



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for damages 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 Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Parties confirm receipt of each other's evidence and that they are not using a recording device for the hearing.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts and the filing fee claimed?

Is the Landlord entitled to retain the security deposit?

Background and Evidence

The following are agreed facts: The tenancy under written agreement started on October 1, 2015 and ended on September 30, 2021. At the outset of the tenancy the Landlord collected \$750.00 as a security deposit. The Parties mutually conducted a move-in inspection with a completed report. The Landlord received the Tenants' forwarding address on October 4, 2021.

The Tenant states that they could not recall a move-in report prepared by the Landlord or being signed by the Tenants. The Landlord thinks that they provide a copy of the move-in report to the Tenants with the signed tenancy agreement. The Landlord states that the report contains the signature of the Tenants. The Tenant does not dispute their signatures on the move-in report.

The Landlord states that they made two offers for a move-out inspection and asked the Tenants for alternate dates as well. The Landlord states that the Tenants agreed to a move-out inspection on September 30, 2021 but did not attend at the agreed time. The Landlord states that they completed the inspection and report alone. The Tenant agrees that they did not attend the move-out inspection as they had other important matters at the time.

The Landlord states that they are claiming half of each of the costs set out on the monetary order worksheet. The Tenant does not dispute the claim for half of the following costs:

- \$30.00 for a window screen;
- \$2.05 for an outlet;
- \$15.00 for a heat vent;
- \$5.00 for a window trim;
- \$12.00 for an outlet;
- \$2.05 for an outlet cover;
- \$20.00 for a window screen;
- \$10.00 for a veneer strip;
- \$29.92 for a toilet roll holder;
- \$4.60 for a doorstep;
- \$29.98 for another toilet roll holder;
- \$4.60 for another doorstep; and
- \$4.60 for another doorstep.

The Landlord claims half the remaining replacement costs for damaged or missing items as set out in the monetary cost estimate and states that the items have either not been replaced or have been replaced but that the Landlord has not provided copies of receipts or invoices for any of the costs claimed as follows:

- \$70.00 for aluminum blinds. The Tenant agrees that they were removed as they were being damaged when the door opened;
- \$360.30 for a broken window. The Tenant agreed that the window was broken by accident caused by a rock that flew out from the Landlord provided lawn mower;
- \$27.99 for a bath plug. The Tenant does not agree to the damage as the Tenant does not recall this item;
- \$200.00 for a light fixture. The Tenant does not agree that the fixture was left broken;
- \$0.00 for a broken spindle;
- \$100.00 for fridge bins. The Tenant states that these were damaged by normal wear and tear;
- \$70.00 for a fridge tray and lid. The Tenant states that these were damaged by normal wear and tear;
- \$1,192.38 for a counter burn. The Tenant states that this is cosmetic damage only;
- \$150.00 for a dining room light fixture. The Tenant agrees that this item was broken by accident;
- \$10.00 for a transition strip. The Tenant states that this was damaged by normal wear and tear;
- \$20.00 for door hardware. The Tenant states that the damage was caused by its original improper installation;
- \$721.85 for a carpet. The Tenant states that the carpet had pre-existing damage as noted on the move-in report;

- \$15.00 for a heat vent. The Tenant states that this was replaced by the Tenant;
- \$721.85 for another carpet. The Tenant states that the carpet had pre-existing damage as noted on the move-in report;
- \$97.42 for under carpet odor primer. The Tenant states that while their children did have accidents the Tenants cleaned up after them.
- \$16.00 for a bifold door. The Tenant states that they were removed because of poor installation;
- \$15.00 for another vent. The Tenant states that this was replaced by the Tenants; and
- \$50.00 for an outdoor broken window. The Tenant states that they do not know what caused the break.

Analysis

Section 24(2) 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

- (a) does not comply with section 23 (3) *[2 opportunities for inspection]*,
- (b) having complied with section 23 (3), does not participate on either occasion, or
- (c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Given the undisputed evidence that the Parties mutually conducted a move-in inspection and that the Tenants' signatures are on the move-in inspection I find that the move-in inspection and report was duly completed and that the Landlord's right to claim against the security deposit was not extinguished at move-in.

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. 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. 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.

As the Landlord has not identified any amount being claimed for damage to a spindle, I dismiss this claim. Given the Tenant's supported evidence of pre-existing damage to the carpets I find on a balance of probabilities that the Landlord has not substantiated that the Tenants caused the damage claimed to the carpets and I dismiss these claims. Given the Landlord's photo evidence of the counter burn and the Tenant's testimony that they caused the burn I find on a balance of probabilities that the Tenant did cause the burn that was quite slightly. As the Landlord did not provide evidence of the costs claimed being incurred, I find that the Landlord is only entitled to a nominal sum of **\$200.00** for this damage.

Given the Landlord's supported evidence of damage, including duly completed move-out inspection report, I find on a balance of probabilities that the Landlord has substantiated that the Tenants have caused damage, that I do not consider to be normal wear and tear, to the following remaining items: blinds, 2 windows, bath plug, light fixture, fridge bins, fridge tray, dining room light, transition strip, door hardware, two heat vents, carpet primer (odor), and a bifold door. The total costs set out for these items is \$1,201.71 and noting that the Landlord is only claiming half this amount I find that the total amount being claimed for these damages is \$600.86. As the Landlord has not provided any evidence that these costs were incurred, I find that the Landlord has only substantiated a nominal amount of 20% of these costs claimed for an entitlement of **\$120.16**.

As the Landlord's application has met with some success, I find that the Landlord is entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$420.16**.

Deducting this amount from the security deposit plus zero interest of **\$750.00** leaves **\$329.84** remaining in the security deposit being held by the Landlord.

Section 36(1) of the Act provides that the right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if

- (a) the landlord complied with section 35 (2) [*2 opportunities for inspection*], and
- (b) the tenant has not participated on either occasion.

Based on the undisputed evidence that the Landlord made two offers for an inspection and that the Tenants did not participate on the agreed upon inspection I find that the Tenants' right to return of the security deposit is extinguished and that the Landlord is entitled to retain the remaining security deposit of **\$329.84**. In effect the Landlord is entitled to retain the total security deposit of **\$750.00** in full satisfaction of its claims.

Conclusion

I Order the Landlord to retain the security deposit plus interest of \$750.00 in full satisfaction of the claim.

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: June 15, 2022

Residential Tenancy Branch