



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNDCL-S, FFL

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 December 26, 2021 for:

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

The Tenant applied on January 1, 2022 for:

1. An Order for the return of double the security deposit - Section 38; and
2. 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 other's application and evidence package. The Parties confirmed that they were not using any recording devices for the hearing.

Issue(s) to be Decided

Is the Tenant entitled to return of double the security deposit?

Is the Landlord entitled to the monetary amounts claimed?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The following are agreed facts: the tenancy under written agreement started on August 1, 2020. Rent of \$1,850.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected \$925.00 as a security deposit and \$925.00 as a pet deposit. The Parties mutually conducted a move-in inspection with a completed inspection report copied to the Tenant. The Parties mutually conducted a move-out inspection on December 14, 2021 with a completed inspection report copied to the Tenant. The Tenant provided their forwarding address on the move-out report.

The Landlord is unsure of the Tenant's move out date but believes it to be December 15, 2021. The Tenant states that they moved out on December 14, 2021.

The Landlord states that the Tenant damaged the lock system on the door and claims the replacement cost of \$327.25. The Landlord states that the lock was new with the building construction in 2013 and was in working order at move-in. The Landlord states that the lock was replaced before the Tenant moved out. The Landlord provides an invoice for the costs incurred.

The Tenant states that at move-in the Landlord had a difficult time locking the door and had to lean in and use their weight to lift the handle to lock the door. The Tenant states that the Landlord gave the Tenant these instructions to close the door. The Tenant states that they followed the Landlord's instructions and within three months of the tenancy, by following the instructions, the lock broke. The Tenant states that the Landlord was informed and replaced the lock one week before they moved out.

The Landlord agrees that the Tenant was instructed on how to close the door but that the Tenant told the Landlord about the damage in September 2021 and that since the Tenant had used the door for a year the Tenant is responsible for the repair cost. The Tenant states that the lock was reported on September 6, 2021.

The Landlord states that the Tenant left small damage to the entry doorframe and strip by leaving a scratch on the exterior frame and a small amount of damage to the strip. The Landlord claims \$682.50 and provides a quote from the Strata contractor. The Landlord states that they did not seek out any other quotes on costs for these repairs as the door is part of the common property and the Landlord had to ensure that the repairs complied with the Strata's requirements. The Landlord confirms that they have not made any repairs to the door frame or sill.

The Tenant does not dispute that small damage was left likely as a result of their move-out. The Tenant disputes the amount claimed as being excessive in comparison to the damage.

The Landlord states that the Tenant left damage to the paint on three walls in the unit. The Landlord claims \$630.00 as the painting costs and provides a quote. The Landlord has not done the painting and has subsequently rented the unit for a monthly rental rate of \$2,200.00.

The Landlord states that the tenancy agreement requires the Tenant to have the unit professionally cleaned at the end of the tenancy. The Landlord states that they do not trust that the Tenant has the carpet professionally cleaned as the Tenant did not provide proof in the form of a receipt. The Landlord claims \$178.59 and provides a quote. The Landlord states that the cleaning was done but that the invoice for its payment was not provided for the hearing. The Tenant states that they have their own rug cleaning machine and did clean the rug at the end of the tenancy, but the Landlord would not accept this without proof.

Analysis

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. Based on the undisputed evidence that the Landlord received the Tenant's forwarding address on December 14, 2021, the Landlord's uncertain evidence of the move-out date and the Tenant's evidence that they moved out of the unit on December 14, 2021 I find on a balance of probabilities that the tenancy ended on the same day as the forwarding address was received by the Landlord. Based on the undisputed evidence that the Landlord made its application to claim against the security deposit on December 26, 2021 I find that the Tenant is not entitled to return of double the security deposit.

Given the Tenant's undisputed evidence that the door was not fully operational for locking at move-in and given the Landlord's instructions on using weight on the door, I find on a balance of probabilities that the Landlord's instruction caused the lock to be damaged. I find therefore that the Landlord has not substantiated that the Tenant caused the lock to be damaged and I dismiss the Landlord's claim for replacement of the lock.

Given the Landlord's evidence of the damage to the door frame and sill to be minor I consider that the quote for repairs is excessive. Further the Landlord took no steps to obtain a lower cost for repairs and did not make any repairs thereby not incurring the costs claimed. For these reasons I find that the Landlord has not substantiated the costs claimed and I dismiss this claim.

As the Landlord has not provided any evidence of rental loss arising from the paint damage and as the Landlord has not provided any evidence of costs being incurred as a result of the damage, I find that the Landlord has not substantiated the claim for painting the unit and I dismiss this claim.

Section 37 of the Act provides that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean. Section 6(3)(a) of the Act provides that a term of a tenancy agreement is not enforceable if the term is inconsistent with this Act or the regulations. As the tenancy agreement term requiring professional cleaning is a higher standard than the reasonable cleaning required under the Act, I find that the term for professional cleaning at the end of the tenancy is inconsistent with the Act and therefore not enforceable. Given the Tenant's undisputed evidence that they cleaned the carpet with their own carpet cleaning machine I find that the Landlord has not substantiated that the Tenant failed to leave the carpet reasonably clean. I dismiss the claim for carpet cleaning costs.

As none of the Landlord's claims have had any merit, I find that the Landlord is not entitled to recovery of the filing fee and in effect the Landlord's application is dismissed in its entirety. I order the Landlord to return the security deposit plus zero interest of **\$1,850.00** to the Tenant forthwith.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$1,850.00**. 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: August 10, 2022

Residential Tenancy Branch