



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL

Introduction

This hearing was reconvened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for damages to the unit - Section 67;
2. An Order to retain the security deposit - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Preliminary Matter

The Tenant confirms that it did not provide a copy of its evidence to the Landlord.

Rule 3.15 of the Rules of Procedure provides that a respondent must give the application a copy of any evidence that the respondent intends to rely on at the hearing. As the Tenants did not provide the Landlord with a copy of their evidence, I decline to consider the Tenants’ documentary evidence.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The following are agreed facts: The tenancy under written agreement started on April 1, 2019 and ended on September 30, 2020. Rent of \$2,300.00 was payable on the first

day of each month. At the outset of the tenancy the Landlord collected \$1,150.00 as a security deposit and \$1,150.00 as a pet deposit. The Parties mutually conducted both a move-in and move-out inspection with completed reports copied to the Tenants. The Landlord received the Tenants' forwarding address on the move-out report dated October 1, 2020.

The Landlord states that the tenancy agreement included a Tenant signed form k and that the Strata rules were provided to the Tenants with the tenancy agreement. The Landlord confirms that a copy of the signed form k and rules were not included as evidence. The Landlord states that the Strata issued two fines for the Tenants placing garbage in the recycling and leaving cardboard in the stairwell. The Landlord states that the items were identified as belonging to the Tenants as the Tenants' mailing label was on the garbage bag and on the cardboard. The Landlord claims \$400.00 for the fines and states that these were paid by the Landlord in October 2020.

The Tenant states that it does not recall ever signing any form k, that the building was still under construction at the onset of the tenancy and that the Strata was still in the process of being set up. The Tenant states that it did see a notice posted. The Tenant states that the misplaced garbage and cardboard were not left by the Tenant. The Tenant states that there were frequent thefts of packages delivered to the building and that it several times found an envelope address to the Tenants ripped open and left on the floor. The Tenant states that it complained about the lack of security. The Tenant states that the Landlord also informed the Tenant that the fines could be disputed with the Strata, so the Tenant sent an email to the Strata indicating its dispute of the fines. The Tenant states that it never heard any response back to the email.

The Landlord states that the move-out inspection with the Tenant occurred on October 1, 2020 at 8:30 a.m. and that the incoming tenants were scheduled for a 9:00 a.m. move-in. The Landlord states that the incoming tenants were going to use the unit the night before to sleep in and that they were compensated for the late move-in. The

Landlord claims \$76.67 as the equivalent of one day's rent. The Tenant states that when the Landlord showed up for the inspection all of its belongings were out of the unit and in the common area.

The Landlord states that the Tenants failed to clean the carpets at move-out. The Landlord claims \$210.00 for the cleaning cost done on September 30, 2020 and provides an invoice. The Tenant states that the carpets were cleaned. The Tenant states that the first move-out walkthrough of the unit occurred at 11:00 a.m. on September 30, 2020 and that the Landlord did not believe that the Tenant has the carpets professionally cleaned. The Landlord confirms that unit was noted as reasonably clean on the move-out report.

The Landlord states that the Tenants left damages to two doors caused by broken door stoppers. The Landlord confirms that this damage is noted on the move-out report. The Landlord states that this damage was repaired for \$130.00 and the Landlord claims this cost. The Tenants do not dispute that they left the damage to the door caused by the door stop.

The Landlord states that the move-out inspection was done quickly and that after the Parties signed off on the move-out inspection report the Landlord noted additional damages to two walls, a hole punch to one door and door casings damaged. The Landlord states that it brought these extra damages to the Tenant's attention who informed the Landlord that these damages were present at move-in. The Landlord states that the repairs were done after the new tenants moved in. The Landlord claims \$275.00 for the wall, \$95.00 for the door hole repairs and \$30.00 to paint the door casings. The Tenant states that they did an extensive walk-through and that the Tenant did not cause these extra damages claimed by the Landlord. The Tenant states that the Landlord did not bring any of these extra damages to the Tenant's attention until October 10, 2020 and this came as a surprise to the Tenants. The Tenant states that

although the Landlord's photos of this extra damage are time stamped, these can be easily edited.

The Landlord states that the bedroom closet door was left with a hole punch that was not noted on the move-out but was later identified and discussed with the Tenant. The Landlord claims \$315.00 for the replacement of the door. The Tenant states that they did not cause any damage to the closet door and that such damage would have been readily visible during the move-out inspection.

The Landlord states that the Tenants left plastic hooks on the kitchen cabinets that required the use of special adhesive remover to repair. The Landlord states that the Tenants also left a doorstop end broken in a bedroom. The Landlord states that these damages are noted on the move-out report. The Landlord states that a few days after the move-out inspection the Landlord found the bathroom sink and tub clogged. The Landlord states that a day after the move-out inspection they found a ceiling ring fixture detached. The Landlord claims \$126.00 for these repairs. The Tenant agrees that the hooks were left, and the doorstop was broken as noted on the move-out. The Tenant states that the sink and tub were not clogged at move-out. The Tenant states that no ceiling ring was detached by the Tenants and that this item was not seen during the move-out inspection. The Tenant states that the Landlord did not provide any photo of a detached ring.

The Landlord states that the Tenants left blinds damaged in the second bedroom. The Landlord states that this damage was not noted on the move-out report but was brought to the Landlord's attention by the new tenants a few days after their move-in. The Landlord claims \$357.55 for the cost of replacement blinds. The Tenant states that it was not aware of any damage to the blinds and that they first heard of this damage on October 9, 2020, 9 days after the second walk-through inspection.

Analysis

Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party, that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed, and that costs for the damage or loss have been incurred or established.

There is no evidence to support that the Landlord incurred the cost claimed for the extra day of rent from the Tenants. I therefore dismiss this claim.

Section 37 of the Act provides 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. Given the move-out report not having any notation of a dirty carpet, the Landlord's evidence that the unit was noted to be reasonably clean at move-out and the Tenants' evidence that the carpet was cleaned, I find on a balance of probabilities that the Landlord has not substantiated that the Tenants failed to leave the carpet reasonably clean. I therefore dismiss the claim for carpet cleaning costs.

Given the Tenants' evidence that it caused the damage from the broken door stop I find that the Landlord has substantiated its claim of **\$130.00**.

Given the lack of any notation in the move-out report of the ceiling ring being off its place and the clogging of the sink and tub and considering the Tenants' evidence that these items were not damaged by the Tenant I find on a balance of probabilities that the Landlord has not substantiated its claim for costs related to the clogging and ceiling ring. I therefore dismiss the Landlord's claims for these costs. As the hooks and doorstop are noted in the move-out report I find that the Landlord has substantiated this damage by the Tenant. However, as the invoice does not set these costs out

separately from the clogging and ring, I am unable to determine any costs other than a nominal amount of **\$25.00** for these damages.

As the damages to the wall and door are not noted on the move-out report as being present at the end of the tenancy and given the Tenant's evidence that it did not cause these damages I find on a balance of probabilities that the Landlord has not substantiated that these damages were caused by the Tenant and I dismiss the claims for costs of \$275.00, \$90.00 and \$30.00 associated with these damages.

As the damages to the closet door are not noted on the move-out report as being present at the end of the tenancy and given the Tenants' evidence that such damage would have been readily visible during the inspection, I find on a balance of probabilities that the Landlord has not substantiated that the Tenants caused this damage. I therefore dismiss the claim for \$315.00.

As the blinds are not noted as damaged in the move-out report, given the Tenant's evidence that they were not aware of any damage left to the blinds and considering that this damage was noted after the new tenants moved into the unit I find on a balance of probabilities that the Landlord has not substantiated that the Tenants left the blinds damaged. I dismiss the claim for these costs.

As the Landlord did not provide any evidence of a signed agreement by the Tenants in relation to the Strata rules and fines and given the Tenants' evidence that it does not recall signing or receiving these documents I find on a balance of probabilities that the Landlord has not substantiated that the Tenants breached any part of the tenancy agreement in relation to the garbage and recycling. I therefore dismiss the claim for \$400.00.

As the Landlord's application has met with minor success, I find that the Landlord is only entitled to recovery of half the filing fee in the amount of **\$50.00** for a total entitlement of

\$205.00. Deducting this entitlement from the **combined security and pet deposit plus zero interest of \$2,300.00 leaves \$2,095.00 to be returned to the Tenants forthwith.**

Conclusion

I Order the Landlord to retain \$205.00 from the security deposit plus interest of **\$2,095.00** in full satisfaction of the claim.

I grant the Tenants an order under Section 67 of the Act for **\$2,095.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the RTB under Section 9.1(1) of the Act.

Dated: March 17, 2021

Residential Tenancy Branch