



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ARBUTUS DEVELOPMENTS
LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-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; 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 tenants for the cost of the application.

An agent for the landlord company and one of the named tenants attended the hearing and each gave affirmed testimony and provided evidentiary material in advance of the hearing. The tenant also represented the other named tenant. The parties were given the opportunity to question each other and to give submissions. The parties agree that all evidence has been exchanged, 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 tenants 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 partial satisfaction of the claim?

Background and Evidence

The landlord's agent testified that this fixed-term tenancy began on May 15, 2020 and reverted to a month-to-month tenancy after April 30, 2021, which ultimately ended on

November 15, 2021. Rent in the amount of \$2,800.00 was originally payable on the 1st day of each month, which was increased during the tenancy to \$2,842.00, and there are no rental arrears. Around April 28, 2020 the landlord collected a security deposit from the tenants in the amount of \$1,400.00. The sum of \$700.00 was returned to the tenants around November 16, 2021, which is the date that the landlord received the tenants' forwarding address in writing. The rental unit is an apartment in a complex containing about 32 units.

The tenant contacted the landlord's agent on October 3, 2021 requesting to move out on November 15, 2021 because the tenants had purchased a house. The parties agreed to pro-rate the rent for November to half a month's rent.

The landlord's agent further testified that a move-in condition inspection report was completed at the beginning of the tenancy, and a move-out condition inspection report was completed at the end of the tenancy, but the parties could not agree on deductions and no one signed it at move-out. Copies of the reports have been provided for this hearing.

The landlord has provided a Monetary Order Worksheet setting out the following claims, totaling \$700.00:

- \$300.00 for paint touch-up;
- \$200.00 for blind repair;
- \$250.00 for cleaning; and
- -\$50.00 offer to resolve the dispute.

The landlord's agent testified that the landlord sends out move-out instructions to tenants so they understand what the potential costs would be. A copy has been provided for this hearing. Paint touch-up would usually cost \$300.00, and blinds are typically charged by panel. Cleaning is \$500.00 for a 2 bedroom apartment and the landlord's agent offered to reduce that by half. The tenants' cleaner provided an invoice in the amount of \$201.60 but it wasn't presented to the landlord's agent during the move-out condition inspection or the landlord's agent would have told the tenant to take it back for a deduction; the landlord's agent didn't receive it until being served with the tenants' evidence. The landlord's agent called the tenants' cleaner who confirmed that they don't offer residential cleaning but knew the tenant and worked with the tenants' company, and did some cleaning in the rental unit. The cleaner didn't say when it was done and was not able to find a copy of the invoice or address. The landlord's agent sent a copy to the cleaner, who replied that he recalled cleaning the rental unit.

The landlord does not have receipts for actual costs, but has provided a 3-page document of "Move Out Instructions." It also includes costs that could be charged to a tenant, such as cleaning, paint touch-up, unit painting, blind cleaning and blind repair, among other things. The rental unit was last painted just before the tenants took possession, and the rental unit was not occupied between the date it was painted and the date that this tenancy commenced. Photographs have also been provided for this hearing, which includes photographs of some patching on the walls. The photographs were taken on November 16, 2021. It was too dark to take photographs during the move-out condition inspection so the landlord's agent went back the following morning and sent copies to the tenants.

The landlord has also provided an automated print-screen of a work order for blinds totaling \$751.78, but the landlord claims \$200.00.

The tenant testified that everything mentioned by the landlord's agent is true except that the that the rental increase was received when the tenants were preparing to move out so rent remained at \$2,800.00 per month.

Based on the sequence of events, the inspections were not conducted correctly:

1. whether or not the landlord had any right to hold the security deposit to pay for damages;
2. the type of damages claimed;
3. there is no baseline of what the performance requirements were to satisfy the move-out condition inspection;
4. job experience of the landlord's agent; and
5. the main reason the tenant didn't sign the move-out condition inspection report was due to the unreasonably high cost and expectations.

The tenant also testified that even if the tenants' cleaner went back to do more cleaning, the landlord would still charge a fee, and the numbers generic.

The landlord's agent does not hold a real estate license and damages are opinion by someone without a professional designation.

The parties exchanged emails about the landlord's claims and the security deposit, wherein the tenant provided a forwarding address on November 15, 2021.

The tenant has also provided a written response to the landlord's claim which states, in part, that the tenant was not provided with a copy of the move-out condition inspection report as required by the law, and therefore the landlord's right to claim against the security deposit for damages is extinguished. The submission also includes photographs of the rental unit at move-out.

Analysis

Where a party makes a monetary claim as against another party for damage or loss, 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* 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.

A tenant is required by law to leave a rental unit reasonably clean and undamaged at the end of a tenancy, except for normal wear and tear. The *Act* also 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 parties attended for both inspections, but both parties failed to sign the report at move-out. The tenant disputes the amount of the damages claimed by the landlord, but did not dispute the reports.

I have reviewed the move-in and move-out condition inspection reports as well as all of the photographs provided by the landlord and by the tenants. The tenants' photographs are taken from a distance while the landlord's photographs have close-up images. Cleaning was obviously still required in the bathrooms, the kitchen, baseboards, the washing machine, countertops, cupboards, microwave, fridge and floors. None of those items have anything to do with any renovations completed by the landlord after the tenancy ended. Although I do not agree that a person who cleans is required to be a "professional cleaner," if a cleaner is hired, the cleaning should be thorough. I also disagree with the tenant that the landlord's agent needs to have some sort of professional designation, such as a real estate license, to be qualified to do an inspection. The landlord claims \$250.00 for cleaning, and I find that the landlord has established the claim.

The landlord's agent testified that the rental unit was last painted prior to this tenancy, which was prior to May 15, 2020. The useful life of interior paint is 4 years, and each time painting is done, patching is a part of that. Although I accept that the painting was last done within the last 3 years, the landlord has claimed \$300.00 for paint touch-up, but has not provided any evidence of the actual cost. The landlord had the rental unit renovated at least to some extent after the tenants vacated, and has provided a scope of the work, which includes repainting walls with 2 coats of paint. Since patching is a normal part of painting, and I am not satisfied that the landlord has established that the tenants should pay \$300.00 for patching, and I dismiss that portion of the landlord's application.

With respect to the landlord's claim for blinds, the landlord claims \$200.00, but has provided a work order for \$751.78. I am not satisfied that the landlord has established the actual cost to replace or repair blinds, and I dismiss that portion of the landlord's claim.

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

The landlord currently holds a security deposit of \$700.00. The tenants' response to the landlord's claim is partially correct; a landlord's right to make a claim against a security deposit for damages is extinguished if the landlord fails to give a copy of the move-out condition inspection report to the tenant within 15 days of the later of the date the inspection is completed and the date the landlord receives the tenant's forwarding address in writing. In this case, neither party gave testimony about giving a copy to the tenant. The landlord's agent testified that the landlord received the tenants' forwarding address on November 16, 2021 by email. The tenant testified that it was sent on November 15, 2021. Regardless, the landlord filed the Application for Dispute Resolution on November 16, 2021. The landlord has provided evidence of having served the tenants on November 17, 2021, which included the evidence. The landlord's evidence includes a copy of the move-out condition inspection report, and therefore, I find that the landlord has complied, and the landlord's right to make a claim against the security deposit for damages is not extinguished.

Having found that the landlord is owed \$350.00, I order that the landlord return the balance of \$350.00 to the tenants.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenants as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$350.00.

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: June 25, 2022

Residential Tenancy Branch