



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, FFL
 MNADB-DR, FFT

Introduction

This hearing was convened by way of conference call concerning applications made by the landlords and by the tenant. The landlords have applied for a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement; 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.

The tenant has applied for a monetary order for return of all or part of the pet damage deposit or security deposit and to recover the filing fee from the landlords. The tenant's application was made by way of the Direct Request process, which was referred to this participatory hearing.

One of the landlords and the tenant attended the hearing, and the landlord also represented the other named landlord. The parties each gave affirmed testimony and were given the opportunity to question each other and to give submissions.

The parties agree that evidence has been exchanged, all of which has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Have the landlords 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, and more specifically for damages to the rental unit or property?

- Should the landlords 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 landlords 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 this fixed-term tenancy began on August 1, 2016 and reverted to a month-to-month tenancy after July 31, 2017, which ultimately ended on May 31, 2021. Rent in the amount of \$2,200.00 was payable on the 1st day of each month, which was increased at some point during the tenancy, and there are no rental arrears. On July 4, 2016 the landlords collected a security deposit from the tenant in the amount of \$1,100.00 as well as a pet damage deposit in the amount of \$1,100.00. The rental unit is the upper level of a house and the landlords resided in the basement suite part-time during the tenancy. A copy of the tenancy agreement has been provided as evidence for this hearing.

The landlord further testified that the tenant provided a forwarding address in writing to the landlords prior to the end of the tenancy, and around June 30, 2021 the landlords returned \$750.00 of the pet damage deposit to the tenant. The balance of \$350.00 has been retained by the landlords, as well as the entire \$1,100.00 security deposit.

A move-in condition inspection report was completed by the landlord with the tenant's ex-husband at the beginning of the tenancy. A move-out condition inspection report was completed by an agent of the landlord and the tenant. Copies have been provided for this hearing. The move-in portion was completed on July 29, 2016, and is signed by a landlord and by a tenant. The move-out portion was completed on a different form, which also adds markings for move-in, and is dated May 31, 2021. Signatures of a landlord and a tenant appear on the form on the move-out portion.

The landlords claim the following damages from the tenant:

- \$184.56 for laundry appliances;
- \$882.00 for painting;
- \$35.96 for light bulbs;
- \$400.00 for repair to the hardwood floor in the dining room;
- \$139.00, plus 2 hours labor of \$100.00 for replacing a bi-fold door;
- \$650.00, plus material of \$50.00 for damage to the stairs.

The appliances were relatively new and in good condition at the beginning of the tenancy. The tenant said that the knob was broken and that the tenant couldn't find it and had been using pliers, which stripped the machine. The landlords had to have all appliances in working order because the rental unit had been sold. The tenant found the knob but not until after the washer had been repaired. A receipt has been provided for this hearing and the landlord testified that the landlords had to buy all parts on the invoice, not just one.

The tenant used hooks for hanging jackets which damaged the wall and the realtor said that was not wear and tear. The rental unit had been painted during tenancy just before the tenant moved out but only the walls damaged by the tenant are claimed. The landlord is not certain, but believes the rental unit was last painted in July, 2016 and the receipt provided by the landlords shows it was done prior to end of tenancy. The tenant had admitted that the damage was caused by the tenant.

Some bulbs were burned out, and the landlords have provided a receipt in the amount of \$35.96, which also includes "forks," which the landlord testified should be deducted from the claim. The receipt is for a total of \$35.96, and the forks were a cost of \$4.55, plus \$.23 for GST and \$.32 PST.

The dining room floor is hardwood, and the move-in condition inspection report shows that it was in good condition. However, the tenant had a plant in the corner of the room and put a yoga mat under it. The plant must have leaked because it left a giant ring on the floor. A photograph has been provided for this hearing, and the person who repaired it gave a receipt showing that the damage was caused by the plant. The receipt is for \$399.00 and is dated prior to the end of the tenancy, however the tenant had already given notice to end the tenancy.

The bi-fold door was damaged/missing and when the landlord attended the rental unit, there was no door. The repair person said that it could not be repaired.

With respect to the stairs, the landlord testified that there is wear and tear, however there are scratch marks all over the stairs, which must have been caused by the tenant's cat. The scratches are severe and that's why the landlords kept a portion of the pet damage deposit.

The landlords tried to do the right thing and gave 1 month of rent free to the benefit of the tenant because some repairs were done during the tenancy. The tenant gave notice to end the tenancy by letter on March 31, 2021 effective May 31, 2021, and then the landlords sold the house. The landlords had sent messages to the tenant prior to receiving the tenant's notice to end the tenancy, indicating that the landlords were

thinking about selling. The landlords also gave the tenant a hotel for a weekend and paid for the tenant's food.

The tenant testified that the landlords did not give any notice about charges for the work being done during the tenancy. The landlord asked that the tenant allow contractors in to prepare for the sale of the home and the tenant agreed. The tenant was not given any notice of that and it started prior to giving the landlords a notice to end the tenancy. The tenant was not given any opportunity to complete repairs.

When the tenants' TV and shelves were removed, the tenant patched and repainted all walls that had chips or damage and would have done the same for the other repairs that the landlord claims. The tenant pointed out damage to the landlords and advised the landlords that the tenant would finish repairs at move-out. The tenant would have painted. The tenant put up a baby gate and left it there until notified that the house was going up for sale.

The markings on the hall, stairs and railing were added onto the move-out condition inspection report after the tenant refused to pay for damages to the floor. The tenant refused because the tenant wasn't given an opportunity to repair it. Then the landlord slapped the tenant with receipts. The tenant felt bullied to give notice to end the tenancy so the landlord could sell, and then the tenant asked to stay until the end of June for the school year, but the landlord said that the buyer and realtor make that decision.

The tenant further testified that the landlords asked the tenant to move items from storage to the outdoors, which the landlord assisted with. The landlord made the tenant move things for staging for selling the house, and the tenant did all of that and was not compensated until the tenant requested compensation.

Forty people were in the rental unit without masks which should have been required due to COVID-19. The landlord was upset that the tenant requested compensation, and that's why the landlord is now hitting the tenant for receipts.

Hinges on the bi-fold door are wear and tear; the screws were stripped and came out. They needed to be put back.

The tenant agrees that the plant caused damage but the tenant was not given the opportunity to correct that.

The tenant told the landlord that all lights worked until recently, and the tenant is cautious about leaving lights on. Numerous people were there and left the lights on.

The tenant also spent \$900.00 for cleaners, and feels that the landlord is gouging the tenant.

Analysis

Firstly, a tenant is required to repair any damages that are caused by the tenant. In this case, I accept the undisputed testimony of the tenant that the landlord had contractors attend the rental unit to make repairs prior to the end of the tenancy to make it saleable. I also find that the landlord was in a rush to make all repairs and stage the home in order to sell it. I agree with the tenant that the tenant was not given the opportunity to make repairs to the dining room floor, or the bi-fold door, or the stairs. Therefore, I dismiss the landlords' application for the cost of those repairs.

The tenant does not dispute the burned out bulbs, although realtors and prospective purchasers were in the rental unit as well and left lights on. It is not clear whether or not that caused the light bulbs to burn out, and I accept the landlord's claim for light bulbs of \$35.96, less the forks on the receipt, for a total of **\$30.86**.

With respect to the landlord's claim for painting, I accept that the tenant hung hooks which damaged the wall. However, any monetary order for damages must put the landlords in the same position as the landlords would be if no damage had been caused by the tenant. In this case, the tenant painted some walls during the tenancy, and testified that the tenant would have painted and repaired the damage had the tenant been given the opportunity to do so. The landlord testified that the rental unit was last painted in July, 2016. To allow the landlord to recover that cost would provide the landlord with new paint, when the landlord would not have new paint if the tenant hadn't caused any damage, and I dismiss the landlords' claim for painting.

With respect to the washing machine, the landlord testified that appliances were relatively new and in good condition, and that the tenant said that the knob was broken and had been using pliers. The appliances had to be in working order because the landlord sold the rental home. I find that the landlord has proven that the washer was broken by the tenant, and there is no evidence to satisfy me that the tenant would have repaired it prior to moving out if given the opportunity. Therefore, I find that the landlord has established a claim of **\$184.56**.

A landlord is required to repay a security deposit and any pet damage deposit in full 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, or must make an Application for Dispute Resolution within that 15 day period. In this case, the tenancy ended on May 31, 2021 and the landlords received the tenant's forwarding address prior to that. The landlords made the Application for Dispute Resolution on June 4, 2021 which is within that 15 day period.

The security deposit is \$1,100.00, and the landlords returned \$750.00 of the \$1,100.00 pet damage deposit to the tenant and have claimed \$700.00 for damages caused by a pet. The landlord currently holds \$350.00 of the pet damage deposit and the entire \$1,100.00 security deposit, for a total of \$1,450.00. I order the landlord to keep \$215.42 and I grant a monetary order in favour of the tenant for the difference of **\$1,234.58**.

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 landlords to keep \$215.42 of the security deposit and pet damage deposit; and I grant a monetary order in favour of the tenant as against the landlords pursuant to Section 67 of the *Residential Tenancy Act* in the amount of **\$1,234.58**.

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 09, 2021

Residential Tenancy Branch