



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RANDALL NORTH REAL ESTATE
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (“the “Act”).

On December 9, 2020, the Landlord filed an application requesting a monetary order for damage to the rental unit and to keep a security deposit or pet damage deposit.

On December 15, 2020 the Tenants filed an application for the return of a security deposit and/or pet damage deposit.

The Landlord and Tenant appeared at the hearing. The hearing process was explained, and the participants were asked if they had any questions. All participants in the hearing provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

While confirming that the parties have exchanged the documentary evidence before me the Tenant stated that he never received a copy of the Landlords photographic evidence. After exploring the issue further, the Tenant conceded that he did receive the Landlord’s photographic evidence via email attachments on March 5, 2021.

The Landlords agent testified that she never received a copy of the Tenants documentary evidence. The Tenant testified that he sent it to the Landlord using Canada Post Registered Mail and verbally provided the registered mail receipt number.

The Landlord then conceded that the Tenants evidence was received; however, she stated that the Tenant's photographs were not clear, and she responded to him via email and requested that he provide another copy. The Landlord also stated that she believes the photographs provided to her were for a different rental unit and not the dispute address. The Landlord stated that she never received new photographs from the Tenant.

The Tenant testified that the photographs he provided to the Landlord and the RTB are photographs of the rental unit.

I find that the parties exchanged the evidence before me, and the parties evidence was considered in this Decision.

Issues to be Decided

- Is the Landlord entitled to the monetary relief sought for damage to the rental unit?
- Is the Landlord entitled to keep the security deposit and or pet damage deposit towards repair costs?
- Is the Tenant entailed to the return of a security deposit and/or pet damage deposit?

Background and Evidence

The Parties testified that the tenancy began on August 1, 2020, as a one-year fixed term tenancy. Rent in the amount of \$1,275.00 was due to be paid to the Landlord by the first day of each month. The Tenants paid the Landlord a security deposit of \$637.50 and a pet damage deposit of \$637.50. The Landlord is holding the deposits. The tenancy ended on November 28, 2020 when the Tenants vacated the rental unit. The Landlord provided a copy of the tenancy agreement.

The Landlord's agent testified that the Tenant is responsible for a broken window and broken glass in a sliding glass door within the rental unit. The Landlord's agent testified that prior to the Tenant moving into the unit she attended the unit and observed that there was no damage to the windows.

The Landlord's agent testified that she set up a time for an inspection; however, the Tenant was not able to attend the unit to participate, so she completed the inspection form on her own and sent it to the Tenant showing what she found wrong with the unit and if anything was missed. The Landlord's agent testified that the Tenant never reported any damage to the windows during the tenancy. The Landlord provided a copy of the condition inspection report which indicates on July 31, 2020 the rental unit was inspected by the Landlord's agent. The report indicates there was no damage to the windows at that time. The Landlord provided a copy of an email dated August 1, 2020 asking the Tenant to report to her if they found any other damage.

The Landlord attended the rental unit at the end of the tenancy and found that two windowpanes were broken. The Landlord had the broken windows repaired and is seeking to keep the security deposit and pet damage deposit in satisfaction of the repair costs. The Landlord provided an invoice dated February 3, 2021 for the cost of the window repair in the amount of \$1,041.76. The Landlord provided photographs of the damaged windows.

The Landlord's agent stated that the Tenant tried to convince a caretaker of the rental unit to lie about the windows and write a letter on the Tenant's behalf. The Landlord referred to her documentary evidence of text messages that the caretaker received from the Tenant.

The owner of the rental unit testified that he attended the rental unit the day after the Tenant moved out and observed the broken windows.

In response, the Tenant testified that he believes that the windows were already broken when he moved in. He stated that he never reported the broken windows to the Landlord because he did not think they would do anything about it. The Tenant testified that he did not break the windows. He testified that the owner was in the rental unit the day the Tenant moved out and did not mention damage to the windows.

The Tenant testified that he did not get an offer from the Landlord for a move in inspection or a move out inspection.

The Landlord's agent replied that the Tenant did not give her proper notice of when he was moving out. She testified that she received a text message saying we have now moved out.

The Tenant provided testimony that he sent the Landlord a message on November 27, 2020 saying he was leaving on the 28th.

Security Deposit and Pet Damage Deposit.

The Landlord applied for dispute resolution and made a claim against the security deposit and pet damage deposit within 15 days from when the tenancy ended.

The Tenant stated that the Landlord should not be able to make a claim against the pet damage deposit since his pets caused no damage.

Analysis

When a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove the claim, the Applicant must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act, Regulation, or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss; and,
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Residential Tenancy Branch Policy Guideline # 16 provides the following with respect to types of damages that may be awarded to parties:

An arbitrator may award monetary compensation only as permitted by the Act or the common law. In situations where there has been damage or loss with respect to property, money or services, the value of the damage or loss is established by the evidence provided.

Sections 23 and 35 of the Act provides that a Landlord and Tenant together must inspect the condition of the rental unit on the day the Tenant is entitled to possession of the rental unit, and at the end of the tenancy before a new tenant begins to occupy the rental unit. Each section also requires that the Landlord complete the condition inspection report; both the Landlord and Tenant must sign the condition inspection report and the Landlord must give the Tenant a copy of that report in accordance with the regulations.

Section 24 (2) of the Act provides that the right of the Landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the Landlord having does not offer the Tenant opportunities for an inspection and complete an inspection report in accordance with the regulations.

Damage

After a careful review of the evidence, I find that the Landlord has provided the stronger evidence that the Tenant is responsible for the damage to the windows in the rental unit. The Landlord testified that prior to the Tenant moving into the unit she attended the unit and observed that there was no damage to the windows. I assign very little weight to the Tenant's suggestion that the windows were already broken when he moved in and that he never reported the broken windows to the Landlord because he did not think they would do anything about it. I accept the Landlords evidence of a condition inspection report completed on July 31, 2020 which indicates no window damage and also that she sent the Tenant an email asking him to report any damage found. I find that the Tenant did not report any window damage at the start of the tenancy or later.

I find that the Tenant is responsible for the damaged windows and I accept the Landlord's evidence that the windows have been repaired at a cost of \$1,041.76.

I grant the Landlord a monetary award of \$1,041.76.

Security Deposit

The Landlord applied for dispute resolution on December 9, 2020, which was within 15 days of when the Tenant moved out and provided the Landlord with his forwarding address.

With respect to a move in inspection, the Landlord testified that she had a time set up with the Tenant. Since the Tenant refutes that the Landlord invited him to attend an inspection, the burden to prove of proof rests with the Landlord. There is no documentary evidence before me from the Landlord that an inspection was proposed or arranged or that a second opportunity for inspection was offered by providing the tenant with a notice in the approved form.

Since the offer of an inspection is mandatory under the Act and Regulation, I find that the Landlord has failed to establish that they offered an opportunity for a move in inspection in accordance with the regulations and therefore I find that the Landlord has

extinguished the right to claim against the security deposit and or pet damage deposit for damage. However, section 72 of the Act provides that if I order a party to pay an amount to the other party, the amount may be deducted from any security deposit or pet damage deposit due to the Tenant. Since the right to claim against the security deposit and or pet damage deposit was extinguished at the start of the tenancy, there is no need to consider an offer of a move out inspection.

Section 72 of the Act also gives me authority to order the repayment of a fee for an application for dispute resolution. Since both parties have breached the Act, I decline to award recovery of the filing fees.

The Landlord has established a monetary award in the amount of \$1,041.76 and is holding deposits that amount to \$1,275.00. I authorize the Landlord to keep the amount of \$1,041.76 from the security deposit and pet damage deposit in full satisfaction of the Landlord's award. I order the Landlord to return the balance of \$233.30 to the Tenant. I grant the Tenant a monetary order in the amount of \$233.30. For enforcement, this monetary order must be served on the Landlord and may be enforced in Provincial Court.

Conclusion

The Landlord's claim for damage to the rental unit is successful. I find that the Tenant is responsible for the damaged windows and I accept the Landlord's evidence that the windows have been repaired at a cost of \$1,041.76.

I authorize the Landlord to keep the amount of \$1,041.76 from the security deposit and pet damage deposit in full satisfaction of the Landlord's award. I order the Landlord to return the balance of \$233.30 to the Tenant.

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: March 31, 2021

Residential Tenancy Branch