



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNDCL-S, FFL

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord seeking a monetary order for damage to the rental unit or property; a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement; 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.

An agent for the landlord and the tenant attended the hearing and each gave affirmed testimony, and the parties were given the opportunity to question each other.

At the commencement of the hearing, the parties agreed that the address of the rental unit should be amended, and the frontal page of this Decision reflects that amendment.

The parties agree that all evidence has been exchanged, all of which 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?
- Has the landlord established a monetary claim as against the tenant for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement, and more specifically for loss of rental revenue and legal fees?
- Should the landlord be permitted to keep the security deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlord's agent testified that this fixed-term tenancy began on July 1, 2018 and expired on July 1, 2019, which ultimately ended on September 19, 2020 after the landlord served the tenant with an Order of Possession. The rental unit is one of 15 units which are shared living units for seniors.

A copy of the tenancy agreement has been provided for this hearing which specifies that rent in the amount of "\$950.00 + \$150.00 = \$1,100.00; first month will be in suite 8th for rate of \$675.00 + \$150.00 = \$825.00." The landlord's agent is not sure what that means, however believes there was a discount for the first month of the tenancy, and the \$150.00 means utilities. There are no rental arrears.

At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$400.00, and the landlord was ordered to keep \$100.00 of that after the hearing on September 14, 2020 wherein the landlord was awarded an Order of Possession, and the balance of \$300.00 remains in trust by the landlord. No pet damage deposit was collected.

A move-in condition inspection report was not completed at the beginning of the tenancy however a move-out condition inspection report was completed at the end of the tenancy with the tenant present, and a copy has been provided for this hearing.

The landlord has provided a Monetary Order Worksheet setting out the following claims, totaling \$4,900.00:

- \$3,000.00 for legal fees;
- \$275.00 for cleaning;
- \$1,500.00 for loss of rental revenue; and
- \$125.00 for door repair.

The landlord's agent testified that due to COVID-19, the landlord was unsure of how to proceed, and sought legal advice in order to attempt to obtain an Order of Possession for cause. Invoices have been provided for this hearing.

The landlord testified that the rental unit required cleaning after the tenancy had ended. A copy of a receipt for cleaning has also been provided for this hearing, and it is dated September 21, 2020. It states that the cleaning took 9 hours and was completed over 2 days and the cleaner charged \$25.00 per hour for 6 hours on September 20 as well as \$25.00 per hour for 3 hours on September 21, 2020, and includes a \$50.00 charge for supplies.

The landlord's agent further testified that the loss of rental revenue is an error, in that the lost revenue was \$1,200.00, not \$1,500.00. The landlord claims \$1,200.00 for lost revenue of another rental unit due to the tenant causing the other tenant to move out. The landlord's agent received a call from another tenant asking him to mediate between the tenant and the neighbouring tenant directly above. The landlord's agent spoke to the tenant, who complained that the neighbouring tenant watered plants on her deck and water would hit the glass on the tenant's deck, and the tenant would grab her broomstick and bang on the deck above incessantly. The landlord's agent was successful in convincing the neighbouring tenant to move her plant. Before the landlord's agent left that day, the neighbouring tenant went out onto her deck, and the tenant continued to bang the broomstick on the deck which continued daily.

The neighbouring tenant moved out as a result on September 1, 2020 after giving the landlord notice to end the tenancy on August 5, 2020. It was not a full month's notice, but the landlord didn't blame her for moving early. It was an endless problem, and 2 police reports were provided for the previous hearing.

The neighbouring rental unit re-rented in October or November, 2020, however a copy of the new tenancy agreement has not been provided for this hearing. The landlord seeks monetary compensation from this tenant due to the lost revenue for the neighbouring unit. A copy of the notice ending the tenancy for the neighbouring unit has been provided for this hearing, however it is in an ".eml" format and I am not able to open it.

The landlord's agent also testified that the tenant slammed the door to the rental unit every time she went through it, which was witnessed by the landlord's agent. The damaged door pulled away from the frame and cracked the drywall. Photographs have been provided for this hearing, which the landlord's agent testified were taken the day after the tenant moved out.

The rental unit was re-rented sometime in October, 2020.

The landlord received the tenant's forwarding address in writing on October 14, 2020 in a note dated October 14, 2020, a copy of which has been provided for this hearing. The tenant has not served the landlord with an Application for Dispute Resolution claiming the security deposit.

The tenant testified that she received a letter in July, 2020 from the landlord's lawyer offering the tenant money to move out. At the end of August, 2020, the tenant received notice of an expedited hearing.

The tenant moved out on September 19, 2020 after being served with an Order of Possession on September 17, 2020. The neighbouring tenant moved out on September 1, 2020, prior to the hearing.

The tenant also testified that she heard the neighbouring tenant say that she found a place where her dog could run in the yard. The neighbouring tenant had difficulties due to her large dog, and found a place that was more dog friendly. She was a large woman with a large dog in a small space. Her dog had attacked a courier and dogs were required to be on a leash, and the neighbouring tenant wanted her dog to be able to run freely. Further, most people don't like the shared kitchen arrangement, and people are always looking for another rental; there's a large turn-over at the rental complex. The tenant did not cause the landlord any loss of rental revenue.

With respect to the landlord's claim for damages, the tenant testified that she did not cause any damage to the door. The tenant would at all costs avoid the manager, who resided next to the tenant, from hearing the tenant come or go from the rental unit because the manager would harass the tenant verbally, calling her names, swearing and telling the tenant to get back into her hole. The manager and the neighbouring tenant above were friends. The tenant denies slamming the door and does not recall any mention of it, nor did she notice it until the day she moved out.

The cleaning bill of \$125.00 is nonsense, and the invoice provided by the landlord does not indicate what cleaning was done, and includes \$50.00 for supplies, which is a lot of supplies for a small space. The tenant has provided a copy of a letter from a person who was the handyman for the complex when the tenant moved in. It states, in part, that the rental unit was 10 x 15 feet and should not take 9 hours to clean, and had no fridge or stove. It also states that the tenant weighs about 120 pounds and could not have caused the crack in the doorframe, and that the doors were second-hand from a motel and were too heavy for the cheap frames, and after a flood, the landlord tried to hide some cracks with paint.

Analysis

Firstly, during the hearing the tenant provided me with a file number for the hearing resulting in an Order of Possession in favour of the landlord, and I have reviewed the Decision to ensure that I make no findings that may be a matter already adjudicated upon. Further, the landlord testified that the Decision ordered the landlord to keep \$100.00 of the \$400.00 security deposit as recovery of the filing fee. I have reviewed the Decision and I find that the order was in fact made, and I find that the landlord has \$300.00 in trust of the \$400.00 security deposit.

The *Residential Tenancy Act* provides for recovery of a filing fee upon the success of an applicant, but not for legal fees or costs of service or preparing for a hearing, and I dismiss the landlord's claim for legal fees.

With respect to the landlord's damage claim, where a landlord fails to ensure that move-in and move-out condition inspection reports are completed in accordance with the *Act* and the regulations, the landlord's right to claim against the security deposit or pet damage deposit for damages is extinguished. Since the landlord has not caused the move-in portion to take place, I find that the landlord's right to claim against the security deposit for damages is extinguished. Further, the *Act* specifies that the reports are evidence of the condition of the rental unit at the beginning and end of the tenancy.

However, the landlord's right to make a claim against the security deposit for loss of rental revenue is not extinguished, and the landlord's right to make a claim for damages is not extinguished. In order to be successful in a claim for damages, the onus is on the landlord to establish the 4-part test:

1. that the damage or loss exists;
2. that the damage or loss exists as a result of the tenant's failure to comply with the law or the tenancy agreement;
3. the amount of such damage or loss; and
4. what efforts the landlord made to mitigate any damage or loss suffered.

I have reviewed the evidentiary material of the parties, and particularly the letter from the previous handyman. Given that there is no evidence of the condition of the door at the beginning of the tenancy, and the undisputed letter of the handyman, I find that the landlord has failed to establish that the damage was caused by the tenant, and I dismiss the landlord's claim for repair to the door.

With respect to cleaning, the tenant pointed out in her testimony that the cleaning invoice is vague and contains no details of what was cleaned. The letter from the previous handyman says that the rental unit was not cleaned at the beginning of the tenancy. Given that there is no move-in condition inspection report, I accept that. I have also reviewed the invoice provided by the landlord for this hearing, which is dated September 21, 2020 and shows 6 hours at \$25.00 per hour for the first day and 3 hours for the second day. I also consider undisputed letter of the handyman that the rental unit has no fridge or stove and is 10 feet by 15 feet, and I am not satisfied that it would take 9 hours or \$50.00 of supplies. I find the bill to be exaggerated, and I dismiss the landlord's claim for cleaning.

With respect to loss of rental revenue, the landlord's evidentiary material appears to contain a notice to end the tenancy of the neighbouring tenant, but I cannot open it, and the landlord did not provide any testimony of what it says. Therefore, I cannot be satisfied that the notice contains any reference to this tenant. The landlord did not dispute the testimony of the tenant that the neighbouring tenant moved out because of her dog and that there is a high turn-over rate at the rental complex. The neighbouring tenant had an obligation to give the landlord sufficient notice to move out of that rental unit, but did not do so. Considering the evidence of the tenant and lack of evidence from the landlord that the tenant caused the landlord to lose rental revenue, I dismiss the landlord's application.

Since the landlord has not been successful with the application, the landlord is not entitled to recovery of the \$100.00 filing fee.

The landlord currently holds \$300.00 of a security deposit in trust, and testified that he received the tenant's forwarding address in writing on October 14, 2020, and has provided a copy of that letter. The landlord filed this Application for Dispute Resolution on October 28, 2020, which is within the 15 days required by the *Act*. Having dismissed the landlord's application, I order the landlord to return the security deposit in full to the tenant within 15 days of today's date. If the landlord fails to do so, the tenant is at liberty to apply for double the amount.

Conclusion

For the reasons set out above, the landlord's application is hereby dismissed in its entirety without leave to reapply.

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 22, 2021

Residential Tenancy Branch