



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNRL, MNDL, MNSDS-DR, FFT

Introduction

This hearing dealt with monetary applications filed by both parties. The landlords applied for a Monetary Order for unpaid and/or loss of rent, damage to the rental unit and cleaning costs. The tenant applied for return of the security deposit.

Both parties appeared for the hearing and were affirmed. The parties were ordered to not record the proceeding. The hearing was held over two dates and an Interim Decision was issued following the first hearing date. The Interim Decision should be read in conjunction with this final decision.

As seen in the Interim Decision, I had issued orders with respect to the landlord's access to the tenant's evidence. At the reconvened hearing, I confirmed the landlords were able to view the tenant's evidence by accessing a different computer. Accordingly, I admitted and have considered the evidence of both parties in making this decision.

During the reconvened hearing, the landlords indicated they had additional claims for damage to the rental unit they wished to make against the tenant. I noted that the landlords were already making a damage claim and that the rules of Procedure prohibit parties from splitting their claim. I asked the landlords if they wished to withdraw their damage claim and reapply to include all of the alleged damage. The landlords opted not to and stated they wished to proceed with only the damage set out in their application.

It should be noted that after both parties had an opportunity to present their respective positions once, the allotted hearing time expired, meaning the landlords did not have an opportunity to rebut the tenant's responses to their claims. The parties were given the choice to have the hearing adjourned so that final arguments could be made, either orally or by written submission, or that I proceed to make a decision based on what I

had heard and been presented thus far. The landlords opted to have the decision made based on what I had heard and been presented thus far.

Issue(s) to be Decided

1. Have the landlords established an entitlement to recover loss of rent and compensation for damage and cleaning costs from the tenant?
2. Is the tenant entitled to return of the security deposit or should the landlords be authorized to retain all or part of it?

Background and Evidence

The tenant was provided possession of the rental unit on July 29, 2018 under an option to purchase agreement. Until such time the tenant purchased the property, if ever, the tenant was required to pay rent of \$1100.00 every month and the tenant paid a security deposit of \$550.00.

The tenant never did purchase the property and the parties confirmed that the tenant's occupation of the rental unit was that of a tenant. The parties also confirmed that the dispute before me is limited to the parties' respective rights and obligations under the Residential Tenancy Act as it pertained to the tenancy and the parties' dispute concerning disposition of the "down payment" the tenant paid to the landlords is the subject of a separate proceeding before the court.

Below, I have summarized the parties' respective claims against each other under the Residential Tenancy Act and the other parties' responses.

Tenant's application

The tenant applied for return of the security deposit. The parties were in agreement that the tenant did not authorize the landlords to retain any part of her security deposit.

The tenant testified that she provided her forwarding address to the landlord by way of a message using a popular social media platform on January 8, 2021.

The landlords filed their claim on January 14, 2021.

Landlord's application

1. Unpaid/loss of rent for January 2021 -- \$1100.00

The landlords submit that on December 9, 2020 they received notification from the tenant that she would not be purchasing the property and that she would be vacating the property on "February 31". Then on December 11, 2020, the landlords received notification from the tenant that she would be moving out of the rental unit on December 31, 2020. The landlord's response to the tenant was "thanks for the information".

The landlords instructed the tenant to give the keys to the rental unit to their agent since the landlords reside four hours away. The tenant and the landlord's agent agreed that the tenant would return the keys to her on January 1, 2021 and the tenant returned the keys on that date.

The landlord's agent proceeded to take photographs of the rental unit and started cleaning the rental unit on January 2, 2021. The landlord and his brother also travelled to the rental unit and made repairs and painted the rental unit. The landlord testified the rental unit was advertised for sale in February 2021, the tenant testified it was advertised in January 2021. The landlords stated they were uncertain when the sales contract became unconditional but ownership of the rental unit was transferred to the new owners effective at the end of March 2021.

The landlords seek loss of rent from the tenant for the month of January 2021 on the basis the tenant did not give them sufficient notice to end tenancy and failed to pay rent for January 2021.

The tenant submitted that in sending her notice to end tenancy to the landlords the landlords did not ask the tenant to pay rent for January 2021 and given the landlord's response "thanks for the information" the tenant considered the ending of the tenancy on December 31, 2020 to be "kosher" with the landlords. The landlord also instructed the tenant to give the keys to their agent and the tenant argued that had the landlords made an issue of ending the tenancy without receiving sufficient notice she would have been open to further discussions about it.

2. Cleaning and repairs

a. Cleaning

The landlords submitted that their agent, who is also the landlord's niece, advised the landlords additional cleaning of the rental unit was required and billed the landlords \$450.00 for labour to clean (18 hours at \$25/hour) and \$45.63 for cleaning supplies by way of an email dated January 13, 2021. The landlords testified that the cleaning included the kitchen appliances and cupboards, walls, floors, windows, and bathroom fixtures based on the agent's invoice sent via email. The landlords noted that the tenant had left the fridge unplugged and it was mouldy inside. Also included the cleaning claim is time their agent spent taking garbage bags of trash that were left by the tenant to the dump including part of a trampoline. The landlords' provided a copy of the emailed invoice for their niece and photographs taken by their agent on January 1 and 2, 2021 in support of their claim.

The tenant testified that she and three others cleaned the rental unit and left the rental unit "very clean". The tenant acknowledged unplugging the fridge before she left and that if additional cleaning was required, she conceded it may be to the fridge. The tenant pointed to her photographs taken at the end of the tenancy in support of her position. The tenant acknowledged that the landlord's agent likely took photographs on January 2, 2021.

b. Wall and trim -- \$750.00 + \$300.00

The landlords submitted that the drywall and trim in the upstairs hallway was very scratched. The landlords included photographs of the scratched trim and a photograph of the tenant's son on a hoverboard in the hallway of the rental unit.

The landlords submitted that baseboards and door casings were missing from the basement. The landlords explained the tenant had permission to install new flooring in the basement, which she did, but the trim was not reinstalled and was missing at the end of the tenancy.

The landlords stated they obtained an estimate from a man who did other work for them at the rental unit to repair and replace the drywall and trim, which came in at \$750.00, not including painting. The landlords decided to purchase the materials and do the work themselves as they had other repairs to make at the property. The landlords seek

\$750.00 from the tenant based on the written estimate they obtained and \$300.00 to paint the patched drywall and new trim based on an oral estimate the landlords obtained.

The tenant testified that the hallway walls and trim were largely the same at the start and end of the tenancy with the exception of some additional wear and tear. The tenant testified that the baseboard and trim the landlord's claim is missing in the basement was not there when her tenancy started.

The tenant acknowledged the photograph of her son on a hoverboard in the rental unit, claiming it was given to him as a Christmas present just before the tenancy ended. The tenant acknowledged the hallway looks rather scratched in the landlord's photographs but suggested that additional scratches may have been caused when the landlords were performing renovations after the tenancy ended.

Both parties referred to the photographs in support of their respective positions.

c. Carpet cleaning

The landlords submitted that the tenant would have had to clean the carpeting in the rec room at the end of the tenancy. The landlords stated they did this work themselves with their own steam cleaner. The landlords seek \$100.00 as they are of the position this is the going rate for carpet cleaning had they hired a carpet cleaning company.

The tenant testified that she and the people helping her clean at the end of the tenancy cleaned the carpet in the rec room three times.

Inspections and condition inspection reports

The landlords had provided a move-in and move-out condition inspection report; however, the landlords conceded that they did not perform a move-in inspection with the tenant or prepare a move-in inspection report with the tenant.

Also, the tenant was not invited to perform the move-out inspection with the landlords but on January 10 and 11, 2021 the landlords sent the tenant a move-out inspection report already filled out and dated January 1, 2021. By this date the landlord's agent had already undertaken her cleaning efforts as photographs taken January 2, 2021 show the agent with rubber gloves on.

Analysis

Tenant's application

Section 38(1) of the Act provides that the landlord has 15 days, from the date the tenancy ends or the tenant provides a forwarding address in writing, whichever date is later, to either refund the security deposit, get the tenant's written consent to retain it, or make an Application for Dispute Resolution to claim against it. Section 38(6) provides that if the landlord violates section 38(1) the landlord must pay the tenant double the security deposit.

The tenant sent a forwarding address to the landlords on January 8, 2021 using social media messaging. This is not a permissible method of service. Accordingly, I find the tenant was premature in filing an Application for Dispute Resolution seeking return of the security deposit without properly serving the landlords with her forwarding address in writing first. Generally, where a tenant is premature in filing their application for return of the security deposit, the tenant's application is dismissed with leave. However, the landlords have filed a claim against the tenant and seek to retain the security deposit in partial offset to their claims. As such, I shall dispose of the security deposit under the landlord's application and I dismiss the tenant's application without leave.

Landlord's application

A party that makes an application for monetary compensation against another party has the burden to prove their claim. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. Awards for compensation are provided in section 7 and 67 of the Act, and, as provided in Residential Tenancy Policy Guideline 16: *Compensation for Damage or Loss* it is before me to consider whether:

- a party to the tenancy agreement violated the Act, regulation or tenancy agreement;
- the violation resulted in damages or loss for the party making the claim;
- the party who suffered the damages or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

The burden of proof is based on the balance of probabilities. It is important to note that where one party provides a version of events in one way, and the other party provides a

version of events that are equally probable, the claim will fail for the party with the onus to prove their claim.

1. Unpaid/loss of rent for January 2021

Upon review of the “rental purchase agreement” I do not see evidence that the tenant was bound to occupy the rental unit for a minimum period. Rather, the contract specified that there was a maximum rental period of one year. However, during the hearing, the parties acknowledged that, by mutual agreement, the agreement was extended beyond the one year but I did not see evidence it was extended for a minimum period of time. As such, I find this to be a periodic tenancy.

In order for a tenant to end a periodic tenancy, the tenant is required to give the landlord at least one full month of written notice pursuant to section 45 of the Act.

On December 11, 2020, the tenant advised the landlords she would be vacating the rental unit on December 31, 2020, which is less than one full month, and I find this is a violation of the tenant’s notice requirements under section 45 of the Act.

Where a tenant gives a landlord insufficient notice to end tenancy and brings the tenancy to an end early, it is expected that the landlord will take reasonable action to minimize loss of rent. Typically, this means a landlord will either put the tenant on notice that they expect the tenant to pay rent for the subsequent month given the insufficient notice period and/or take steps to re-rent the unit in a timely manner. The landlords did none of these things. Rather, they thanked the tenant for the notice, did not make any attempts to have the unit re-rented for January 2021 and it appears they used the vacant month to repair and/or renovate the unit to put it up for sale.

In light of the above, I deny the landlord’s request for loss of rent for January 2021 on the basis they did not do whatever was reasonable to mitigate losses as required under section 7 of the Act.

2. Cleaning and repairs

a. Cleaning

Section 37 of the Act requires a tenant to leave the rental unit vacant, including disposal of their garbage, and reasonably clean at the end of the tenancy. There is no exception to these requirements; however, it is important to point out that a tenant is not required

to bring a rental unit to a standard of cleanliness that is greater than “reasonably clean” and if the landlord expends money to bring the rental unit to a greater level of cleanliness that is at the landlord’s expense.

The parties were in dispute as to the level of cleanliness that the tenant left the premises. I have not given any evidentiary weight to the move-out inspection report as it was not completed in accordance with the requirements of the Residential Tenancy Regulations. The regulations require that the tenant be invited to inspect the rental unit and the inspection report is prepared with the tenant present. This is intended to provide both parties the opportunity to observe and record deficiencies at the same time so as to avoid disputes concerning the condition of the property. The tenant was not invited to inspect the unit with the landlords or their agent at the end of the tenancy and only did so after several days and after the move-out inspection report was already prepared. Not surprisingly, the parties are now in dispute as to how the rental unit appeared when the tenancy ended.

Without a reliable move-out inspection report, I find the best evidence as to the condition of the rental unit to be the parties’ direct testimony and the photographs they provided. The parties had also provided written statements of witnesses; however, neither party called their witnesses to testify at the hearing and the witnesses were not subject to further examination. As such, I find the witness statements to be inferior evidence to the parties’ direct testimony and photographs and I have not relied upon them.

Upon review of the landlord’s photographs, which the tenant conceded were likely taken on January 2, 2021, I see the following areas that require appear to additional cleaning:

- Dirty bathtub
- Chalk on a bedroom door
- Mouldy fridge
- Greasy oven
- Dirty floor in kitchen
- Dirty area under kitchen sink
- Trash bags left behind

The tenant’s photographs appear to show a rental unit that is reasonably clean and I do not see trash bags left behind. However, the tenant’s photographs are taken of the rental unit from a further distance; whereas, the landlord’s photographs focus on areas that require additional cleaning and are taken closer up. The tenant conceded

additional cleaning may have been required in the fridge but objected to any other cleaning charges. Based on the landlord's photographs, I accept the landlord's position that additional cleaning was required to bring the rental unit up to a "reasonably clean" condition to those areas I describe above.

Despite finding that additional cleaning was required, I find the landlord's agent list of cleaning tasks are not entirely supported by the photographs. As such, I find I am unsatisfied that every cleaning task the agent undertook was to bring the rental unit up to a standard of reasonably clean and the agent may very well have been exceeding that standard in her cleaning efforts. As such, I find the agents charge of 18 hours to be high compared to the evidence I see in the photographs. Further, there are no receipts for the cleaning supplies. Therefore, I limit the landlord's award for cleaning to six hours, at \$25.00/hour, for an award of \$150.00.

b. Wall and trim

Section 32 of the Act provides that a tenant is required to repair damage caused to the rental unit or residential property by their actions or neglect, or those of persons permitted on the property by the tenant. Section 37 of the Act requires the tenant to leave the rental unit undamaged at the end of the tenancy. However, sections 32 and 37 provide that reasonable wear and tear is not considered damage. Accordingly, a landlord may pursue a tenant for damage caused by the tenant or a person permitted on the property by the tenant due to their actions or neglect, but a landlord may not pursue a tenant for reasonable wear and tear or pre-existing damage.

It is important to note that monetary awards are intended to be restorative. A landlord is expected to repair and maintain a property at reasonable intervals. Where a building element is so damaged that it requires replacement, an award will generally take into account depreciation of the original item. To award the landlord full replacement value of certain building elements that were several years old already would result in a betterment for the landlord. I have referred to Residential Tenancy Branch Policy Guideline 40: *Useful Life of Building Elements* to estimate depreciation where necessary.

From the landlord's photographs, the upstairs trim appears significantly scratched, especially at the corners, to the extent the paint is missing. The scratches appear rather fresh and I accept they may have been cause later in the tenancy, such as with the tenant's son hoverboard, or other activities during the tenancy. However, it also

appears to me that the trim is of an older style and had been gouged and dented in the past as prior scratches and dents were obviously just painted over.

Policy guideline 40 does not provide a specific lifespan of trim but I note that doors and drywall were given an average useful life of 20 years and cabinets 25 years. As such, I find it reasonable to expect trim to have an average useful life of 20 to 25 years and I find it likely the trim in the rental unit was likely nearing the end of its average lifespan.

Considering the above, I find the landlord's request for replacement of the upstairs trim from the tenant is over-reaching since the trim was older and not in good condition to begin with. Given the trim was merely painted over before, and was already showing signs of age and wear, I limit the landlord's claim to an estimated award to repaint over the scratched areas. I provide the landlords' an award of \$100.00 to do this.

As for the missing trim and casing in the basement, I was provided disputed testimony as to whether the trim was present at the start of the tenancy and I cannot rely upon the move-in inspection report since it was not prepared with the tenant. As such, the move-in inspection report does not offer any reliable evidence as to whether the trim was missing at the start of the tenancy or not, or if it was present, its condition. Since the landlords bear the burden of proof, I find the disputed evidence to be insufficient to meet their burden and I do not hold the tenant responsible for missing trim and casings in the basement.

c. Carpet cleaning

as part of a tenant's obligation to leave a rental unit "reasonably clean" at the end of the tenancy, the tenant is expected to have the carpets cleaned if the tenants had uncaged pets or the tenancy was greater than one year according to Residential Tenancy Branch Policy Guideline 1. The tenancy was greater than one year and I find the tenant obligated to clean the carpets.

The landlords did not provide support for the amount they claimed for carpet cleaning such as an estimate, receipt, or invoice. The landlords did not provide photographs of the rec room carpet to demonstrate it was not left clean. The landlords claim to have cleaned the carpets themselves; however, the tenant said the same thing.

The tenant did provide a photograph of the rec room. The carpeting in the rec room appears very old and is multi-coloured gold and brown, and I am unable to see that it was stained or in need of additional cleaning due to the tenant's failure to clean it.

Therefore, I find the landlords did not meet their burden of proof and I dismiss the landlord's claim for carpet cleaning against the tenant.

Filing fee, Security Deposit and Monetary Order

The landlords had limited success in their application and I limit their award for recovery of the filing fee to 50% of the fee paid, or \$50.00.

Based on all of the findings and awards provided above, the landlords are authorized to deduct \$300.00 from the tenant's security deposit for cleaning, damage, and a portion of the filing fee [\$150.00 + 100.00 + \$50.00]. I order the landlords to return the remainder of the security deposit to the tenant in the amount of \$250.00 without further delay.

In keeping with Residential Tenancy Policy Guideline 17, I provide the tenant with a Monetary Order in the amount of \$250.00 to ensure the landlord's refund the balance of the security deposit.

Conclusion

The landlords were partially successful and are authorized to deduct \$300.00 from the tenant's security deposit. The landlords are ordered to return the balance of the tenant's security deposit, in the amount of \$250.00, to the tenant without further delay. The tenant is provided a Monetary Order in the amount of \$250.00 to ensure payment is made.

The balance of the landlord's claims against the tenant are dismissed without leave. The tenant's application is also dismissed without leave.

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: September 24, 2021

Residential Tenancy Branch