



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNRL-S, FFL

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord seeking 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.

An agent for 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.

The tenant has not provided any evidentiary material, and the landlord's agent testified that all of the landlord's evidence has been provided to the tenant, all of which 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?
- Has the landlord established a monetary claim as against the tenant for unpaid rent?
- 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 claims?

Background and Evidence

LANDLORD'S TESTIMONY:

The landlord's agent testified that this fixed-term tenancy began on April 1, 2019 and reverted to a month-to-month tenancy after March 31, 2020, and the tenant vacated the rental unit on or about August 4, 2021. Rent in the amount of \$2,150.00 was payable on the 1st day of each month. At the outset of the tenancy the previous landlord collected a security deposit from the tenant in the amount of \$1,075.00 as well as a pet damage deposit in the amount of \$1,075.00, both of which are still held in trust by the current landlord. The rental unit is an apartment in a complex, and a copy of the tenancy agreement has been provided for this hearing.

The landlord has provided a Monetary Order Worksheet setting out the following claims, totaling \$3,040.00:

- \$2,150.00 for August rent;
- \$90.00 for keys; and
- \$800.00 for flooring replacement.

The tenant gave notice to vacate the rental unit by sending a text message to the caretaker on July 7, 2021. The landlord received an official notice to end the tenancy from the tenant on July 20, 2021. The landlord has also provided a Craigslist advertisement, which is not dated and advertises the rental unit for rent at \$2,200.00 per month. The landlord's agent testified that the advertisement was placed on July 22, 2021, and the tenant also placed an advertisement.

The parties participated in a move-in and move-out condition inspection report, and both reports have been provided for this hearing, which are on the same form for comparison purposes. The tenant participated in the move-in and the move-out portions, but did not sign the move-out portion because he didn't agree with it. The move-out portion was completed on August 4, 2021 and the tenant provided a forwarding address on the report.

The hardwood flooring was scratched at the end of the tenancy, and the landlord has provided an Invoice totaling \$3,633.00 which covered other repairs as well. It is dated August 15, 2021 and charges \$450.00 for removal and disposal of living room wood flooring and underlay; \$1,890.00 to supply and install new premium vinyl plank flooring with transitions and reinstall moulding around perimeter; \$150.00 for material delivery; \$860.00

for interior wall repairs and painting; \$40.00 to supply and install new garburator plug and cap; and \$70.00 to supply and install a new sliding door handle. The landlord's agent testified that the tenant agreed to pay \$800.00, but when the tenant discovered that the landlord was also claiming the unpaid rent for August, 2021, the tenant withdrew that consent by way of an email to the landlord. The landlord claims \$800.00 for the repair. The flooring was about 10 years old.

The tenant also failed to return all of the keys and fobs, and the landlord had claimed \$90.00, but reduces the claim to \$45.00, accepting that the tenant returned 1 of the 2 sets of keys to the caretaker.

The landlord's agent is not certain when the rental unit was re-rented, but believes it was either September 1 or 15, 2021 for \$2,200.00 per month. A Timeline of the Tenant's Notice has been provided for this hearing.

The tenant has not served the landlord with an application seeking return of either of the deposits.

TENANT'S TESTIMONY:

The tenant testified that the owner changed during the tenancy and the tenant didn't know who the new owner was, but only knew that the tenant had to change the name on the rent cheques to the new company. When the tenant decided to move out, the caretaker said she did not know what the process for moving out was, and would ask the property manager, but no one got back to the tenant. That was on June 25, 2021. The tenant Googled the name of the new landlord or representative of the owner and tried to contact someone by telephone, but no one answered the phone. That was about June 26 or 27, 2021.

Prior to July 1, 2021 the tenant put a letter in the manager's mailbox in the lobby with the rent cheque for July. Perhaps the person who got the cheque didn't see the letter. However, after a few days, not hearing back from the landlord, on July 7, 2021 the tenant sent a text message to the caretaker asking how to move out. The reply was that the caretaker would talk to the property manager and get back to the tenant the following day. The tenant texted again on July 9, and the caretaker provided a phone number on July 13, 2021 to personally talk to someone.

Because the tenant is also a landlord and knows how difficult it can be to rent, the tenant advertised the rental unit for rent as well. There were lots of candidates for August 1, 2021 but the tenant asked the potential tenants who said that the landlord's agent didn't reply to any of them.

The tenant moved out of the rental unit on or about July 27, 2021.

The tenant also testified that the scratches on the hardwood flooring are normal wear and tear. The tenant originally agreed to pay \$800.00 for it, and the landlord thought it was a good price, but the tenant now considers it normal wear and tear.

The tenant agrees to the claim of \$45.00 for keys and fobs.

SUBMISSIONS OF THE LANDLORD:

The tenant found a possible tenant who applied to rent and the landlord's agent has lots of correspondence but they were not approved by the owner for a few reasons. There were other showings as well, probably about 10 before a suitable tenant was found. The landlord disputes that the tenant had no contact information for the new landlord. The new landlord delivered letters to each resident with contact information when the company took over management.

SUBMISSIONS OF THE TENANT:

The tenant does not recall receiving a letter from the new landlord company, and got the name of the company from the caretaker.

Analysis

The *Residential Tenancy Act* specifies how a tenancy ends, and in the case of a tenant's notice to vacate, the notice must be given before the date rent is payable under the tenancy agreement. In this case, the tenant has not provided any evidence, and the landlord's agent testified that the tenant's notice was received by text message on July 7, 2021 to the caretaker. The tenant agrees that the text message was sent on July 7, 2021, and testified that a letter was enclosed with the rent cheque for July prior to the end of June, but there is no evidence to substantiate that. The landlord's agent also testified that proper notice to end the tenancy wasn't given to the landlord until July 20, 2021, but has not provided a copy.

I am not satisfied that the tenant gave notice to end the tenancy prior to the end of June, 2021 and therefore could not legally end the tenancy until the end of August, 2021. Therefore, I find that the landlord has established a claim of \$2,150.00 for unpaid rent.

With respect to the claim for the flooring, in order to be successful in a claim for damage or loss, the onus is on the landlord 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 tenant'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 landlord made to mitigate any damage or loss suffered.

Further, the purpose of compensation is to put the landlord in the same position as if the damage or loss had not occurred.

I have reviewed the move-in and move-out portions of the condition inspection reports, and note that the no markings appear for the floor at the beginning of the tenancy, but shows as scratched at the end of the tenancy. I have also reviewed the Invoice provided by the landlord, which specifies supply and installation of new premium vinyl plank flooring, but I am not satisfied that the flooring in the rental unit at the beginning of the tenancy was premium vinyl plank flooring. The Invoice shows a cost of \$450.00 for removal of the flooring and underlay as well as \$1,890.00 for the new flooring. The landlord claims \$800.00 because the tenant agreed to that amount, and then withdrew the consent.

The tenant's position is that the scratches in the flooring are normal wear and tear.

I am not satisfied that the landlord has established that any damage to the flooring in the rental unit was beyond normal wear and tear, or the amount of the damage or loss.

The tenant agrees to compensation to the landlord in the amount of \$45.00 for keys and fobs.

The landlord currently holds a security deposit in the amount of \$1,075.00 as well as a pet damage deposit in the amount of \$1,075.00. The parties agree that the landlord received a forwarding address in writing from the tenant on the move-out condition inspection report on August 4, 2021, and the landlord filed the application on August 12, 2021, which is within the 15 days as required by the *Act*. Having found that the landlord is entitled to \$2,150.00 for unpaid rent and \$45.00 for keys and fobs, I set off the amounts, and I order

the landlord to keep the deposits in partial satisfaction of the claim, and I grant a monetary order in favour of the landlord for the difference in the amount of \$45.00.

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

Conclusion

For the reasons set out above, I hereby order the landlord to keep the \$1,075.00 security deposit and the \$1,075.00 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 \$145.00.

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: February 26, 2022

Residential Tenancy Branch