rent was paid to the end of September, 2020.

The landlord's agent further testified that there are more holes than the 1 that the tenant admitted to in his testimony. A big hole was left to hold a mirror.

The landlord lost rental revenue because after the tenant moved out, the rental unit was so dirty, and to bring in a cleaner was difficult. The first would not attend due to COVID-19 and it was hard to find another. After 10 days, the rental unit and carpet were cleaned, but the new tenant wanted new carpet. After 5 showings, the landlord finally replaced the carpet.

The rental unit was re-rented for December 1, 2020 for \$1,500.00 per month.

The landlord has provided a Monetary Order Worksheet setting out the following claims, totaling \$2,589.98:

- \$60.00 for a front door fob;
- \$380.00 for cleaning;
- \$10.98 for light bulbs;
- \$1,200.00 to paint the living room and bedroom
- \$100.00 to paint the ceiling;
- \$1,314.00 rental loss;
- LESS \$475.00 security deposit.

SUBMISSIONS OF THE TENANT:

The laws in 2017 should be applied; the vacate clause is illegal, so the landlord's request of 1 month of loss of rental revenue should not be ordered. The tenant gave notice to end the tenancy and the increase was above the allowable amount. Rent in 2018 should have been a 4% increase, not 23%. The tenant also wants the landlord to reimburse the tenant for paint that the landlord agreed to pay for in the amount of \$133.242. Since the tenant left earlier than the end of September, 2020 and could not get back to clean the rental unit, the tenant agrees to \$200.00 for cleaning, not \$380.00 as claimed by the landlord.

SUBMISSIONS OF THE LANDLORD:

The tenant was notified about the 23% increase and agreed. The letter with the tenancy agreement clearly said that if the tenant didn't agree, the landlord would be moving back into the rental unit due to her financial situation.

Analysis

The tenant is correct; a vacate clause in a fixed term tenancy is not legal. However, in this case, the tenant knew that at the time that he signed the tenancy agreement in 2018. In order to find in favour of the tenant for an overpayment of rent, the tenant would have to establish coercion. The tenant testified that the landlord's agent advised

the tenant that if he did not sign a new tenancy agreement for the larger amount of rent, the owner would move in. That would require the landlord to give 2 months' notice to end the tenancy and 1 free month of rent and would not have been effective until the end of March, 2018 at the very earliest. If that were the case, the owner would be required to reside in the rental unit for at least 6 months. I accept that the tenant's wife was expecting a child and it was winter, however that is not coercion. The tenant signed the tenancy agreement knowing full well that it was a binding contract, and I dismiss the tenant's claim for overpayment of rent.

The landlord's agent did not dispute the tenant's claim of **\$133.42** for purchasing paint, and given the text messages provided as evidence, I am satisfied that the tenant has established that claim.

With respect to the landlord's claim, the tenant does not dispute the front door fob claim of **\$60.00** or **\$10.98** for light bulbs, and I grant those amounts to the landlord.

Where a party makes a monetary claim for damages as against another party, 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 *Residential Tenancy Act* requires a tenant to leave a rental unit reasonably clean and undamaged except for normal wear and tear, and also states 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. The regulations go into detail of how the inspection reports are to be completed, which require a landlord to give the tenant at least 2 opportunities to schedule the inspection and report. If the landlord fails to do so, the landlord's right to make a claim for damages against the security deposit is extinguished.

In this case, I accept the testimony of the landlord's agent that the tenant advised that he had vacated and was out of the country, however the tenant could have scheduled it and had an agent attend in his place. That was not done and given that the onus is on the landlord to ensure the inspection took place in accordance with the regulations, I find that the landlord's right to make a claim against the security deposit for damages is extinguished.

However, the landlord's right to make a claim for damages is not extinguished.

With respect to the landlord's claim for cleaning, I have reviewed the Invoice provided by the landlord. Regardless of what quote the tenant may have received from another cleaning company, the landlord is not bound by law to use the same company. The tenant did not dispute that cleaning was required at the end of the tenancy, and I find that the landlord has established the **\$380.00** claim for cleaning.

With respect to painting the rental unit and ceiling, I refer to Residential Tenancy Policy Guideline #40 – Useful Life of Building Elements, which puts the useful life of interior paint at 4 years. Any award for damages is meant to put the landlord in the same situation that the landlord would be if no damage or loss existed. In other words, to provide a monetary order for the landlord to repaint, would mean that the landlord would have a new paint job, when the landlord certainly would not have a new paint job if the damage claimed hadn't occurred. The landlord has not caused the rental unit to be painted since 2014, and the tenant painted in 2019. Therefore, I dismiss the landlord's claims of \$1,200.00 to paint the living room and bedroom and \$100.00 to paint ceilings.

With respect to the landlord's claim for loss of rental revenue, the tenancy agreement provided for a fixed term to expire on January 31, 2021. I also note that the tenancy agreement provides for liquidated damages in the amount of \$1,314.00 if the tenant ends the tenancy earlier than the fixed date. In the circumstances, I accept the landlord's claim for loss of rental revenue in the amount of **\$1,314.00**.

Although I have found that the landlord's right to claim against the security deposit for damages is extinguished, the landlord's right to claim against the security deposit for loss of rental revenue is not extinguished.

Having found that the tenant has established claims totaling \$133.42 and the landlord has established monetary claims totaling \$1,764.98 ($\$60.00 + \$10.98 + \$380.00 + \$1,314.00 = \$1,764.98$), I set off those amounts, and I find that the difference of \$1,631.56 is owed to the landlord. The landlord currently holds a security deposit in the amount of \$475.00. I order the landlord to keep the security deposit in partial satisfaction, and I grant a monetary order in favour of the landlord as against the tenant for the difference in the amount of **\$1,156.56** ($\$1,764.98 - \$133.42 = \$1,631.56 - \$475.00 \text{ security deposit} = \$1,156.56$).

Since both parties have been successful with the application, I decline to order that either party recover the filing fees.

Conclusion

For the reasons set out above, I hereby order the landlord to keep the \$475.00 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 \$1,156.56.

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: January 11, 2021

Residential Tenancy Branch