



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-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 damage to the rental unit or property; 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 for a monetary order for return of the security deposit or pet damage deposit and to recover the filing fee from the landlord. The tenant's application was made by way of the Direct Request process which was referred to this participatory hearing.

The landlord and the tenant attended the hearing and the tenant was accompanied by an Advocate. The parties each gave affirmed testimony and were given the opportunity to question each other and to give submissions.

At the commencement of the hearing the landlord advised that no evidence from the tenant had been received. The tenant advised that the evidence was served by email to the landlord on November 19, 2021. The landlord got the email and asked the tenant to send it by mail because it was large. The tenant sent it by registered mail on November 22, 2021 to the rental unit, which is the current residence of the landlord, who moved into the rental unit after the tenancy had ended. The landlord submitted that the landlord's mail is only collected at the landlord's place of business.

I refer to the regulations to the *Residential Tenancy Act*:

43 (1) For the purposes of section 88 (j) [*how to give or serve documents generally*] of the Act, the documents described in section 88 of the Act may be

given to or served on a person by emailing a copy to an email address provided as an address for service by the person.

When documents are considered to be received

44 A document given or served by email in accordance with section 43, unless earlier received, is deemed to be received on the third day after it is emailed.

I am satisfied that the tenant has complied in providing the landlord with the evidence, and all evidence of the parties 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?
- Should the landlord be permitted to keep all or part of the security deposit in full or partials satisfaction of the claim?
- Has the tenant established a monetary claim as against the landlord for return of all or part or double the amount of the security deposit or pet damage deposit?

Background and Evidence

The landlord testified that the tenancy began on June 1, 2017 and was fixed until May 31, 2018, however there were 4 tenancy agreements over the years. The tenancy ended on June 1, 2021. Rent in the amount of \$1,650.00 was payable on the 1st day of each month, which was raised to \$1,680.00 on May 1, 2019 and there are no rental arrears. In May, 20217 the landlord collected a security deposit from the tenant in the amount of \$825.00 as well as a pet damage deposit in the amount of \$400.00, both of which are still held in trust by the landlord. The rental unit is a condominium apartment, and a copy of the latest tenancy agreement has been provided for this hearing. It states that the fixed term tenancy began on May 1, 2020 and ended on April 30, 2021 for rent in the amount of \$1,720.00 payable on the 1st day of each month, and is signed by a landlord but not by a tenant.

No move-in or move-out condition inspection reports were completed, however before and after videos and photographs have been provided for this hearing.

The landlord received the tenant's forwarding address in an email on June 12, 2021.

The landlord has provided a Monetary Order Worksheet setting out the following claims, totaling \$1,403.00:

- \$201.34 for Handy Mac Services;
- \$677.60 for Handy Mac Services to replace a door and casing;
- \$59.59 for curtains;
- \$114.98 for more curtains;
- \$200.00 for the landlord's stay in a hotel; and
- \$150.00 for 5 hours of cleaning.

Invoices and receipts have been provided for this hearing, for Handy Mac Services, curtains and a cleaner. A string of emails from the hotel and the landlord has also been provided, showing that the hotel stay is \$200.00 per night.

The first Handy Mac Invoice states that on June 12, 2021 the contractor removed and replaced the transition into the bathroom, sanded the damaged door casing and frame, put 2 coats of paint the door casing and frame, and adjusted 1 side of the laundry doors for a cost of \$201.34. The landlord testified that the door was tilted and wouldn't open or close properly. The contractor tried to sand but that didn't work. The tenant was there for 4 years, and this was pet damage, and the tenant told the landlord in a text message that the landlord could keep the pet damage deposit. The walk-through was done quickly and the tenant acknowledged it verbally.

Two more coats of paint were also required, and photographs have been provided of this hearing. The rental home was last painted prior to this tenancy however the frame of the door is missing chunks and paint is not sufficient to fix it.

The curtains were a "rolly" kind, custom made, and 1 was not functioning at the end of the tenancy. The curtains were scratched and covered in hair and dirty. Instead of purchasing custom made curtains, the landlord purchased cheaper ones for the main living area. There are 6 panels of curtains to cover all 3 windows.

The landlord was supposed to move into a new place on April 16, 2021 but that home was flooded that day. The landlord paid a monthly rate for about 2 months from April 16 to June 7, 2021 for a hotel. When the tenant moved out of the rental unit, it was very filthy, and the landlord asked the tenant to clean. The landlord's cleaner couldn't attend until the Monday after June 1, so the landlord had to stay in the hotel for an extra night. A string of emails between the landlord and the hotel has been provided wherein the landlord is told that the cost to stay for an extra night would be \$200.00.

The landlord's cleaner arrived on June 7, 2021, and a copy of the invoice has been provided for this hearing.

The landlord gave the tenant 2 cheques, one for the security deposit and one for the pet damage deposit and told the tenant not to cash them until the landlord could receive quotes for repairs. The landlord also gave the tenant the opportunity to clean the rental unit or pay for the landlord's cleaner, and to have someone fix damages to the door casing. A day or 2 after giving the cheques to the tenant, the landlord put a stop payment on them.

During the tenancy, the landlord was a good landlord. The rental unit is now the landlord's home and there are lots of issues, including repair to the washer and the fire extinguisher was left unusable.

The tenant testified that the rental unit was not left in a mess and dated photographs have been provided from June 1, 2017 to the date the tenant moved out. The tenant kept it clean, but admits that the cat did scratch the door. The building is 24 years old and over time things deteriorate. The tenant testified that the photographs show how the rental unit was provided to the tenant and how it was left at the end of the tenancy.

When the landlord gave the security deposit and pet damage deposit back to the tenant, the tenant told the landlord that the tenant agreed to damages and advised the landlord to let the tenant know about the damages to the door. However the landlord demanded that the tenant hire professional cleaning services of at least 4 hours after the tenant had already moved out. It is a 450 square foot condominium apartment, and there was no major damage aside from the door.

The rental unit has never been painted during the tenancy and the landlord was going to repaint anyway. The condition of the rental unit at the end of the tenancy was general wear and tear and it is not fair to say that it was so gross that the landlord had to stay a night in a hotel.

SUBMISSIONS OF THE LANDLORD:

The landlord works long hours and has a cleaner come in, food and hair on the wall is not wear and tear, and the rental unit was not cleaned by any means.

SUBMISSIONS OF THE TENANT'S ADVOCATE:

The landlord's claim for a hotel stay has no credence.

Analysis

Where a party makes a claim for damage or loss against another party, 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. what efforts the claiming party made to mitigate any damage or loss suffered.

In this case, the landlord claims damages to the door casing and the door frame, and the tenant does not dispute that damage. Therefore, I find that the landlord has established the claim of \$201.34.

The second Invoice is not an Invoice, but 2 emails. The first states that the rate is \$70.00 and is dated June 12, 2021. The second email from the contractor states that a new door with frame is between \$230 and \$300 depending on the style selected. That is not proof of cost. It also states that the labour will be 6 hours = \$360. There is no evidence to satisfy me of the actual cost of the new door. Therefore, I find that the landlord has established \$360.00.

I refer to Residential Tenancy Policy Guideline #40 – Useful Life of Building Elements, which puts the useful life of interior paint at 4 years. The parties agree that the tenancy lasted 4 years and was not painted during the tenancy. Therefore, I find that any painting required at the end of the tenancy is wear and tear.

I have reviewed all of the evidence, including the string of emails between the landlord and the painter, who advises the landlord that it would be good to book the movers for the afternoon of June 2nd to ensure the painter can finish that morning. The landlord replied that the movers would be booked for the 4th, and on June 2 the painter states that he ran out of paint and would finish the following day. On June 3 the painter advises that the unit was not completely ready to be painted upon arrival due to bits of splattered food and other splashes that needed to be cleaned, and that baseboards, windows and closet shelves needed to be cleaned of dirt and hair.

Some of the videos and photographs provided by the landlord could not be opened, giving an error message stating that the file could not be opened because the format is unsupported or the file is corrupted. However, I have also reviewed the email strings between the landlord and the cleaner, who states that the bathroom was very dirty and

the cleaner spent 2 hours, and in the kitchen everything was very dirty and greasy, including the floor and cabinets.

The landlord has provided a copy of an Invoice for cleaning in the amount of \$150.00, and I am satisfied with the evidence that the landlord is entitled to recovery of that cost. However since the landlord made arrangements with the painter to move in later, I dismiss the landlord's claim for an extra night in a hotel.

The tenant did not dispute in any of the testimony of damage claimed by the landlord for the curtains. The landlord testified that they were replaced with curtains that were not custom made, but a less expensive product. The landlord has provided 2 Invoices in the amount of \$59.59 and \$114.98, and I am satisfied that the landlord has established the claims.

The *Residential Tenancy Act* places the onus on the landlord to ensure that move-in and move-out condition inspection reports are completed in accordance with the regulations, and where a landlord fails to do so, the landlord's right to claim against the security deposit for damages is extinguished. Since the landlord did not cause either of the reports to be completed, I find that the landlord's right to make the claim is extinguished.

Where such a right is extinguished, the landlord can make a claim for damages, but must return the security deposit and/or pet damage deposit to a tenant, unless the landlord has a claim for other than damages. If the landlord fails to return the deposit(s) to a tenant 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, the landlord must repay double the amount(s).

In this case, the landlord has not made a claim for any loss or compensation except for damages. The tenancy ended on June 1, 2021 and the landlord testified that the tenant's forwarding address was received in writing on June 12, 2021 via email.

I refer to Residential Tenancy Policy Guideline #17 – Security Deposit and Set-off, which states, in part:

Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit:

• if the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act;

whether or not the landlord may have a valid monetary claim.

Therefore, I find that the landlord must repay double the amount of each of the deposits, or double \$825.00 = \$1,650.00 and double \$400.00 = \$800.00.

Having found that the tenant is entitled to \$2,450.00 and the landlord has established a claim for damages in the amount of ~~\$525.94~~ \$885.91 (~~\$201.34 + \$360.00 + \$59.59 + \$114.98 + \$150.00 = \$525.94~~ \$885.91), I grant a monetary order in favour of the tenant for the difference in the amount of ~~\$1,924.09~~ \$1,564.09.

Since both parties have been partially successful with the application, 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 tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of ~~\$1,924.09~~ \$1,564.09.

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: December 16, 2021

Amended December 28, 2021

Residential Tenancy Branch