



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, MNDL-S, MNRL-S, FFL
 MNSDB-DR, FFT

Introduction

This hearing was convened by way of conference call concerning applications made by the landlord and by the tenant.

The landlord has applied for a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement; 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 tenant has applied by way of the Direct Request process for a monetary order for return of the security deposit and to recover the filing fee from the landlord, which was referred to this participatory hearing, joined to be heard with the landlord's application.

The landlord and the tenant attended the hearing and each gave affirmed testimony. The parties were given the opportunity to question each other and to 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 tenant for unpaid rent?

- 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 money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement?
- Should the landlord be permitted to keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?
- Has the tenant established a monetary claim as against the landlord for return of all or part of the security deposit and pet damage deposit?

Background and Evidence

The landlord testified that this tenancy originally began on July 1, 2018 with the tenant and another person for rent in the amount of \$1,600.00 per month. A Mutual Agreement to End Tenancy was signed by the landlord and the other person, and a new tenancy agreement was signed by the tenant and the landlord. A copy has been provided for this hearing, specifying rent in the amount of \$1,640.00 payable on the 1st day of each month. On July 30, 2018 the landlord collected a security deposit from the tenant in the amount of \$800.00, as well as a pet damage deposit in the amount of \$800.00 which was collected in 2 payments during the tenancy. Both deposits are still held in trust by the landlord. The rental unit is an upper suite in a 4-plex, and the landlord does not reside on the property.

The landlord further testified that on May 28, 2021 the tenant gave the landlord a letter containing the tenant's forwarding address.

A move-in condition inspection report was completed by the parties and a copy of the report was given to the tenant. A move-out condition inspection report was completed by the parties on May 1, 2021.

The landlord gave a notice to end the tenancy to the tenant in February, 2021 and the tenant disputed it. A hearing was scheduled for May 17, 2021, but in the meantime the landlord gave the tenant another notice to end the tenancy on March 30, 2021. However, the tenant moved out of the rental unit notifying the landlord on April 30, 2021 that the tenant had vacated the rental unit without prior notice and before the May 17, 2021 hearing.

The landlord claims 1 month's rent, or \$1,640.00 for the tenant's failure to give notice to end the tenancy. The landlord was anticipating that the tenant would be there for the

month of May, 2021 and had 3 prospective tenants looking. The landlord had told prospective renters that she may have a place available for June 1, 2021. However on April 30, 2021 the tenant advised that she had already moved out.

During the last 10 days or so in May, 2021 the landlord allowed new tenants to move some large items into the rental unit, but they didn't move in until June 1, 2021. They were renting another unit belonging to the landlord and paid rent for the other place to May 31, 2021.

The landlord has also provided a Monetary Order Worksheet setting out the following damage claims, totaling \$1,006.44:

- \$215.06 for carpet and installation;
- \$155.51 for replacement of a curtain rod and 4 panels;
- \$15.66 for repair to a bi-fold door track;
- \$33.17 for light bulbs and a door stopper;
- \$17.34 for a floor diffuser;
- \$126.00 for a dishwasher repair bill;
- \$193.70 for curtain dry cleaning;
- \$50.00 for the landlord's time and gasoline to take tires to the dump;
- \$100.00 for 4 hours of the landlord's time to clean the kitchen; and
- \$100.00 for 4 hours of the landlord's time to clean lights and ceiling fans.

The landlord testified that the carpet had been installed in 2013 and the claim is for the depreciated amount. At the end of the tenancy the carpet had lots of stains from pets and kids spilling juice on the carpet. The carpet had not been cleaned during the tenancy and was so soiled that cleaning was not an option. A copy of a receipt dated May 6, 2021 has been provided in the amount of \$955.80, as well as an Invoice dated July 11, 2013 in the amount of \$1,038.00 as evidence of the purchase prior to this tenancy.

The bedroom curtain rod was bent beyond repair and the living room curtains had been cut or torn. The tenant had sewn it but it couldn't be salvaged due to the location of the cut. The living room window is quite wide and it took 4 panels to replace the curtains. A receipt has been provided for this hearing for \$155.51.

The bi-fold door track in the medium sized bedroom was bent and can't be bent back, but had to be replaced. A receipt has been provided in the amount of \$15.66.

The landlord had to replace 2 light bulbs in the living room and a couple in the bathroom. The door stopper was screwed to the wall in a bedroom to protect the wall from the door knob, and it was missing at the end of the tenancy. A receipt has also been provided in the amount of \$33.17.

The diffuser is also known as a vent cover, which was broken at the end of the tenancy, and a receipt in the amount of \$17.34 has been provided.

The dishwasher wasn't functioning and the landlord paid the repair bill, however it broke again, and the landlord claims the costs of the 2nd repair. An Invoice has been provided in the amount of \$126.00 dated September 9, 2020. It states: "CHECK AND TEST REMOVE GOOLEEYE FROM DRAIN TESTED OK." An email dated June 1, 2021 has also been provided referencing a Bosch Dishwasher Repair, which states that the writer confirms that on 2 separate visits, the writer found foreign objects in the drain system causing the dishwasher not to drain, with 2 different blockages; rice the first time and the eye of a doll the second time. The email is in response to the landlord's email request dated May 31, 2021 about repairs on July 3, 2020 and September 9, 2020.

The kitchen and 3 bedrooms have black-out curtains which had to be dry cleaned at the end of the tenancy and a receipt dated Saturday, May 15, has been provided in the amount of \$193.70.

The tires were left outside under the stairs. The landlord sent a message to the tenant and her former boyfriend, and the tenant replied that she didn't know who the tires belonged to, but another neighbour said they belonged to the previous boyfriend. The landlord texted the boyfriend, who told the landlord to leave him alone.

The landlord spent 4 hours cleaning the kitchen; the tenant had not cleaned the cupboards, drawers, oven and tops of cupboards. They had not been wiped and were covered with grease. The landlord is not certain if the tops of the cupboards had been checked at move-in, and testified that previous tenants didn't clean and forfeited their security deposit, and the landlord completed a deep cleaning before this tenancy.

One of the light fixtures that the landlord had to clean was in the kitchen, so covered in grease and dust above the sink, and it took a very long time to clean it.

There were 2 ceiling fans, one in the bedroom and one in the living room, and each had to have all the blades and the hardware cleaned.

The landlord has a check-sheet for tenants moving out, and usually gives it to tenants about a month before the end of the tenancy. A copy has been provided for this hearing which shows a minimum charge of \$50.00.

The landlord is not certain how much of the damage left by the tenant was caused by the tenant's pet, but believes the damage to the carpet and perhaps damage caused to the curtains were caused by the tenant's pets.

The tenant testified that she moved out of the rental unit on April 30, 2021 without giving notice to the landlord because the landlord gave the tenant a notice to end the tenancy effective on April 30, 2021. Therefore, the tenant shouldn't have to pay rent for May.

With respect to the landlord's claim for damages, the tenant has provided photographs of the rental unit taken the day the tenant vacated, showing that the rental unit was cleaned.

The tenant is aware of the track on the closet door had been broken during the tenancy, and knew there were some light bulbs burned out. The tenant didn't have the money to pay for carpet cleaning, and testified that it was not beyond cleaning and didn't have to be replaced.

The landlord has added a photograph of some sticky stuff on the wall, but that wasn't there when the tenant left, and refers to the tenant's colored photographs provided for this hearing. The rental unit was clean when the tenant left.

The tenant was present for the move-out condition inspection but didn't sign the report because she didn't agree with what the landlord was saying, such as \$100.00 for 5 light bulbs and wouldn't give the deposits back. The tenant disagreed so didn't sign that part of the inspection report.

The landlord had the dishwasher repaired during the tenancy, but it still didn't work right, and the tenant told the landlord that it still caused issues and was only working intermittently.

The curtains had been in the house during other people living there, and the tenant didn't think that they should be washed.

The tenant's grandmother cleaned the stove and other things, and the tenant does not know who the tires belonged to.

SUBMISSIONS OF THE LANDLORD:

The landlord disagrees that the tenant advised that the dishwasher wasn't working or only working intermittently after the first repair. The landlord is a hands-on landlord and wouldn't have waited over a month before getting the dishwasher back up and running.

SUBMISSIONS OF THE TENANT:

The tenant sent a text message to the landlord about the dishwasher, and the landlord told the tenant to call for repair, and the tenant had to wait about 3 weeks before it was serviced again.

Analysis

Firstly, the parties agree that the tenant was served with a notice to end the tenancy and disputed it. If the tenant had been successful, the tenant would be required to give the landlord a month's notice to vacate. Given that the tenant didn't give any notice to vacate and didn't follow through with the dispute, the tenant still had an obligation to give the notice required under the legislation to vacate. I am satisfied that the landlord is entitled to one month's rent, or \$1,640.00.

With respect to the landlord's claim for damage to the rental unit, in order to be successful the landlord must satisfy the 4-part test:

1. that the damage or loss exists;
2. that the damage or loss exists as a result of the tenant's failure to comply with the *Act* or the tenancy agreement;
3. the amount of such damage or loss; and
4. what efforts the landlord made to mitigate any damage or loss suffered.

Further, the *Act* specifies that the move-in and move-out condition inspection reports are evidence of the condition of the rental unit at the beginning and end of the tenancy. In this case, the tenant testified that she didn't sign the move-out portion because she didn't agree with it.

I have reviewed the inspection reports and the photographs provided by the parties. The landlord's claim for cleaning the kitchen of 4 hours and \$100.00 is not reflected in the move-out condition inspection report, which states: "3 drawers to right of stove not cleaned," and, "oven not cleaned." I do not accept that cleaning drawers and an oven

would take 4 hours, and I dismiss the landlord's claim of \$100.00 for cleaning the kitchen.

In all other respects, I find that the landlord has established costs for damages with receipts, invoices and the tenant's failure to comply with the *Act*, by failure to leave the rental unit undamaged at the end of the tenancy. The following claims listed in the landlord's Monetary Order Worksheet are ordered, totalling \$906.44:

- \$215.06 for carpet and installation;
- \$155.51 for replacement of a curtain rod and 4 panels;
- \$15.66 for repair to a bi-fold door track;
- \$33.17 for light bulbs and a door stopper;
- \$17.34 for a floor diffuser;
- \$126.00 for a dishwasher repair bill;
- \$193.70 for curtain dry cleaning;
- \$50.00 for the landlord's time and gasoline to take tires to the dump;
- \$100.00 for 4 hours of the landlord's time to clean lights and ceiling fans.

The landlord currently holds a security deposit in the amount of \$800.00 as well as a pet damage deposit in the amount of \$800.00, which the tenant has applied to recover from the landlord. The law requires a landlord to return the deposits within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing or must make an Application for Dispute Resolution claiming against the deposits within that 15 day period. If the landlord fails to do either, the landlord must repay double the amount(s).

In this case, the parties agree that the tenancy ended on April 30, 2021 and the landlord received the tenant's forwarding address in writing on May 28, 2021. The landlord filed the Application for Dispute Resolution claiming the deposits on June 7, 2021, which is within the 15 day period.

The *Act* also specifies that a landlord may only claim a pet damage deposit for damage caused by a pet. In this case, the landlord believes that the damage to the carpet and drapes was caused by the tenant's pet, but the claims are for \$215.06 and \$155.51 respectively, which totals \$370.57, but the landlord withheld \$800.00.

The landlord's position is that previous hearings have resulted in the landlord keeping both deposits where the landlord's claim exceeds the deposits. However, the *Act* is very specific:

38 (3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(7) If a landlord is entitled to retain an amount under subsection (3) or (4), a pet damage deposit may be used only for damage caused by a pet to the residential property, unless the tenant agrees otherwise.

In this case, the tenant has not agreed in writing that the landlord retain any portion of the deposits. I find that the landlord ought to have returned the difference to the tenant within 15 days of receiving the tenant's forwarding address in writing. Therefore, I find that the tenant is entitled to double the amount of the pet damage deposit.

Having found that the landlord has established a claim for unpaid rent in the amount of \$1,640.00 and damages totaling \$906.44 and the tenant is entitled to a credit for the deposits totalling \$800.00 and \$1,600.00, I set off those amounts, and I order that the landlord keep the deposits in partial satisfaction of the landlord's claim and I grant a monetary order in favour of the landlord for the difference in the amount of \$186.44 (\$1,640.00 unpaid rent + \$906.44 damages = \$2,586.44 - \$800.00 security deposit = \$1,786.44 - \$1,600.00 pet damage deposit = \$186.44).

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 order the landlord to keep the security deposit and pet damage deposit, and I grant a monetary order in favour of the landlord as

against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$186.44.

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: November 10, 2021

Residential Tenancy Branch