



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFL, MNDL-S, MNDCL-S**

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

Authorization to recover the filing fee for this application from the tenant pursuant to section 72;

A monetary Order for Damages and authorization to retain a security deposit pursuant to sections 38 and 67; and

A monetary order for damages or compensation and authorization to retain a security deposit pursuant to sections 38 and 67.

Both the landlord and the tenant attended the hearing. As both parties were present, service of documents was confirmed. The tenant acknowledged service of the landlord's Notice of Dispute Resolution Proceedings package and the landlord acknowledged service of the tenant's evidence. Neither party raised any issues regarding timely service of documents.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for damages to the rental unit?

Can the landlord retain the security deposit?

Should the filing fee be recovered?

Background and Evidence

At the commencement of the hearing, pursuant to rules 3.6 and 7.4, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony. In accordance with rule 7.14, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

A copy of the tenancy agreement was provided as evidence. The tenancy began on October 1, 2012 with rent set at \$1,400.00 per month payable on the first day of each month. The landlord collected a security deposit of \$700.00 which she continues to hold. A move-in condition inspection report was done with the tenant at the commencement of the tenancy.

The landlord provided the following testimony. The rental unit is the top floor of house with an upper and lower unit. There is another rental unit located below the one occupied by the tenant. The house is approximately 25 years old and was 13 years old at the commencement of the tenancy.

The tenants ended the tenancy with a notice to end tenancy effective October 31, 2020. A copy of the notice to end tenancy was provided as evidence. The parties made arrangements for a move-out condition inspection report to be done on October 27th. Present at the condition inspection report was the landlord, her husband and the tenant's husband who was called as a witness by the tenant.

The landlord testified that the husband wouldn't sign the condition inspection report on October 27th. The tenants wanted the landlord to return 4 days of pro-rated rent to them because they were "officially out" of the rental unit on October 27th instead of October 31st. The tenant would not give back the keys to the rental unit if the landlord refused to reimburse them the 4 days of pro-rated rent. The landlord offered to come back on October 31st to have the tenant sign the condition inspection report and return the keys but the tenant's husband refused. He told the landlord that he would send her the keys via registered mail which the landlord acknowledges receiving on November 3rd. The condition inspection report was never signed because the tenant never came back.

The landlord submits that the rental unit was dirty at the end of the tenancy. She hired a company to clean the unit, install a smoke detector, repair a patio screen door and cut the lawn. The landlord was charged \$578.17 in labour and materials for the work. The landlord submits that a cat in the unit damaged the patio screen door and that the tenants were responsible for cutting the lawn which they did not do.

The landlord seeks to recover a pro-rated 3 days of rent because she didn't receive the key to the rental unit from the tenant until November 3rd. The landlord testified that she could not access the unit until she received the key because the tenants had changed the locks and the landlord was not provided with a copy of the key to the new locks. The landlord was deprived of the ability to clean until the key arrived by registered mail.

The tenant provided the following testimony. They had moved out of the rental unit on October 18th, but the tenant's husband attended on October 27th for the condition inspection report. The tenants were concerned because the occupants of the two rental units below theirs had accessed their upper unit between October 18th and October 21st. The tenant points to the text message from one of the lower unit occupants whereby that occupant admits to being in the tenant's unit without the tenant being present.

The tenant testified that the keys were returned to the landlord via registered mail on November 2, 2020 and provided the tracking number and confirmation of receipt from Canada Post to corroborate it. Together with the keys, the tenant provided the landlord with her forwarding address and a request to return the security deposit and a copy of the condition inspection report.

The tenant called her husband, DG to testify. DG testified that he attended the unit on October 27th for the condition inspection report. He and the landlords didn't stand close together due to the pandemic and the encounter was tense and odd. According to DG, the only issues pointed out to him was the oven not being cleaned well enough and the ripped screen door. When the landlord asked him for the keys, DG asked the landlord for 4 days of prorated rent to be returned to him which she wouldn't do.

DG testified that he didn't feel comfortable giving the landlord the keys when he was still "responsible" for the rental unit on his insurance. The occupants of the lower units had accessed his upper unit via a 'pinhole lock' that can be opened using a pin rather than a key. DG alleges that a smoke detector was stolen by the lower unit occupants.

The tenants submit that they hired professional cleaners to clean the unit before they moved out. A copy of the invoice from the cleaner was provided as evidence. The tenants also submit that the issue of the lawn cutting and whose responsibility it was had been previously determined by an arbitrator. The previous arbitrator determined that cutting the lawn was not their responsibility and the file number for the previous hearing is recorded on the cover page of this decision.

Analysis

Section 37(2) of the *Act* states that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

This notion is further elaborated in Residential Tenancy Branch Policy Guideline PG-1 which states:

the tenant must maintain "reasonable health, cleanliness and sanitary standards" throughout the rental unit or site, and property or park. ***The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard.*** The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises), or for cleaning to bring the premises to a higher standard than that set out in the *Residential Tenancy Act* or *Manufactured Home Park Tenancy Act* (the Legislation). **(emphasis added)**

PG-1 also states: *MAJOR APPLIANCES*

At the end of the tenancy the tenant must clean the stove top, elements and oven, defrost and clean the refrigerator, wipe out the inside of the dishwasher.

I have reviewed the photos provided by the landlord, and I find the tenants, or the cleaners hired by the tenant did not properly or sufficiently clean the appliances. The landlord has not provided a breakdown from their cleaners for me to determine the value of the labour involved in cleaning the appliances and so I award the landlord nominal damages in the amount of **\$35.00**.

PG-1 states: *LIGHT BULBS AND FUSES*

The tenant is responsible for replacing light bulbs in his or her premises during the tenancy

I am satisfied that the tenant did not replace light bulbs that were burned out during the tenancy. The landlord did not provide evidence as to whether the original bulbs were incandescent, halogen, CFL or LED, each with varying replacement costs. Given that the tenancy began 8 years ago, I award the landlord an approximate value of \$1.00 per light that was burned out during the tenancy. The landlord notes 7 burned out bulbs in the condition inspection report and I award the landlord **\$7.00** as compensation.

PG-1 states: PROPERTY MAINTENANCE

Generally the tenant living in a townhouse or multi-family dwelling who has exclusive use of the yard is responsible for routine yard maintenance, which includes cutting grass, clearing snow.

I read the decision of the previous arbitrator who found that the tenants in this case did not have exclusive use of the yard. I find the tenants are not responsible for cutting the grass. The claim for cutting the grass is dismissed.

I have reviewed the photographs of the rental unit provided by both the landlord and the tenant regarding the condition of the rental unit at the end of the tenancy. I have also taken into consideration the length of the tenancy, being approximately 8 years. For a tenancy of this duration, common sense dictates that the landlord would expect there to be reasonable wear and tear. I find the patio screen door rip can be attributed to reasonable wear and tear, not deliberate damage or damage caused by neglect. The same applies to the baseboard damage, cleaning of the bathroom tiles and cleaning the patio. I find the unit was left reasonably clean and undamaged except for reasonable wear and tear. I decline to award the landlord a monetary award for cleaning or damage and order that each of these portions of the landlord's claim be dismissed.

The landlord has not provided sufficient evidence to satisfy me an installation of smoke detectors was required. The tenant supplied photos of smoke detectors above each bedroom in the hallway and the landlord has not convinced me that they should be moved or replaced. This portion of the claim is dismissed.

Lastly, the landlord seeks pro-rated rent for November 1 to 3 as she did not have the keys to the rental unit on October 31st. The tenant provided evidence that she sent the landlord the keys on October 27th by registered mail and that it was received on November 2nd. Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In this case, I do not find the tenants breached any section of the *Act*, regulations or tenancy agreement when they sent the keys to the landlord by registered mail. I find it reasonable that the tenants would send the keys by mail given the distance between their new accommodations and the old rental unit. This portion of the landlord's claim is likewise dismissed.

- Return of security deposit

Section 36(2)(c) of the *Act* specifies that the right of the landlord to claim against a security deposit for damages to the residential property is extinguished if the landlord,

having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

The parties offer differing accounts of what happened on October 27th. The landlord testified that the parties were to reattend on October 31st to complete the condition inspection report while the tenant's husband testified he considered the condition inspection report completed on October 27th and the landlord did not provide a copy to him.

In this case, I find that the tenant's argument that on October 27th they should be entitled to pro-rated rent return is unreasonable. The notice to end tenancy given by the tenant gave an effective date of October 31st, not October 27th. The tenant is obligated to pay rent until the end of the tenancy. The landlord's refusal to give the tenant the return of 4 days rent led to the tenant's refusal to give the landlord the keys to the rental unit. This, in turn, led to the landlord taking the position that the tenancy had not ended and that the condition inspection report would take place on the 31st. Based on this turn of events, I find the landlord did not breach section 36 of the *Act* and fail to provide a copy of the completed condition inspection report to the tenant.

Section 38 of the *Act* states:

Return of security deposit and pet damage deposit

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of (a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing, the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

The tenancy ended on October 31st and landlord received the tenant's forwarding address by registered mail on November 2nd. The landlord made an Application for Dispute Resolution claiming against the security deposit on November 16, 2020. I find the landlord made her application within 15 days after the date she received the tenant's forwarding address in writing. As the landlord filed her application within the 15 days as required by section 38 of the *Act*, the tenant is not entitled to a doubling of the security deposit. The landlord is ordered to return the tenant's security deposit, less any deductions awarded in this decision.

As the landlord's application was mostly unsuccessful, the landlord is not entitled to recover the \$100.00 filing fee for the cost of this application.

Item	Amount
Cleaning	\$35.00
Light bulbs	\$7.00
Less security deposit	(\$700.00)
Total	(\$658.00)

Conclusion

The tenant is entitled to a monetary order in the amount of \$658.00.

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: February 23, 2021

Residential Tenancy Branch