



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, MNDL-S, FFL

Introduction

This hearing was convened by way of conference call concerning an application made by the landlords seeking a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement; a monetary order for damage to the rental unit or property; an order permitting the landlords 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.

One of the named landlords attended the hearing and also represented the other named landlord. The tenant also attended, and the parties each gave affirmed testimony. The parties were given the opportunity to question each other and to give submissions.

At the commencement of the hearing the parties confirmed that all evidence had been exchanged, however during the course of the hearing the landlord testified that the tenant did not provide any evidence to the landlords. The tenant agreed that none of the tenant's evidence was provided to the landlords.

Any evidence that a party wishes to rely on must be provided to the other party, even if the other party already has copies; it's important for each party to know what evidence I have received. Since the tenant has not provided any evidence to the landlord, I decline to consider any of it. All of the landlord's evidence has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Have the landlords established a monetary claim as against the tenant for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for strata move-in fees?

- Have the landlords established a monetary claim as against the tenant for damage to the rental unit or property?
- Should the landlords be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlord testified that this fixed term tenancy began on December 1, 2020 and reverted to a month-to-month tenancy after the first year, which ultimately ended on January 1, 2022. Rent in the amount of \$1,700.00 was payable 3 business days in advance before the 1st day of each month, and there are no rental arrears. At the outset of the tenancy the landlords collected a security deposit from the tenant in the amount of \$850.00 which is still held in trust by the landlords, and no pet damage deposit was collected. The rental unit is an apartment in a strata complex containing multiple units, and a copy of the tenancy agreement has been provided for this hearing.

A move-in condition inspection report was completed by the parties at the commencement of the tenancy. The tenant had given the landlords notice to vacate, and the parties participated in a move-out condition inspection. A copy of the report has been provided for this hearing which is dated January 1, 2022 and signed by both parties. The landlords received the tenant's forwarding address on that report on January 1, 2022.

The report indicates that the tenant agreed to a cleaning fee of \$400.00 and a move-in fee, which is required by the strata, of \$175.00. The landlord testified that the tenant orally agreed to the charges, and the landlord added that part to the move-out condition inspection report at a later date, after the tenant had signed it and after receiving an invoices from the cleaner, believing that is what the landlord was supposed to do. The landlord told the tenant that he would send the cleaning invoice, but when the tenant saw the amounts, he disputed it. A copy of the invoice has been provided for this hearing, and it is dated January 4, 2022 in the amount of \$400.00 for 6 hours.

The landlords have provided a Monetary Order Worksheet setting out the following claims, totaling \$675.00:

- \$400.00 for house cleaning service;
- \$175.00 for a move-in fee; and
- \$100.00 for recovery of the filing fee.

The landlord testified that the kitchen items at the end of the tenancy were extremely dirty and photographs have been provided for this hearing, which the landlord testified were taken on January 1, 2022 or the day after. The main bathroom was not cleaned, nor were the washer and dryer. The fridge had food in it, and the landlord moved the food to the countertop so the landlord could take photographs of the fridge. The washer has grime on the detergent tray, and the inside of the washer has a rubber molding which has a black spot, as well as a collection of hair and dirt. The cleaner told the landlord the black spot was mold. The entire walls of and the glass on the tub has soap scum, and the silver finishings, air vent, toilet and sink were not cleaned. Video evidence has also been provided showing a clogged sink in the bathroom.

The tenant told the landlord that he found cleaners for less than \$400.00, but in the landlord's experience that is dependent on how much cleaning is required. The service, at that time, had to be sterilized and disinfected because of COVID-19 and the landlord provided it that way for the tenant at the beginning of the tenancy. The fee claimed is not unreasonable, and when the tenant leaves, the landlord would do the same duty for a new tenant. No cleaning was done by the tenant at all during the tenancy.

When the parties conducted the move-out condition inspection, the tenant disputed the strata move-in fee, and the parties agreed that each would pay half, however it's been carried forward for months, and since the tenant doesn't agree with the cleaning, the landlord is withdrawing consent to pay half of it. The strata requires I but the tenant has not paid it. There is no strata move-out fee. The landlord has also provided a Statement of Account from the strata, showing the move-in fee of \$175.00.

The tenant testified that the landlord told the tenant he could not clean the rental unit himself and had to get the cleaner the landlord always used, which the tenant agreed to so long as it was a reasonable price. Cleaning was done a week after the tenancy ended, and the invoice was provided to the tenant on January 4, 2022.

The move-out condition inspection took 2 or 3 hours and the landlord was very detail-oriented; only the kitchen and bathroom were dirty. All of the items in the fridge were thrown away, and the tenant was moving stuff to the car. After the inspection was done, the landlord asked the tenant to take it with him, so it was gone before the cleaner came. The apartment is 540 square feet and only has 1 bedroom. The move-out condition inspection report was done after the landlord took the photographs.

The landlord says it should be the same as at move-in, but the move-in condition inspection report was done in a rush.

After a few months of living in the rental unit, the landlord sent a text message saying that the tenant had to pay a move-in fee. Then the owner, who is the landlord's mother sent a message using "not good language" on February 19, 2021 asking for the move-in fee. The tenant was okay with that, but because of her language, the tenant was not happy with it and told her that the tenant would pay it and terminate the agreement, but received no reply. During the move-out inspection the tenant told the landlord about the conversation with the owner and agreed to pay half of the move-in fee, but the cleaning fee came later, and \$400.00 just to clean the kitchen and bathroom was not reasonable. The tenant offered \$400.00 for cleaning and the move-in fee, but the landlord wanted more.

The tenant has not made an Application for Dispute Resolution claiming the security deposit.

Analysis

Firstly, a landlord must not alter a condition inspection report after it is signed by a tenant. In this case, the landlord agrees that it was altered showing that the tenant had agreed to the landlord's claims, but did not really agree.

In order to be successful in a claim 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.

I have reviewed the tenancy agreement, which does not indicate that the tenant is required to pay a move-in fee. I have also reviewed the strata Form K provided by the landlord, which says nothing about a move-in fee. The Statement of Account from the strata is addressed to the landlord, not to the tenant. The move-in condition inspection report does not indicate a move-in fee. Therefore, I am not satisfied that the landlord has established that the responsibility to pay it belongs to the tenant, and I dismiss that portion of the landlords' application.

With respect to the landlord's claim of \$400.00 for cleaning, the *Residential Tenancy Act* specifies 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. I am satisfied that

the tenant agreed that the move-out portion fairly represented the condition of the rental unit at move-out, but not the amounts written on the report by the landlord later. The report shows that all of the kitchen, main bathroom and washer were not cleaned. I have also reviewed all of the photographs provided by the landlord, which were not disputed by the tenant.

I also note that the tenancy agreement contains a term that the tenant will have the rental unit professionally cleaned at the end of the tenancy, which is contrary to the law. Any term that is contrary to the law cannot be enforced. I also accept the testimony of the tenant that the landlord told the tenant he could not clean it himself, but had to use the cleaner that the landlord chose. That is also contrary to the law. I also consider the testimony of the landlord that due to COVID-19 the rental unit had to be disinfected and sterilized. That may be the case, however the law states that a tenant must leave a rental unit reasonably clean. Any disinfecting or sterilizing is not the responsibility of the tenant.

The tenant does not dispute the landlord's photographs, however disputes that it would take 6 hours to clean the kitchen and bathroom and washer, in a 1 bedroom rental unit that is 540 square feet. I accept that the rental unit needed cleaning at the end of the tenancy, but I am not satisfied that the landlord has established the amount that the tenant ought to have paid for, or that the landlord mitigated by allowing the tenant to hire his own cleaner. I find that the landlord has not established elements 3 or 4 in the test for damages. I dismiss the landlord's claim for damages.

Since the landlord has not been successful with the application, the landlord is not entitled to recovery of the filing fee.

The landlord currently holds a security deposit in the amount of \$850.00 and the parties agree that the landlord received the tenant's forwarding address in writing on January 1, 2022 and has filed this application on January 8, 2022, which I find is within the 15 days as required.

Having dismissed the landlord's application, the tenant is entitled to recovery of the security deposit. I hereby order that the landlord return the security deposit to the tenant in full within 15 days of the date of this order. If the landlord fails to do so, the tenant will be at liberty to apply for double.

Conclusion

For the reasons set out above, the landlord's application is hereby dismissed in its entirety without leave to reapply.

I hereby order the landlord to return the security deposit to the tenant within 15 days of the date of this Decision, failing which the tenant will be at liberty to apply for double.

This order is final and binding.

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: August 25, 2022

Residential Tenancy Branch