



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL, FFL
 MNSDS-DR, FFT

Introduction

This hearing was convened by way of conference call concerning applications made by one of the landlords and the tenants. One of the named landlords has applied for a monetary order for damage to the rental unit or property; and to recover the filing fee from the tenants for the cost of the application. The tenants have applied as against both landlords for a monetary order for return of all or part of the pet damage deposit or security deposit and to recover the filing fee from the landlords. The tenants made the application by way of the Direct Request Process, which was referred to this participatory hearing.

One of the landlords attended the hearing and represented her son, who is the other landlord named in the tenants' application. Both tenants also attended. The parties each gave affirmed testimony and were given the opportunity to question each other and 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 landlord established a monetary claim as against the tenants for damage to the rental unit or property?
- Have the tenants established a monetary claim as against the landlords for return of all or part or double the amount of the security deposit?

Background and Evidence

The landlord testified that this fixed-term tenancy began on June 1, 2019 and reverted to a month-to-month tenancy after May 31, 2020. The tenancy ended on January 18,

2021. Rent in the amount of \$1,600.00 per month was payable on the 1st day of each month, and there are no rental arrears. At the outset of the tenancy the landlords collected a security deposit from the tenants in the amount of \$800.00 which is still held in trust by the landlords, and no pet damage deposit was collected. The rental unit is a condominium apartment, and a copy of the tenancy agreement has been provided for this hearing, which names both landlords and both tenants.

The tenants gave notice to the landlords to end the tenancy effective February 1, 2021. A copy of the notice has also been provided for this hearing and it is dated December 27, 2020. The landlord testified that the tenants changed the date, asking if they could stay until January 15, 2021, and pay half a month's rent for January, and the landlord agreed. The tenants actually left on the 17th of January to fix things and a move-out condition inspection report was completed that day. However, the tenants didn't return the keys until January 23. A new tenant was supposed to move in on January 18, but wouldn't do so until all keys were returned. The landlord had to change the locks, and the new tenant moved in on the 21st of January. The landlord claims \$125.00 for changing the locks and \$100.00 to replace a building fob. Receipts have been provided as evidence for this hearing.

Copies of the move-in and move-out condition inspection report have also been provided for this hearing, dated January 17, 2021 and contains the tenants' forwarding address. The landlord testified that an agent for the landlord completed the move-out portion with one of the tenants. The tenant was in a hurry to leave during the inspection and wanted a copy. The landlords' agent was in the process of writing out another report, but the tenant grabbed it and left.

The kitchen sink was clogged at the end of the tenancy, which was not ever mentioned to the landlords during the tenancy. The landlord claims \$120.75 for a plumber, and a receipt has been provided for this hearing.

The landlord also had to take time to clean the rental unit and claims \$100.00.

The landlord's total claim is \$445.75 in addition to the \$100.00 filing fee, and the landlord testified that someone at the Residential Tenancy Branch advised the landlord to keep the entire \$800.00 security deposit until after this hearing, and the amount of the landlord's award would be deducted.

The first tenant (FG) testified that he was present for the move-out condition inspection which was attended by an agent of the landlord with the landlord on the tenant's phone. The tenant told the landlord that he had lost a fob and agreed to pay \$100.00 for it. The tenants had 2 sets of keys at the beginning of the tenancy. The tenant told one of the

landlords that he would return the other set of keys after repairs were made which is why he kept 1 set of keys, including a mail key. That landlord didn't know when new a new tenant intended to move in, and agreed that the tenants should keep keys and do the things marked on the inspection report. A door needed to be fixed on closet, and a bookcase secured, which the tenant did. The sink wasn't clogged until day before the inspection and appears to be very old. The sink is part of a garburator, and a lot of times the tenants had to unplug it. The other landlord was notified by phone.

The landlord had asked the tenants to move out earlier than the effective date of the tenants' notice to end the tenancy, but their new place was not ready yet and so the landlord agreed to end the tenancy later.

The tenant further testified that cleaning was done to the same standard as when the tenants moved in, however the tenants agreed to pay \$20.00 for cleaning the oven.

The second tenant (MC) testified that the tenants had to unclog sink during the tenancy, and continued to do so with a plunger because the landlord told them to.

The tenants left the apartment in the same condition at move-out as when they moved in, and testified that the tenants had to clean it when they moved in. However, the tenants forgot to clean the oven at the end of the tenancy and agreed to pay for that.

The landlord kept asking for the tenant's husband to return to repair things on January 17 and 18, 2021, which is why they kept the keys. The landlord called the tenants on the 19th asking that they drop everything and take the keys, but the tenants explained they couldn't go right away and agreed to go the following day, but never heard back from the landlords. The tenant agrees to the landlord's claim of \$100.00 for the fob.

Analysis

Firstly, dealing with the landlord's claim, in order to be successful, the landlord must satisfy the 4-part test for damages:

1. That the damage or loss exists;
2. That the damage or loss exists as a result of the tenants' 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 landlords made to mitigate any damage or loss suffered.

I have reviewed all of the evidentiary material, and particularly the move-in/out condition inspection reports. The *Residential Tenancy Act* specifies that the reports are evidence

of the condition of the rental unit at the beginning and end of the tenancy. The only mention of cleaning required at the end of the tenancy are the oven and a kitchen drawer. The landlord did not dispute the tenants' testimony that it wasn't clean at the beginning of the tenancy, however, that's not mentioned in the move-in portion of the report. I do not accept that cleaning an oven and 1 drawer would require 4 hours at \$25.00 per hour, and therefore, I am not satisfied that the landlord has established a claim of \$100.00. The tenants agreed that they didn't clean the oven, and agreed to pay the landlords \$20.00, and I find that to be reasonable.

The tenants do not dispute the \$100.00 claim for the building fob, and I find that the landlords have established that claim.

With respect to the landlords' \$120.75 claim for the plumber,

The regulations to the *Residential Tenancy Act* specifies that if a new tenant requests new locks, the landlord must pay all costs associated with that:

25 (1) At the request of a tenant at the start of a new tenancy, the landlord must

(a) rekey or otherwise alter the locks so that keys or other means of access given to the previous tenant do not give access to the rental unit, and

(b) pay all costs associated with the changes under paragraph (a).

Therefore, I dismiss the landlord's application for \$125.00 to change the locks.

I have also reviewed the evidentiary material with respect to the clogged drain. The landlords' description of events states that the clog found by the repairman clearly showed long term neglect by the tenants. The landlord testified that the landlords were never told about a clog, but have provided a string of emails, starting on November 29, 2019 with the other landlord about required repairs. The string also includes a YouTube video entitled "How to Fix Garbage Disposal Jams." Therefore, I accept the testimony of the tenants that the landlords, or at least one of the landlords had been aware of a problem.

The landlord has also provided an Invoice for the \$120.75 repair, however the comments made by the plumber are not readable. I am not satisfied that the landlords

have established that the repair was necessary due to the tenants' failure to comply with the *Act* or the tenancy agreement, and I dismiss the claim.

With respect to the tenants' claim for recovery of the security deposit, the *Residential Tenancy Act* requires a landlord to return a security deposit or make an application to keep it within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenants' forwarding address in writing. In this case, the condition inspection report specifies that the tenancy ended on January 15, 2021 and the inspection was completed on January 17, 2021, which is when the tenant provided a forwarding address in writing. The landlord filed the Application for Dispute Resolution on January 27, 2021, which is within the required 15 days.

Having found that the landlord has established claims in the amount of \$100.00 for the building fob and \$20.00 for cleaning, I set off those amounts from the \$800.00 security deposit held in trust and I grant a monetary order in favour of the tenants as against the landlords for the difference of \$680.00.

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

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenants as against the landlords pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$680.00.

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: June 14, 2021

Residential Tenancy Branch