



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 convened by way of conference call concerning an application made by the landlords seeking a monetary order for damage to the rental unit or property; an order permitting the landlords 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.

One of the landlords and the tenant attended the hearing, and the tenant called 1 witness. The landlord and the tenant's witness each gave affirmed testimony, and the parties were given the opportunity to question each other and to give submissions.

At the commencement of the hearing I learned that the tenant has not provided any of the tenant's evidentiary material to the landlord. The tenant advised that the landlord served the tenant by email so the tenant was not sure if the tenant should respond to it. The tenant applied to adjourn the hearing, which was opposed by the landlord, and I declined to adjourn.

Any evidence that a party wishes me to consider must be provided to the other party. Since the tenant has not done so, I decline to consider any of the tenant's evidence.

Issue(s) to be Decided

- Has the landlord established a monetary claim as against the tenant for damage to the rental unit or property?
- Should the landlord be permitted to keep all or part of the security deposit or pet damage deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlord testified that this fixed-term tenancy began on September 20, 2019 and reverted to a month-to-month tenancy after September 30, 2020, which ultimately ended on May 31, 2021. Rent in the amount of \$2,600.00 was payable on the 1st day of each month and there are no rental arrears. On September 20, 2019 the landlord collected a security deposit from the tenant in the amount of \$1,300.00 as well as a pet damage deposit in the amount of \$650.00, both of which are still held in trust by the landlord. The rental unit is one of 2 suites in a house, and other tenants resided in the other suite; the landlord does not reside on the property.

The landlord further testified that the tenant gave notice to end the tenancy on April 22, 2021 by email effective May 31, 2021. On June 2, 2021 the landlord received an email from the tenant which contained the tenant's forwarding address.

The landlords have provided a Monetary Order Worksheet setting out the following claims, totaling \$9,407.49:

- \$3,800.00 to replace the gas fireplace;
- \$4,700.00 to replace a burned mantle;
- \$133.82 for a clogged dishwasher repair;
- \$123.67 for another clogged dishwasher repair;
- \$250.00 as an estimate for another clogged dishwasher repair;
- \$390.00 for cleaning at move-out; and
- \$210.00 for carpet cleaning.

Move-in and move-out condition inspection reports were completed at the beginning and end of the tenancy and copies have been provided by the landlord for this hearing.

The landlord testified that the tenant had sent photographs to the landlords saying that the glass in the gas fireplace had exploded. An Invoice from the technician has been provided for this hearing, and the landlord testified that since the glass had been blown into it, it was caused by being hit. The fireplace is too old for just replacing the glass so the entire fireplace had to be replaced; it was deemed unsafe to replace the glass by the technician. The fireplace was original to the house which was built in 2008. The damage occurred on July 25 or 26, 2020 and was replaced on July 31, 2020, during the tenancy.

The mantle was a custom mahogany with shelving and cubby holes for storage of items. During the tenancy the tenant lit candles and placed one in a cubby essentially setting fire to the mantle and scorching it on the inside. The landlord had someone assess it for repair or replacement, and photographs have been provided for this hearing. There is no way to repair it to match and it sits in front of a window so it couldn't be matched, which would also devalue the house. An estimate for replacement has been provided for this hearing, and the landlord testified that due to the pandemic, the price of lumber is insane. The mantle itself is intact.

The dishwasher required continual repairs due to clogging, and the tenant called the landlord about it twice. Invoices have been provided for this hearing. Each time it was repaired the tenant was told that it was clogged from not scraping plates and the tenant said she would "do better." However, it was not working at the end of the tenancy because the latch was snapped. The dishwasher was replaced about 4 months prior to this tenancy.

The tenant had people in and out and claimed that they had cleaned. However during the move-out condition inspection, floors were sticky causing shoes to stick to the tile. There were streaks and film on everything, including countertops, cabinet faces and the floor, but they had vacuumed. Wax and dust remained on the mantle, which was not wiped or cleaned.

The tenant lived there for almost 2 years and did not have the carpet cleaned by a professional or with a steam cleaner. Although the tenant replaced the carpets, part of the tenancy act says that the tenant must clean carpets at the end of a tenancy.

The landlord has not made a claim for damages caused by a pet, and the tenant has not served the landlord with an Application for Dispute Resolution claiming the security deposit or the pet damage deposit.

During cross examination by the tenant, the landlord testified that tenants previously left \$25,000.00 worth of damages, as assessed by a friend who is a realtor.

The tenant's witness is a realtor and testified that he has several other realtors that he supervises on his team.

The witness attended the rental unit for the move-out condition inspection as agent for the tenant, with 2 representatives for the landlord. The tenant had a medical emergency, and the witness is the tenant's ex-husband, so he stepped in. The witness did not sign the move-out condition inspection report because he was not the tenant,

and the people representing the landlord claimed to be property managers, but were not licensed. They would not give the witness a copy of the report, but the witness took photographs.

The condition of the rental unit was great, and the witness paid over \$600.00 for 3 cleaners. The landlord's representatives said the cleaning was satisfactory and checked that off on the move-out condition inspection report. They also had a checklist and there were no discussions about it not being cleaned.

The fireplace had been repaired months prior to the end of the tenancy.

The carpets could have been steam-cleaned at the end of the tenancy, but the tenant had a medical emergency so that wasn't done, but they were in a good and clean condition, and there were no complaints from the landlord or the landlord's representatives. The rental unit was move-in ready and new tenants moved in that day.

Analysis

Where a party makes a claim for damage or loss, the onus is on that 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* or the tenancy agreement;
3. the amount of such damage or loss; and
4. what efforts the claiming party made to mitigate any damage or loss suffered.

Further, the *Act* states 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 was not able to attend for the move-out condition inspection, and the agent sent on behalf of the tenant testified that he didn't sign the move-out portion because he was not the tenant and because the people sent by the landlord were not licensed property managers. The regulations specify that a tenant may appoint an agent but must advise the landlord in advance. There is nothing to suggest whether or not the landlord was notified, however the landlord wasn't there either. There is nothing in the regulations to specify that a landlord may send an agent, however the *Act* describes a landlord as:

"landlord", in relation to a rental unit, includes any of the following:

- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
 - (i) permits occupation of the rental unit under a tenancy agreement, or
 - (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;
- (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);
- (c) a person, other than a tenant occupying the rental unit, who
 - (i) is entitled to possession of the rental unit, and
 - (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;
- (d) a former landlord, when the context requires this.

The landlord testified that the agents of the landlord who attended for the move-out portion of the inspection report was at the rental unit for the first month after the start of the tenancy, again at 3 months and 6 months. Therefore I find that the people who attended on behalf of the landlord were agents of the landlord as described in the *Act*, and there is no requirement that they be licensed property managers.

I have reviewed the condition inspection reports, and I have considered the testimony of the landlord and the tenant's witness, who is a licensed realtor.

With respect to the fireplace, the invoice dated July 31, 2020 for **\$3,360.00** states that because there were pieces of glass inside and none outside, it was broken inward. It also confirms the landlord's testimony that the glass was a discontinued item, and the fireplace had to be replaced. The tenant's witness argues that if it were an issue it ought to have been negotiated prior, and I can't disagree. However, I am satisfied that the landlord has established the claim.

With respect to the \$4,700.00 claim to replace a burned mantle, I have reviewed the photographs provided by the landlord and the estimate. I find that the damage was caused by the tenant. The estimate gives the landlord 2 options, to fix or to rebuild. The condition inspection report shows that a few holes existed at the beginning of the tenancy and holes and candle wax and a burn existed at the end of the tenancy. Any award for damages must not put the landlord in a better position financially than the landlord would be if the damage had not occurred during this tenancy. Given that it was

not in excellent condition at the beginning of the tenancy, I find that the estimate for fixing rather than replacing is justified. That estimate comes to **\$650.00**.

The landlord has also made 3 separate claims for unclogging a dishwasher. The first occurred on or about May 12, 2020 according to the invoice for \$123.67, which I find is a landlord's responsibility. The second occurred on or about June 7, 2020 for **\$133.82**. Both invoices indicate that the drain was clogged, and the first also had a missing clamp. The landlord's third claim is an estimate of \$250.00, well over the costs of the first 2 repairs. I accept the testimony of the landlord that the latch was broken, but there is no evidence that the cost should exceed the previous repairs, or if so, by how much, and I dismiss that portion of the application.

With respect to the claim of \$390.00 for cleaning at move-out, I accept the undisputed testimony of the tenant's witness that new tenants moved in the same day as the move-out condition inspection on June 1, 2021, however the Invoice provided by the landlord for cleaning shows that the cleaner attended on June 3 and 4. The move-out condition inspection report shows that the only cleaning required was a closet in the 2nd bedroom and the carpet. I dismiss the landlord's application for cleaning.

A tenant is required to have a carpet cleaned at the end of a tenancy if the tenancy lasts more than a year or if the tenant has pets that are not kept in a cage. In this case, the tenant resided in the rental unit for over a year, and I accept the **\$210.00** claim for carpet cleaning.

Since the landlord has been partially successful, the landlord is also entitled to recovery of the **\$100.00** filing fee.

The landlord currently holds a security deposit in trust in the amount of \$1,300.00 as well as a pet damage deposit in the amount of \$650.00. The landlord received the tenant's forwarding address on June 2, 2021 and the tenancy ended on May 31, 2021. A landlord must return the deposit(s) to a tenant within 15 days of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing, or must make an application claiming against the deposit(s) within that 15 day period. If the landlord fails to do either, the landlord must repay double the amount to the tenant. A landlord may not make a claim against a pet damage deposit except for a claim for damages caused by a pet. In this case, the landlord made the application on June 8, 2021, which is within 15 days, but has not made a claim for damages caused by a pet, and therefore ought to have returned the pet damage deposit to the tenant within that 15 day period. Therefore, I find that the landlord must repay double the amount of the pet damage deposit, or \$1,300.00.

In summary, I find that the landlord has established claims in the amount of **\$3,360.00** for the fireplace, **\$650.00** for the mantle, **\$133.82** for dishwasher repair, **\$210.00** for carpet cleaning, and **\$100.00** for recovery of the filing fee, for a total of **\$4,453.82**.

Having found that the landlord has established a monetary claim as against the tenant in the amount of \$4,453.82, I order the landlord to keep the \$1,300.00 security deposit and \$1,300.00 pet damage deposit in partial satisfaction of the claim, and I grant a monetary order in favour of the landlord for the difference in the amount of \$1,853.82.

Conclusion

For the reasons set out above, I hereby order the landlord to keep the security deposit and pet damage deposit, totalling \$2,600.00, 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 **\$1,853.82**.

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 25, 2021

Residential Tenancy Branch