



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL, MNSD, MNETC, FFT

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”).

The Landlord applied on September 24, 2021, for:

1. A Monetary Order for damage to the unit - Section 67;
2. An Order to retain the security deposit - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Tenant applied on January 10, 2022, for:

1. An Order for the return of the security deposit - Section 38;
2. A Monetary Order for compensation - Section 67; and
3. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Parties confirmed receipt of each others application, notices of hearing and evidence package. Landlord CL, as named in the Tenants application, is not named as a landlord in the tenancy agreement.

Issue(s) to be Decided

Are the Tenants entitled to the monetary amounts claimed?

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The following are agreed or undisputed facts: The tenancy under written agreement started on February 1, 2018 and ended on September 11, 2021. At the outset of the

tenancy the Landlord collected \$750.00 as a security deposit. Rent of \$1577.48 was payable on the first day of each month. No move-in or move-out inspection was offered to the Tenants. The Tenants provided their forwarding address to the Landlord in person on September 11, 2021. The Landlord did not return the security deposit. The tenancy ended as a result of the Landlord giving the Tenants a two month notice to end tenancy for landlord's use dated May 5, 2021 (the "Notice"). The Landlord did not pay the Tenants the equivalent of one month's rent for giving the Tenants the Notice.

The Tenants claim return of the security deposit and compensation of \$1577.48.

The Tenant states that the Parties agreed to extend the move-out date of the Notice to the tenancy end date. The Landlord states that the one-month compensation was not paid because the Tenants stayed past the effective date. The Landlord confirms that the Tenants paid all the rents for the tenancy.

The Landlord states that the Tenants left the unit with flooring damaged by pet stains causing areas to be lifted as well as strong pet odors. The Landlord claims \$1,500.00 as the estimated costs to refinish the flooring. The Landlord states that the floors have not been refinished, that the Landlord did not move into the unit and that the unit has not been rented. The Tenant states that no floors were left damaged.

The Landlord states that the Tenants left the unit unclean and with strong pet odors. The Landlord claims \$514.50 as the cleaning costs. The Landlord states that the copy of a move-out condition report provided as evidence was completed with the cleaning company. The Landlord provides photos. The Tenants state that they cleaned the unit thoroughly and provide a witness letter and video of the unit taken at move-out.

The Landlord states that the Tenants left garbage and other items that had to be removed by the Landlord. The Landlord provides photos including photos of furniture items in a room. The Landlord claims \$600.00 as the estimated cost of this removal.

The Landlord confirms that the garbage removal has not been done. The Tenant states that their garbage was removed by their neighbour as the unit bins, shared by several people, were full. The Tenant states that the furniture items in the Landlord's photos do not belong to the Tenants.

Analysis

Section 23(3) of the Act provides that the landlord must offer the tenant at least 2 opportunities, as prescribed, for a move-in inspection. Section 24(2)(a) of the Act provides that the right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord does not comply with section 23 (3). Based on the agreed facts that no move-in inspection was offered to the Tenants I find that the Landlord's right to claim against the security deposit was extinguished at move-in.

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. Policy Guideline #17 provides that the return of double the deposit will be ordered 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. As the Landlord's right to claim against the security deposit for damages to the unit was extinguished and based on the undisputed evidence that the Landlord received the Tenants' forwarding address and did not return the security deposit, I find that the Landlord must now pay the Tenants double the security deposit plus zero interest of **\$1,500.00**.

Section 51(1) of the Act provides that a tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one

month's rent payable under the tenancy agreement. Regardless of the date the Tenants moved out of the unit and based on the undisputed evidence that the Landlord gave the Tenants the Notice and did not pay the Tenants the required amount I find that the Tenants have substantiated their claim to the compensation of **\$1,577.48** as the equivalent of one month's rent.

As the Tenants' claims have met with success I find that the Tenants are also entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$3,177.48**.

Section 37 of the Act provides that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. Section 21 of the Regulations provides that a duly completed inspection report is evidence of the condition of the rental property, unless either the landlord or tenant has a preponderance of evidence to the contrary.

There is no move-in inspection report and I consider the move-out report to be of little weight since it was completed without the Tenants and with a cleaning company that had a vested interest in the outcome. As the Landlord did not provide any other supporting evidence of the state of the unit at move-out, and I note that none of the photos show an unclean unit, given the Tenant's supported evidence of the state of the unit at move-out I find on a balance of probabilities that the Landlord has not substantiated that the Tenant left the unit unclean. I dismiss the claim for cleaning costs.

In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party and that costs for the damage or loss have been incurred or established. The Tenant's evidence is that

the furniture items in the Landlord's photos did not belong to the Tenant and that no garbage was left at move-out. The Landlord has no evidence to support that the Tenants left any of the garbage or items shown in the photos. Finally, the Landlord did not incur any expense to remove any items or garbage. For these reasons I find on a balance of probabilities that the Landlord has not substantiated its claim for junk removal, and I dismiss this claim. As the Landlord has not incurred any costs for any repairs to the floors, I find that the Landlord has not substantiated the compensation claimed for these repairs and I dismiss this claim. As none of the Landlord's claims have been successful, I find that the Landlord is not entitled to recovery of the \$100.00 filing fee, and I dismiss this claim. In effect the Landlord's application is dismissed in its entirety.

Conclusion

The Landlord's application is dismissed.

I grant the Tenant an order under Section 67 of the Act for **\$3,177.48**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: February 28, 2022

Residential Tenancy Branch