



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Codes: MNDL-S, MNDCL-S, FFL, MNSD-DR, FFT

Introduction

The landlord's application is seeking orders as follows:

1. For a monetary order unpaid utilities, cleaning and damage to the rental unit;
2. To keep all or part of the security deposit; and
3. To recover the cost of filing the application.

The tenant's application is seeking orders as follows:

1. Return all or part of the security deposit and pet damage deposit; and
2. To recover the cost of filing the application.

This matter commenced on March 14, 2022, and June 3, 2022, and rescheduled to reconvene on October 14, 2022. The interim decision of March 14, 2022, and June 3, 2022, should be read in conjunction with this Decision.

On October 14, 2021, both parties appeared.

Issues to be Decided

Is the landlord entitled to a monetary order for damages and unpaid utilities?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Is the tenant entitled to the return of the security deposit and pet damage deposit?

Background and Evidence

The parties entered into a two month tenancy agreement that was to start on July 1, 2022. Rent in the amount of \$9,000.00 was payable each month and the tenant paid the rent for the two months in advance. The parties agreed the tenant took possession earlier on or about June 15, 2022. The parties agreed that the tenant paid a security

deposit of \$4,500.00; however, the landlord disagreed that the tenant paid the pet damage deposit. I will further consider the pet damage deposit when I consider the tenant's application.

The landlord claims as follows:

a.	Damage to bathroom	\$1,950.00
b.	Carpet cleaning	\$ 350.00
c.	Unpaid utilities	\$ 441.45
d.	Filing fee	\$ 100.00
	Total claimed	\$2,841.45

Damage to bathroom

The landlord testified that the tenant caused damage to the bathroom by using the shower to wash their dog causing damage to the walls, which this was told to them by the tenant. The landlord stated that the tenant agreed they would repair the damage. Filed in evidence is a photograph and a statement of MC stating the work was done

The tenant testified that when they moved out of the rental unit the landlord indicated everything was fine. The tenant stated that they did not cause damage to the bathroom. Filed in evidence are text messages between the parties, which have been translated by a certified translator.

Carpet cleaning

The landlord testified that the tenant did not shampoo the carpets at the end of the tenancy and the tenant's dog urinated on the carpet leaving stains. The landlord stated that they had to pay to have the carpets and stairs cleaned. Filed in evidence is a statement of MC.

The tenant testified that they paid to have the entire property cleaned and they cleaned the carpets. Filed in evidence is an invoice for regular cleaning in the amount of \$236.25.

The landlord argued that it is impossible to have the entire rental unit cleaned and the carpets for \$236.25. The landlord stated that nowhere on the receipt does it state the carpets were cleaned.



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Unpaid utilities

During the hearing the tenant agreed they did not pay any utilities to the landlord and agree that amount is to be deducted from the security deposit.

Tenant's Application

The tenant testified that they paid the landlord a security deposit of \$4,500.00 and a pet damage deposit of \$4,500.00 (the "Deposits"), as it was to be paid by June 15, 2022. The tenant stated that they gave the landlord two cheques. The first cheque of \$18,000.00 was given to the landlord on June 1, 2022, as advance payment for July and August 2022, and the second cheque of \$9,000.00 was given on June 15, 2022, for the Deposits. The tenant seeks the return of their Deposits less the agreed upon utilities.

The landlord testified that they do not agree the pet damage deposit was paid. The landlord stated that the tenant moved into the premises on June 15, 2022, before the date stated in the tenancy agreement of July 1, 2022. The landlord stated that received the total amount of \$27,000. The landlord stated that this was rent from June 15 to June 30, 2022 (\$4,500.00), rent for July (\$9,000.00) and rent for August 2022(\$9,000.00), which totals the amount of rent owed was \$22,5000, and the balance was for the security deposit of \$4,500.00. The landlord stated they did not receive a pet damage deposit.

The tenant argued that the landlord told them they could live rent free for June 2022.

The landlord argued that is simply untrue.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, both parties have the burden of proof to prove their respective claim.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation, or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

How to leave the rental unit at the end of the tenancy is defined in Part 2 of the Act.

Leaving the rental unit at the end of a tenancy

37 (2) When a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Normal wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

Damage to bathroom

In this case, I find the landlord has failed to prove the tenant caused damage to the bathroom that was from their action or neglect. The landlord receipt show the landlord was renovating a toilet and part of the walls were soaked in water. This is supported by the text messages that the tenant has provided a translated copy of, which supports that there was an issue with a leaking toilet. I find the landlord has provided no supporting evidence that the tenant's was washing their dog in the shower, and this was the cause of damage. Therefore, I dismiss this portion of the landlord's claim.

Carpet cleaning

The evidence of the landlord was the tenants did not have the carpets cleaned at the end of the tenancy and there was urine stains on the carpet. The tenant stated they did



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have the carpets cleaned. I find both versions are probable. However, the onus is on the landlord to prove their version.

The landlord has provided a statement of MC that indicated the carpets were left dirty and they professional cleaned the carpets. This is not what I would expect for an invoice or proof of payment. Further, I have no photographs of the carpet showing any staining for my review and consideration. I find the landlord has not met the burden of proof. Therefore, I dismiss this portion of the landlord's claim.

Unpaid utilities

During the hearing the tenant agreed that they owed utilities to the landlord. Therefore, I find the landlord is entitled to recover the cost of utilities in the amount of **\$441.45**.

I find that the landlord has established a total monetary claim of **\$541.45** comprised of the above described amount and the \$100.00 fee paid for this application.

Tenant's Application

I accept that under the terms of the tenancy agreement that the tenant was to pay at a later date, a security deposit and pet damage deposit, when they entered into the tenancy agreement on May 29, 2022. However, that alone is not proof of payment of the Deposits.

In this case, the parties agreed the tenant moved into the premises on or about June 15, 2022, two weeks in advance of the start date in the tenancy agreement. I find it is a reasonable expectation of a landlord that when a tenant moves in earlier than the date listed in the tenancy agreement, that they would be required to pay prorated rent based on the period the tenant occupies the rental unit, which in this case was June 15 to June 30, 2022.

I am not satisfied with the tenant's version of event, that they were not required to pay any rent for June 2021. This does not have the "ring of truth". I would expect to see at least some communication between the parties, which expressly stated that the landlord was not charging rent for this time period. The tenant has not provided any evidence to support their version of events that they were to live rent free for June 2022.

While I accept there were discussion on the return of the security deposit. However, I can put little weight upon them the value of the deposit as the landlord did not explicitly say they would be returning \$9,000.00. Further, I note in the move out inspection the landlord refers to **the deposit** being refunded, this is singular; not the **deposits**, which would mean more than one.

Therefore, I accept the landlord's calculation that \$22, 500.00 was rent due for the period of June 15 to August 30, 2022, and the remainder was applied to the security deposit. I find the tenant has failed to prove a pet damage deposit was paid.

As I have found that the landlord has established a total monetary claim of **\$541.45**, I authorize the landlord to keep the amount of **\$541.45** from the tenant's security deposit of \$4,500.00 in full satisfaction of their claim. I order the remaining balance of the security deposit of \$4,048.55 be returned to the tenant forthwith.

Therefore, I grant the tenant a formal order for the balance due of their security deposit in the amount of **\$4,048.55**. The tenant is granted a formal order pursuant to section 67 of the Act. This Order may be enforced in the Provincial Court (Small Claim). The landlord is **cautioned** that costs of such enforcement are recoverable from the landlord.

I have not granted the tenant the cost of their filing fee as their application was filed after the landlord had already made a claimed against the security deposit which within the statutory time limit and any balance due remaining of the security deposit would have been ordered to be returned.

Conclusion

The landlord is granted a monetary order and may keep a portion of the security deposit in full satisfaction of the claim. I find the tenant is entitled to the return of the remainder of the security deposit.

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 2, 2022

Residential Tenancy Branch