



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MNDL-S, FFL

Introduction

This hearing was convened by way of conference call concerning an amended application made by the landlord seeking an Order of Possession for cause; a monetary order for damage to the rental unit or property; an order permitting the landlord to keep all or part of the security deposit or pet damage deposit; and to recover the filing fee from the tenant for the cost of the application.

The landlord attended the hearing and gave affirmed testimony, and was accompanied by the landlord's spouse, who did not testify or take part in the hearing. The tenant also attended, accompanied by another person, however, they did not remain in attendance, but disconnected from the hearing within the first 43 minutes.

The landlord was successful in obtaining a substitutional service order, by serving the tenant by email. The amendment to the application removes 3 other tenants because the landlord could not serve them.

The landlord submitted that the tenants moved out of the rental unit on August 31, 2022. The tenants applied to cancel a notice to end the tenancy for cause, and the Arbitrator on September 2, 2022 dismissed the tenant's claim, however the tenants had already given notice to end the tenancy. Therefore, the landlord's application for an Order of Possession is withdrawn.

The landlord also submitted that the tenant was provided with all of the landlord's evidentiary material. I accept that, and all evidence of the landlord has been reviewed and is considered in this Decision. The tenant has not provided any evidence.

Issue(s) to be Decided

The issues remaining to be decided are:

- has the landlord established a monetary claim as against the tenant for damage to the rental unit or property?
- has the landlord established that the landlord should keep all or part of the security deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlord testified that this 1 year fixed-term tenancy began on March 1, 2020 and a new tenancy agreement was signed by the parties for another fixed term on May 1, 2021 which reverted to a month-to-month tenancy after April 30, 2022. The tenancy ended on August 31, 2022, but the tenants continued to retrieve some items after that date. Rent in the amount of \$2,500.00 was payable on the 1st day of each month, which was increased to \$2,537.50 effective May 1, 2022, and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$1,250.00, which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a single family dwelling in a strata; a unit exists behind the house, owned by someone else. 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 \$24,686.61:

- \$69.67 for a water bill;
- \$49.24 for 2 trees;
- \$837.90 Junk removal;
- \$2,762.00 more junk removal;
- \$1,785.00 vermin control;
- \$2,500.00 garden cleanup;
- \$210.00 fridge;
- \$52.50 to inspect stove;
- \$52.50 to inspect microwave and dishwasher;
- \$128.26 rental of the truck;
- \$25.13 gas for U-Haul;
- \$315.00 to re-key the house;
- \$1,281.28 replacement of the dishwasher;

- \$1,002.39 to replace the stove;
- \$671.94 for the microwave replacement;
- \$2,500.00 for insurance deductible;
- \$1,000.00 insurance deductible for water damage in the kitchen;
- \$1,000.00 insurance deductible for water damage in the basement;
- \$4,468.80 estimate for re-sodding grass;
- \$3,975.00 labour to clear out junk and garbage; 159 hours @ \$25.00 per hour.

The water bill runs from July 9 to September 16, 2022.

According to the Addendum to the tenancy agreement, the tenants were required to take care of the trees, but stopped watering them, and 2 trees died, which the landlord has replaced.

The \$837.90 Junk removal claim is for the first truck that came. The tenants didn't return any keys, and on September 2 they told the Arbitrator that they wanted to pick up their things and the landlord agreed to a date, September 7, and they would bring a U-Haul at 10:00 but arrived at 10:30 with no truck. Police were there and the tenants said they didn't want anything. One of the tenants signed a form on behalf of all tenants saying that they didn't want the stuff and the landlord could remove it. A copy has been provided for this hearing.

With respect to the second claim for junk removal amounting to \$2,762.00, the landlord testified that the landlord sent a message to the tenant, a copy of which has been provided for this hearing, saying that the landlord had paid the \$837.90 junk removal bill, and asking whether or not the tenant wanted to return to retrieve more items, but received no response.

The landlord also testified that the landlord lived in the rental unit for 18 years prior to this tenancy, and after the tenants moved out there were rats everywhere and Orkin trapped about 7, which will continue for about a year. The tenants left food all over the house which seeped into everything; liquids and food stuck to floors, including rotting food and meat, urine spotted mattress outside, and the landlord told the tenants it would attract rats. The tenants never said a word to the landlord about vermin, and after the tenants moved out the landlord found rat poison behind couches and in the laundry room, so the tenants had already been trying to get rid of them. Biohazard people will have to come in before construction of damage can commence upstairs and downstairs.

With respect to the claim for garden clean-up, the landlord testified that the tenants left so much junk and didn't water or weed the garden as agreed. The landlord called several people, and an estimate of the cost has been provided for this hearing.

The fridge was fairly new however the insurance company said that appliances had to be inspected before they would continue with the landlord's claim. To continue with the claim, West Coast Appliances had to inspect it. The same applies to inspections of the stove, microwave and dishwasher. The stove was left filled with grease, grime and does not work. The microwave was melted on the outside, and the dishwasher was entirely inoperable with pieces missing. Photographs have also been provided for this hearing.

The landlords rented a U-Haul to save on the costs for junk removal, and claim the cost of the rental truck and gasoline.

The tenants didn't return the keys, so the landlords had to re-key after the tenants had vacated at a cost of \$315.00.

The landlord also testified that replacement of the dishwasher was \$1,281.28, \$1,002.39 to replace the stove and \$671.94 for replacing the microwave. The dishwasher replacement was cheaper than the previous one, but the same quality as was in the rental unit. The dishwasher and stove had been purchased in January, 2020 and the microwave was about 3 years old, which is a hood over the stove.

The landlord also testified that the strata policy only goes to a certain point, then the landlord must pay on her own and is told by the adjuster that the insurance deductible will be \$2,500.00, which has not yet been paid; the landlord is waiting for bio-hazard people.

Another insurance deductible of \$1,000.00 is for water damage in the kitchen; whatever the tenants did to the dishwasher, water remained in the bottom throughout floors. Another insurance deductible of \$1,000.00 will be payable for water damage in the basement.

The landlord further testified that re-sodding the grass is estimated to cost \$4,468.80.

The landlord also claims \$3,975.00 for labour to clear out junk and garbage, being 159 hours at \$25.00 per hour. Friends and family assisted and the landlord has not yet paid them; they're willing to wait. The landlord kept track of how many people worked on an Excel Spreadsheet, also provided for this hearing.

The landlord has no true information about the bio-hazard cost, but claims \$2,800.00 to \$4,800.00 before taxes.

Analysis

Where a party makes a monetary claim as against another party for damages, the onus is on the claiming party to satisfy the 4-part test:

- that the damage or loss exists;
- 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;
- the amount of such damage or loss; and
- what efforts the claiming party made to mitigate any damage or loss suffered.

In this case, I have reviewed all of the photographs and the condition inspection reports, and I am satisfied that the damage or loss exists and that it exists as a result of the tenants' failure to comply with the *Act*, which includes removal of all of the tenants' items and leaving the rental unit reasonably clean at the end of the tenancy. It is clear from the evidence that the tenants took absolutely no care in ensuring that the rental unit was left in a reasonable state.

I also find that the landlord mitigated by completing inspections prior to the end of the tenancy and providing the tenants with a list of items that required attention, and did what was required by law with respect to providing the tenants with at least 2 opportunities to complete the move-out condition inspection report, but the tenants did not remain in attendance for the inspection. The tenant did not dispute the damages prior to disconnecting from the call, only denied that the tenant had any means to pay for it.

The landlord has provided numerous receipts and invoices, covering some, but not all of the claims. Also, a landlord must not be compensated twice for damages, and considering that the landlord has included claims for inspections to appliances, one might assume that the insurance company will reimburse the landlord for replacement of those items.

The water bill runs from July 9, 2022 to September 16, 2022 and the tenancy ended on or about September 1, 2022, and therefore, I find that the landlord has established a portion of the claim ($\$69.67 / 69 \text{ days of the bill} = \$1.009 \text{ per day} \times 55 \text{ days} = \55.53). I find that the landlord has established a claim of **\$55.53** for the water bill.

I am also satisfied that the landlord has established the following:

- \$49.24 for tree replacement;
- \$837.90 Junk removal;
- \$2,762.00 more junk removal;
- \$1,785.00 vermin control;
- \$2,500.00 garden cleanup;
- \$210.00 fridge inspection;
- \$52.50 for the stove inspection;
- \$52.50 for microwave and dishwasher inspection;
- \$128.26 for U-Haul costs;
- \$25.13 for gasoline;
- \$315.00 for re-keying;
- \$2,500.00 for an insurance deductible;
- \$1,000.00 for the deductible for water damage in the kitchen;
- \$1,000.00 for the deductible for water damage in the basement; and
- \$3,975.00 for labour to clear out the junk and garbage left behind by the tenants.

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

Having found that the landlord has established the above, totaling \$17,348.06, I order that the landlord keep the \$1,250.00 security deposit in partial satisfaction, and I grant a monetary order in favour of the landlord for the difference of \$16,098.06.

Conclusion

For the reasons set out above, I hereby order the landlord to keep the \$1,250.00 security 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 \$16,098.06.

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: November 16, 2022

Residential Tenancy Branch