



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: MNDC MND MNSD FF
Tenant: MNSD FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties. The participatory hearing was held, via teleconference, on August 16, 2022 and December 20, 2022. Both parties applied for multiple remedies under the *Residential Tenancy Act* (the “Act”).

The Landlords, S.E. was present with his brother, T.E. The Tenant was also present. All parties attended both the hearing and provided affirmed testimony.

Tenant’s Application

The Tenant stated she sent her Notice of Dispute Resolution Proceeding to S.E. and T.E. She stated she sent it by registered mail to S.E. and provided mail tracking information showing it was sent on January 28, 2022. The Tenant confirmed it was mailed to the S.E.’s residence, and S.E. confirmed it was his place of residence. S.E. stated he did not receive the package, and denies signing for it. Although S.E. denied getting the Notice of Dispute Resolution Proceeding, pursuant to section 90 of the Act, I find S.E. is deemed to have received the package 5 days after it was sent by mail.

The Tenant stated she served the Notice of Dispute Resolution Proceeding to T.E., by leaving a copy with him, in person. Regardless of who left this copy with T.E., I find T.E. has been sufficiently served given he acknowledged receiving it on or around January 29, 2022.

Both S.E. and T.E. confirmed receipt of the Tenant’s evidence package. No issues were raised with respect to the service of the Tenant’s evidence packages.

Landlords' Application

The Landlords stated that they sent the Tenant their Notice of Dispute Resolution Proceeding package, with some evidence, by registered mail. The Tenant confirmed receipt of this package. The Tenant also confirmed receipt of the Landlords' evidence package, some of which was sent via email. No further service issues were raised. I find the Landlords sufficiently served their application and evidence.

All parties provided testimony and were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure, and evidence that is relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

The Landlord filed his application online and listed that they are seeking a total of \$1,520.00 for several different monetary items. Subsequent to filing the application, the Landlord also provided a monetary order worksheet specifying that he is seeking \$5,750.56. However, the Landlord confirmed that he did not file an amendment to the initial application to increase, change, or modify the initial application and the amounts listed.

As stated in the hearing, in order to increase the amount of monetary compensation sought in a proceeding, a formal amendment must be filed with our office, and served to the respondent. This form is titled "RTB-42L Landlord Request to Amend an Application for Dispute Resolution". Since this has not been done, I find the Landlord's application is limited to the amount set out on the initial application, which amounts to \$1,520.00, plus \$100.00 for the filing fee.

Issue(s) to be Decided

Tenant

- Is the Tenant entitled to the return of the security deposit held by the Landlord?

Landlords

- Is the Landlord entitled to a monetary order for damage to the rental unit or for damage or loss under the Act?
- Is the Landlord entitled to keep the security and pet deposit to offset the amounts owed by the Tenant?

Background and Evidence

Both parties agree that:

- Monthly rent was \$1,300.00 and was due on the first of the month.
- The tenant moved in on or around November 1, 2020, and moved out on December 31, 2021, the same days the keys were left on the counter.
- The Landlord still holds a security deposit and pet deposit totalling \$1,300.00.
- The Tenant provided, and the Landlord received, the Tenant's forwarding address in writing on December 31, 2021.

The parties had a previous dispute resolution proceeding and a hearing was conducted on November 30, 2021. The Tenant had applied to cancel a 1 Month Notice to End Tenancy for Cause. However, the Tenant failed to attend the hearing, and the Notice was upheld. The Tenant applied for a review consideration on December 6, 2021, and this review was dismissed, on December 14, 2021.

The Tenant stated she provided a text message to T.E. (who is the Landlord's brother who lives above the rental unit) on November 18, 2021, stating she would be moving out in one month. However, T.E. stated that the Tenant needed to put the notice in writing, so the Tenant posted her 1 month notice to T.E.'s door on November 29, 2021.

The Landlord, S.E., pointed to the tenancy agreement to show that he is the only named Landlord, and he asserts that T.E. is not a Landlord. The Tenant provided text messages showing that she has communicated with T.E. for several tenancy related matters. Specifically, T.E. spoke to the Tenant about providing her mailing address, and about cleaning up at the end of the tenancy. Further, in the hearing, T.E. stated that he received the Tenant's written notice to end tenancy at the end of November 2021.

Condition Inspection

The parties met and conducted a move-in inspection on November 1, 2020, and the Landlords completed the move-in portion of the condition inspection report. Both parties signed the move-in portion of the report. In the report, for each room, the Landlords listed a series of numbers, rather than using descriptive words, or the pre-defined "condition codes" noted on the report. Most of the move-in portion of the condition inspection report is blank, aside from a few numbers. The Landlords stated that the numbers correspond to the attached photos. The Landlords stated that they only took a photo and noted in on the move-in report when there was actual damage. The Landlord did not provide photos of the entire rental unit and asserts that if there were no photos taken, it was in good condition.

The parties never met to do a move-out inspection, nor was a move-out condition inspection report completed. After the Landlord obtained an Order of Possession at his November 30, 2021, hearing, he stated that he text messaged the Tenant several times in the early part of December trying to arrange a time to move-out, and a time to do the walk through inspection. However, the Landlord stated that the Tenant refused to respond to his proposals for when to conduct the move-out inspection, and she also refused to answer his calls. Copies of text messages were provided into evidence, and its clear the parties were communicating regularly via text message. The Landlord, S.E., stated to the Tenant, on December 6, 2021, that he would be there on December 9, 2021, at 11:00 am, to do the walk-through move-out inspection. The Tenant did not respond, despite the Landlord following up and asking why she was not replying.

The Tenant finally responded 4 days later, on December 10, 2021, but ignored the Landlord's proposal and instead talked about a rent reduction/rebate. The Landlord proceeded to speak about potentially having to get a bailiff due to the Tenant's failure to comply with the Order of Possession that she was served with in early December.

Tenant's Application

The Tenant has applied for the return of her security and pet deposit, which total \$1,300.00. The Tenant was asked if she wanted to pursue double the security and pet deposit, pursuant to section 38 of the Act. However, she stated that did not, and she only wished to obtain the base amount back, not double.

The Tenant stated that although the Landlord performed a move-in inspection, and completed that portion of the inspection report, no move-out inspection was offered. The

Tenant stated that because the Landlord failed to complete the move-out inspection, or sufficiently plan a date and time to perform the inspection, he should not be allowed to keep the deposits.

Landlord's Application

The Landlord provided a monetary worksheet which shows he is seeking the following items. The Landlord was wishing to pursue all items, and was willing to accept that the claim would be limited to the amount noted on the application. For clarity, the Landlord's items are addressed in the same manner as laid out on their worksheet.

1) \$8.00 – Garbage dump fees

The Landlord explained that when the Tenant moved out, she left behind garbage in cabinets, trash in bags, and some general debris which required a dump run, because the garbage cans were already overflowed by the Tenant. The Landlord provided a copy of the receipt for this item. The Landlord provided a photo of the garbage pile left behind by the Tenant.

The Tenant does not deny that she left behind more garbage than could fit in the normal garbage can. She does not refute that there were bags of garbage on the ground outside.

2) \$100.00 – 2 sets of blinds

The Landlord stated that he had to replace 2 sets of blinds in the rental unit, but they did not specify which blinds. The Landlord did not point to any photos of the blinds nor did they point to any evidence showing the blind damage. The Landlord only provided one receipt for \$45.93, and stated that this was for one of the blinds, and stated that the other blind required special order and he did not provided a receipt for the second blind.

The Tenant acknowledged that she broke two blinds, and that they are her responsibility. The Tenant agreed to pay \$100.00 for the blind damage.

3) \$4454.50 – Flooring repairs

The Landlord stated that he is seeking this amount because the Tenant's dog peed on the floors in numerous spots causing smell in the carpeted areas and damage to the laminate flooring and baseboards. The Landlord pointed to photos taken at the end of

the tenancy, taken a day after the Tenant moved out, to show that there is swollen wood baseboard trim in a couple areas, indicating water damage. Further, the Landlord provided photos showing there is some swelling at the seams of the laminate flooring, further indicating some minor water damage.

The Landlord also stated that the Tenant's cat damaged the carpet in the bedroom. However, he did not elaborate and explain what was damaged in the bedroom. The photos taken at the end of the tenancy show that there were some stains and spots left on the carpet.

The Landlord stated that he provided copies of letters from the SPCA and the neighbours, showing the Tenant left her animals alone in the rental unit for extended periods of time. However, the Landlord clarified that these letters were provided as part of a previous dispute resolution, and were not provided into evidence for this hearing.

The Landlord stated that the house was brand new in 2015, so the flooring is not very old.

The Tenant does not feel the floors needed replacing, and stated that only a "little part of the trim that was lifting". The Tenant stated that there was some minor water damage on the trim/baseboard because of water leaking from her dog's water bowl. The Tenant denies that there was pet urine anywhere in the unit. Although she acknowledged that her dog peed on the floor in the past.

4) \$945.00 – Painting/repair

The Landlord explained that this amount is comprised of expenses to repair damaged wall areas, some holes in the drywall, and to repair window moulding. The Landlord stated that the unit was last repainted right before the Tenant moved in. Landlord spoke generally about patching, puttying, and painting. The Landlord stated the scuffs and holes were excessive.

The Landlord did not speak to or point to the specifics of the damages, and where it was located.

The Tenant stated there was only very minor wall damage, and would be considered normal wear and tear, such as hanging photos etc.

- 5) \$120.00 – Supreme Court Filing Fee
- 6) \$3.00 – Robins Parking Fee at Court house

The Landlord explained that this is the fee he incurred to make an application for a writ of possession, pursuant to the Order of Possession he received from the RTB. More specifically, the Landlord stated that there was a hearing on November 30, 2021, where the Tenant applied to cancel a Notice to End Tenancy. However, she did not attend, and the Landlord obtained an Order of Possession on or around December 6, 2021. The Landlord stated he served this Order on the Tenant on December 6, 2021, by posting it to her door, but the Tenant ignored it and did not respond to text messages regarding this issue or by actually moving out. The Landlord stated he had no other option except to file for a writ of possession because the Tenant showed no signs of moving out, and he had to consider hiring a bailiff. A copy of the receipt was provided, dated December 17, 2021.

The Tenant stated she did not attend the hearing in November because she already told the Landlord she would be out by the end of December.

- 7) \$120.00 – Cleaning Services

The Landlord stated that the Tenant left the place very dirty, and as a result, he had to hire a cleaner on December 31, 2021. The Landlord spoke about mould on windows, and dirty appliances. The Landlord provided a receipt for this item which was for 4 hours cleaning. The Landlord also provided photos of the windows, and some piles of garbage, and some staining above the microwave.

The Tenant asserts that she cleaned the rental unit, including the appliances before she moved out so she is not sure what these costs are about. The Tenant acknowledged that she may not have been able to reach all spots that were up high.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim.

The applicant bears the burden of proof to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the other party. Once that has been established, the applicant must then provide evidence that can verify the value of the loss or damage. Finally it must be

proven that the applicant did everything possible to minimize the damage or losses that were incurred.

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

Firstly, I note the Landlord, S.E., asserts that since T.E. is not on the tenancy agreement, he is not considered a Landlord under the Act. I turn to the following portion of the Act:

"landlord", in relation to a rental unit, includes any of the following:

(a)the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,

(i)permits occupation of the rental unit under a tenancy agreement, or

(ii)exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;

I have reviewed the testimony and evidence and I note that T.E., on several occasions, was clearly interacting with the Tenant for tenancy related matters, including discussing moving out, and asking the Tenant to give notice in writing, among other things. I am satisfied that T.E. was exercising some powers and performing some duties under the Act regarding this tenancy, and as such, I find he is considered a Landlord (agent of) under the Act. That being said, only S.E. will be named as a Landlord on any Orders issued, as he is the owner, and the only person who signed the tenancy agreement as a Landlord.

Tenants' Application

Section 38(1) of the Act requires a landlord to repay the security deposit or make an application for dispute resolution within 15 days after receipt of a tenant's forwarding address in writing or the end of the tenancy, whichever is later. When a landlord fails to do one of these two things, section 38(6) of the Act confirms the tenant is potentially entitled to the return of double the security deposit.

However, in this case, the Tenant confirmed that she was not seeking double the deposits, pursuant to section 38(6) of the Act, and only is requesting the base amount of her deposits back (\$1,300.00). As such, it is not necessary to consider whether or not

the Landlord extinguished his right to claim against the security and pet deposits. Further, it is also not necessary to consider whether or not the Landlord extinguished his right to claim against the deposits because extinguishment only applies to applications strictly made for damage, and the Landlord's application is also for other fees (court fees). Also, I note the Landlord filed his application against the deposits on January 6, 2022, within 15 days of the end of the tenancy, which is within the allowable time frame.

The return of the security and pet deposit of \$1,300.00, will be addressed further below, once the merits of the Landlord's application is determined.

Landlord's Application

Next, I turn to the Landlord's claim for monetary compensation. I will first address the condition inspection report and the move-in/move-out inspections.

Condition Inspection Report

Sections 23 and 35 of the Act states that a Landlord and Tenant together must inspect the condition of the rental unit on the day the Tenant is entitled to possession of the rental unit, and at the end of the tenancy before a new tenant begins to occupy the rental unit. Both the Landlord and Tenant must sign the condition inspection report and the Landlord must give the Tenant a copy of that report in accordance with the regulations.

In this case, I note that the parties do not dispute the contents of the move-in portion of the condition inspection report. As such I find this part of the condition inspection report provides reliable evidence with respect to the condition of the rental unit at the start of the tenancy. I accept that the condition of the rental unit was good, unless photos were appended and noted, as this is the system the parties used at the start of the tenancy.

I note there was no move-out inspection completed. However, I note the Landlord provided photos taken at the end of the tenancy. As such, I will rely on these photos and the testimony to make my determinations with respect to the condition of the rental unit at the end of the tenancy.

- 1) \$8.00 – Garbage dump fees

Having reviewed the testimony and evidence on this matter, I find the Tenant is liable for this item, in full, as I find it more likely than not that she left behind garbage, as shown in the photos taken after she moved out. I am satisfied this would have caused the Landlords to incur the above noted loss. I award \$8.00.

2) \$100.00 – 2 sets of blinds

I have reviewed the testimony and evidence on this matter, and I find the Tenant is liable for this amount in full, as she explicitly agreed to paying for this amount. I award the Landlord \$100.00 for this item.

3) \$4454.50 – Flooring repairs

I have reviewed the testimony and evidence on this matter. I note the move-in portion of the condition inspection report shows only one small mark on the laminate flooring in the living room, and an up-close photo was attached. No other damage was noted but I note there is no written description of the general condition of the floors, and there are no general or wider-angle photos of the flooring at the start of the tenancy.

At the end of the tenancy, the Landlord took photos of several problematic spots where it appears water infiltrated the edges of the laminate, causing it to swell. This occurred in several areas, although the Landlord did not explain where exactly the photos were taken, and what specific part of the floor was being photographed.

I also note that there are no stains noted in the move-in portion of the condition inspection report for the carpeted bedroom. However, at the time of move-out, the photos show staining in a few areas.

I note the Tenant denied that her dog or cat urinated on the flooring, but she also later acknowledged that her dog had peed on the floor in the past. Overall, based on the testimony and evidence, I am satisfied that it is more likely than not that the water damage/swollen seams on the laminate flooring was caused by the Tenant, during her tenancy. Whether it be from improper cleaning and/or pooling of water, or from pet urine, I find it more likely than not that the damage to the laminate flooring occurred as a result of the Tenant's actions.

With respect to the carpet in the bedroom, I note the Landlord did not sufficiently clarify what the damage was, if any, aside from the stains noted in the photos taken at the end of the tenancy. I find there is a lack of clarity in this regard. Also, I am not satisfied,

based on the testimony and evidence, that the carpets required replacement. There is no evidence to show that the Landlord attempted to clean the carpets, or mitigate the loss in that regard. I am not satisfied the Tenant ought to be responsible for the replacement of the carpeted area (bedroom).

I note the invoice provided by the Landlord includes replacement of all flooring. Although I am satisfied that the Tenant caused some damage to the laminate flooring, it is not clear how much of the overall invoice was related to the replacement of the carpeted area, and which was related to the laminate flooring area. The Landlords did not elaborate on this matter and explain any sort of square footage breakdown of the rooms, including which portions were previously carpeted. Ultimately, it is difficult to determine which portion of the overall invoice provided by the Landlord that the Tenant ought to be responsible for, given her partial liability for flooring as noted above. However, I note that an arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward:

“Nominal damages” are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

In this case, I find a nominal award is appropriate. I award \$750.00.

4) \$945.00 – Painting/repair

I have reviewed the testimony and evidence on this matter. I note the Landlord stated there was damage to the window moulding. However, I find it unclear where this damage was, and how significant it was. The Landlord did not elaborate on what which windows were damaged, and to what extent. Further, and similarly, the Landlord did not explain where the damaged drywall was, and to what extent it was damaged. Without further clarity and detail on this matter, including specific photos presented and explained to demonstrate the damages, I am not satisfied that the alleged damages are beyond reasonable wear and tear, such that the Tenant ought to be responsible for the repairs and repainting of the affected areas. I dismiss this item, in full.

5) \$120.00 – Supreme Court Filing Fee

6) \$3.00 – Robins Parking Fee at Court house

I have reviewed the testimony and evidence on this matter. I acknowledge that the Tenant had provided a separate notice, at the end of November, to the Landlord that

she would be moving out by the end of December 2021. However, I do not find this entitles her to ignore the November 30, 2021, dispute resolution proceeding, and the related orders. I also note the Landlord attempted to communicate and confirm when the Tenant would be moving out, after he served her with the Order of Possession. However, as per the text messages, this was largely ignored by the Tenant. Further, she showed no signs of vacating and complying with the Order of Possession, and I find it is a reasonable step to file for a writ of possession, given the situation. I find the Tenant is liable for both these amounts, as they were incurred as a result of her failure to comply with the Order made.

7) \$120.00 – Cleaning Services

I have reviewed the testimony and evidence on this matter. I note Policy Guideline #1 states that the Tenant is responsible for cleaning the interior window areas, including removing mold from the window frames. I find this was not done, as it was clearly dirty and/or mouldy in the photos taken at the end of the tenancy. I also note there was some garbage, and some general staining on items such as the microwave. There was also debris in the cupboard. I find the Landlord's costs on this item are reasonable, and supported by the evidence. I award this item, in full.

I decline to award the recovery of either filing fee as both parties were partly successful.

In summary, the Landlord is entitled to \$1,101.00 for the items noted above. I note he holds \$1,300.00 in deposits. I authorize him to retain \$1,101.00 from the deposits, and I order him to return the balance, \$199.00.

Conclusion

The Tenant is granted a monetary order pursuant to Section 67 in the amount of **\$199.00**. This order must be served on the Landlord. If the Landlord fails to comply with this order the Tenant may file the order in the Provincial Court (Small Claims) and be 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 *Residential Tenancy Act*.

Dated: December 21, 2022