



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding URBAN PACIFIC PROPERTY MANAGEMENT LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S, MNRL-S, FFL

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord seeking a monetary order for damage to the rental unit or property; a monetary order for unpaid rent or utilities; an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenant for the cost of the application.

The hearing did not conclude on the first scheduled date and I adjourned it to continue on the following day. My Interim Decision was provided to the parties.

An agent for the landlord company and the tenant attended the hearing on both scheduled dates and each gave affirmed testimony and provided evidentiary material in advance of the hearing. The landlord's agent also called 1 witness who gave affirmed testimony. The parties were given the opportunity to question each other and the witness.

Some of the evidence of the landlord was provided to the Residential Tenancy Branch the day of the first scheduled date. I declined to consider any of the evidence provided on October 4, 2021. All other evidence has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Has the landlord established a monetary claim as against the tenant for damage to the rental unit or property?
- Has the landlord established a monetary claim as against the tenant for unpaid rent or utilities?

- Should the landlord be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlord's agent (hereafter referred to as the landlord) testified that this fixed term tenancy began on September 1, 2020 and was to revert to a month-to-month tenancy after June 30, 2021, however the tenant vacated the rental unit on April 29, 2021. Rent in the amount of \$1,485.00 was payable on the 1st day of each month, and there are no rental arrears to the end of April, 2021. On August 15, 2020 the landlord collected a security deposit from the tenant in the amount of \$742.50 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a 1 bedroom apartment in a low rise apartment building, and the landlord's agent does not reside on the property. A copy of the tenancy agreement has been provided as evidence for this hearing.

The landlord further testified that the tenant has not provided the landlord with a forwarding address in writing, however when the landlord submitted the application, an order was made permitting the landlord to serve the tenant by email.

On April 30, 2021 the landlord received an email from the tenant advising that the tenant had moved out. The landlord responded the same day stating that the tenant had not given a notice to end the tenancy, had broken the lease and if rent was not received, the \$50.00 late payment fee stated in the tenancy agreement would apply. On or about May 3, 2021 the landlord attempted to collect rent from the tenant, but the tenant did not respond.

The tenant moved his belongings out of the rental unit through windows in order to avoid detection to move out without paying rent. The rental unit is on the ground floor, and there was no reason to avoid using the door; the tenant's group of people moved carpet, mattresses through the windows causing damage. The tenant and movers pulled furniture through the window and the frame of the screen bent, requiring the landlord to obtain a new one and have it installed. An invoice has not been provided for this hearing, but an e-transfer to the company has been provided.

The walls in the living room and bedroom were patched by the tenant, but the filler was not completed properly and was painted over without sanding and in the wrong color of paint, leaving lines and blotches and touched the ceiling with different colored paint. The tenant also left damage at the front door and damage to hardwood which was left

with scratches due to the furniture not being protected. The landlord had to hire the painter, which was the same painter that painted the rental unit prior to this tenancy.

At the end of the tenancy the rental unit smelled like urine; the bathroom was in a horrible state with mold and mildew and urine smell around the toilet. The kitchen had not been cleaned, food and liquid were stuck to shelves, the stove was covered in grease and was spilled over the sides and back of it. The counter edge and exhaust fan and filter were also greasy, as well as the underside of the microwave and backsplash. The inside of the oven was not cleaned at all and was left with burned food on the underside and top and door. The fridge wasn't cleaned at all either and smelled bad of old food. The tenant didn't sweep or clean the floors and dust and dirt were left on trim, the heater and windowsills. Closet shelves were not wiped.

The door was a solid door with veneer on the outside which was chipped off. An invoice for repair to the hardwood in bedroom and door has been provided for this hearing.

When movers moved the tenant's belongings they broke 2 sprinkler heads outside the window. One was completely broken and sheered off and the other was broken and pipes had to be repaired requiring cutting PBC pipe and a new connector and sprinkler head.

In the landlord's response to the tenant's email on April 30, 2021 the landlord indicated that he had left messages and texted the tenant on that date and requested the tenant to return to complete the move-out condition inspection report. The tenant didn't reply and the landlord phoned the tenant again on May 1 and on May 2, 2021 but there was no answer either date. The move-in condition inspection report was completed on July 1, 2021, the date the tenant took possession. The parties each initialled the move-in portion of the report.

Painting was completed on May 7 and then the landlord had cleaners attend mid-month. The landlord made every attempt to advertise the rental unit for rent, but it was not ready to re-rent due to its condition. Eventually the landlord found a new tenant around the 25th of May for a tenancy commencing on June 1, 2021. The landlord advertised for the same amount of rent that the tenant had been paying.

The landlord has provided a Monetary Order Worksheet setting out the following claims, totaling \$3,721.25:

- \$1,485.00 for rent for May, 2021;
- \$50.00 for a late payment fee;
- \$1,097.25 for painting;

- \$189.00 for cleaning;
- \$150.00 for repair to the window screen;
- \$400.00 for repair to the hardwood floor;
- \$250.00 for repair to the broken sprinkler; and
- \$100.00 for recovery of the filing fee.

An invoice for the painting has been provided for this hearing which is dated May 7, 2021. Also, an invoice dated May 13, 2021 has been provided for the cleaning. The landlord has also provided an invoice dated May 16, 2021 for repair and supplies to finish the hardwood floors, and another dated May 21, 2021 for repair to the sprinkler heads.

The move-in condition inspection report was filled in by a computer with check-marks, and the landlord testified that it is the standard and is easier to complete when going through it. If there were damages, the tenant was to specify what they were.

The landlord's witness testified that she is a painter working for a painting company. In June, 2020 the witness performed painting services that took about 2 hours to complete; she painted walls, trim and completed touch-ups to the ceiling.

The witness returned on May 5, 2021 and completed the painting job on May 7, 2021. When the witness first arrived the rental unit wreaked of urine and had to open all windows and wear a mask. A screen in the living room window was broken and the witness put it to the side on the first day.

The witness could not put her food in the fridge because it was extraordinarily dirty and noted lots of grease dripping on the stove from the fan and on the stove top. The oven was open and the inside was absolutely filthy. The toilet was in very bad shape and it took a lot to paint the bathroom. There was urine stained on the floor and the ceiling appeared as if someone used a roller to paint which touched the ceiling with a different color of paint. There was mold on the baseboards which had been touched up but with a different colour. Chips and scratches were evident where someone tried to fix holes, but they were uneven.

The living room wall was the worse and had been touched up with excess filler and was not smooth or sanded and had an inadequate amount of paint that did not match. The front entrance was heavily damaged and the electrical panel had the wrong color of paint. Next to the sink the walls were chipped and painted, but not filled or sanded.

The bathroom was worse. The cabinet side and back wall were damaged and stained and the witness had to clean and complete repairs.

On the first day the witness had to do a lot of prep work; covering the floor, cleaning the moldy, dusty and dirty trim, which took about 8 hours and then had to let it dry. On the second day, the witness spent 5 hours sanding, vacuuming and painting. Then another 6 hours was spent sanding, vacuuming and painting with 2 coats. The landlord provided the paint, so the witness' work was labor only.

The witness has been painting for 5 years and has also painted other units in the building.

The witness had forgotten a sweater in the rental unit and went to retrieve it on May 13, 2021 and saw there were cleaners inside. When the witness left she bumped into a lady who lived next door and the parties had a conversation that lasted about 5 or 10 minutes. The lady told the witness that 2 tenants had moved out due to chaos going on in the rental unit. She said that she was fearful, lived through torture and other tenants as well were glad that the tenants had moved out.

The tenant testified that the move-in condition inspection report provided by the landlord is completely doctored, and the tenant denies signing or initialling it; there was no report at move-in. When the tenant moved in the landlord handed the tenant the keys and said that after everything was cleaned, the landlord would attend to do the report because the rental unit wasn't ready and the landlord didn't charge a move-in fee. The tenant had to put all belongings in the centre of the room for the painter, who only painted 1 wall. No cleaners arrived and the move-in condition inspection report was never spoken about again. A co-tenant was also there and the report only contains initials of the tenant, however the photographs provided by the tenant also show that the co-tenant was there. The tenant and co-tenant went out to eat because it was too grubby inside. The move-in condition inspection report in Section C shows both names, and only initials of 1 tenant.

The tenant also testified that the landlord's photograph of the report is in color and the one served to the tenant is in black and white. The one in the photograph has both names, and the one the tenant was served with only has 1 name, and no move-in condition inspection date. The tenant has provided a UPS document with his signature for comparison purposes.

When the tenant moved in, the fridge wasn't working and kept freezing the tenant's food, and repair personnel attended twice.

The rental unit had an infestation of ants at the beginning of the tenancy, which the tenant took care of with bait traps after the landlord attempted but was unsuccessful. Copies of text messages about that have also been provided for this hearing, as well as about the condition of the rental unit, and the move-in fee was waived. The rental unit was supposed to be cleaned and painted, and the tenant moved in on July 1. Only 1 laundry machine was working for 20 tenants in the building. When the tenant left his scooter in the bike room, people messed with it by flattening tires, stealing packages in front of the building, break-ins with no security. Even a floor mat in the front was stolen. The heat didn't work well, and the tenant complained to the landlord about that.

The landlord sent a Mutual Agreement to End Tenancy several times, and the tenant told the landlord that the tenant was moving out by May 1, 2021 and sent the notice to end the tenancy by registered mail in time. The tenant has provided a copy of the letter dated March 9, 2021 with an effective date of vacancy of April 30, 2021.

The tenant didn't return to do a move-out condition inspection because there was no report done at move-in. Photographs have also been provided for this hearing, which includes a photograph of a woman in the bathroom also showing a thick layer of dust on top of the cabinet.

There was no damage to the sprinkler caused by the tenant, and the screen was in that condition when the tenant moved in.

The tenant further testified that he cleaned the rental unit prior to moving out to a better condition than it was at the beginning of the tenancy. The tenant did leave food and things in the cupboard and grease on the counter, but never used the oven at all and left it in the same condition as it was at move-in. The tenant did not leave holes in the walls. The walls had chips and cuts in the walls prior to moving in. The tenant did not attempt to fill and repair damage to the walls, which is beyond his craft. The tenant believes that the previous tenant who didn't get their security deposit back left the walls that way. The tenant is a research scientist and does not know how to fix a wall. The tenant didn't do any damage except for normal wear and tear, and did not hang anything on the ceiling.

The tenant's withdrawal limit was \$1,000.00, and each time, the tenant made an e-transfer of \$1,000.00 and gave the landlord \$485.00 in cash the next day. The tenant only received a receipt for the amount paid in cash the very first time. The tenant gave the landlord notice to end the tenancy and does not owe any rent, but thought the landlord wanted to keep the security deposit because the tenant moved out prior to the end of the fixed term.

Analysis

Where a party makes a claim as against another party for damage or loss, the onus is on the claiming party to satisfy the 4-part test:

1. that the damage or loss exists;
2. that the damage or loss exists as a result of the other party's failure to comply with the *Residential Tenancy Act*, regulation or tenancy agreement;
3. the amount of such damage or loss; and
4. mitigation.

In this case, I have reviewed all of the evidence, and note in particular that the landlord used a computer to fill in the move-in condition inspection report in the absence of the tenant, and testified that it was up to the tenant to specify any damages at the beginning of the tenancy. That is contrary to the law. A landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession. It is not up to the tenant to let the landlord know if it's accurate or not after the fact. Further, the landlord and tenant must sign the report, not initial it. I have also compared the initials of the tenant on the move-in condition inspection report to the UPS document as mentioned by the tenant as well as the tenant's notice to end the tenancy, and I find no match.

A landlord must also give the tenant the tenant at least 2 opportunities to schedule the move-out condition inspection in the approved form. If the landlord fails to do so, the landlord's right to claim against the security deposit or pet damage deposit for damages is extinguished, and I so find; the landlord has not provided a copy of the approved form.

However, the landlord's right to make a claim for damages is not extinguished. I have reviewed the copious amounts of evidence provided by the parties, and I am not at all convinced that the landlord has established that the rental unit was in reasonable condition at the beginning of the tenancy. The tenant's photographs also show a deep layer of dust on the bathroom cabinet, and I accept the testimony of the tenant that he never even used the oven, and I dismiss the landlord's claim of \$189.00 for cleaning.

The tenant also testified that the painter only painted 1 wall at the beginning of the tenancy, and given the testimony of the painter that she was there for 2 hours, I accept that. I find that the landlord has failed to establish that there weren't already holes and

nicks and damages prior to this tenancy, and I dismiss the landlord's \$1,097.25 claim for painting.

Given the testimony and evidence, and lack of evidence of a valid move-in condition inspection report, I also dismiss the landlord's \$400.00 claim for repair to the hardwood floor and \$250.00 repair to the broken sprinkler.

A landlord may not charge more than \$25.00 for a late payment of rent, even if the tenancy agreement specifies more; a landlord must not make any terms of a tenancy agreement that are not sanctioned by the *Act*, and therefore I dismiss that portion of the landlord's application.

The landlord has also applied for a monetary order for unpaid rent, and the landlord's right to claim against the security deposit for unpaid rent or utilities is not extinguished.

The tenant has provided proof of giving the landlord notice in writing to end the tenancy effective April 30, 2021, which was sent by registered mail on March 10. The landlord testified that on April 30, 2021 the landlord received an email from the tenant advising that the tenant had moved out.

The tenant has also provided evidence of sending April's rent in the amount of \$1,450.00 via UPS on March 31, 2021, and the landlord agreed that rent was paid to the end of April. The landlord has not provided any evidence of attempting to re-rent prior to June 1, 2021 and I am not satisfied that the landlord has established that the rental unit was not rentable due to the condition left by the tenant, but due to the condition it was left for the tenant by the landlord.

In the circumstances, I am not satisfied that the landlord has established any of the claims made as against the tenant, and I dismiss the landlord's application in its entirety without leave to reapply.

The landlord still holds the security deposit of \$742.50 in trust, and if the tenant does not provide a forwarding address in writing within a year of the date the tenancy ends, the landlord may keep it. If the tenant provides the landlord with a forwarding address on or before April 29, 2022, the landlord must return the security deposit to the tenant within 15 days.

Conclusion

For the reasons set out above, the landlord's application is hereby dismissed in its entirety without leave to reapply.

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: October 18, 2021

Residential Tenancy Branch