



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNDCL-S, FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for money owed or compensation for damage or loss under the Act, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- an order authorizing the landlord the recovery of the filing fee for this application from the tenant pursuant to section 72.

At the outset of the hearing, I explained to the parties that as these hearings were teleconferences, the parties could not see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited, and they were reminded to refrain from doing so.

All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation. The tenant acknowledged that she received the landlords evidence however, the tenant did not provide any of her evidence to the landlord, accordingly; the tenants evidence has not been considered in making the decision. Both parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I explained the hearing and settlement processes to both parties. Both parties had an opportunity to ask questions. Both parties confirmed that they were ready to proceed

with the hearing, they did not want to settle this application, and they wanted me to make a decision regarding this application. Neither party made any adjournment or accommodation requests. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue to be Decided

Is the landlord entitled to a monetary award for damage arising out of this tenancy?
Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?
Is the landlord entitled to the recovery of the filing fee?

Background, Evidence

Both parties agreed to the following. The tenancy began on March 31, 2021 and ended on April 30, 2022. The monthly rent of \$1350.00 was due on the first of the month. The tenants paid a security deposit of \$675.00 and a pet deposit of \$675.00. The landlord continues to hold both deposits. Written condition move in and move out condition reports were conducted with both parties present.

The landlord gave the following testimony. The landlord testified that the tenants did not clean the suite to his standards which required him to clean it himself. The landlord testified that the tenant had cleaners attend on the last day of the tenancy but the cleaners did not have the proper equipment to clean the floors as he wanted. The landlord testified that the cleaners left without doing anything. The landlord testified that the tenants also caused some "scratches and dents in the walls" and caused a cut on the countertop. The landlord testified that he gave the tenants an opportunity to make the repairs but they did not. The landlord is seeking \$450.00 for cleaning and \$294.37 for damages along with the recovery of the \$100.00 filing fee for a total claim of \$844.37.

The tenant gave the following testimony. The tenant testified that the damages were pre-existing and even if she caused them, they were minimal. The tenant testified that she cleaned the unit on April 29, 2022 and the landlord attended and told her it wasn't good enough. The tenant hired cleaners that attended on April 30, 2022 but the landlord wanted them to do the cleaning based on his instructions and the parties ended up

arguing. The cleaners advised that they would attend the following day, but the landlord refused and said he was busy. The cleaners left and charged the tenant \$200.00 even though they didn't do any work. The tenant testified that she attempted to address the landlords concerns but he was unreasonable and wasn't willing to allow the cleaning company to return.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. **In order to claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof.** The claimant must provide **sufficient evidence of the following four factors**; the existence of the damage/loss, that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party, the applicant must also show that they followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed, and that if that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. I address the landlords claim and my findings as follows.

Cleaning

The tenant arranged to have cleaners clean the unit for her after she had already cleaned it to satisfy the landlord who advised her, he was unhappy with her cleaning. The landlord could have allowed the cleaning company to conduct as much cleaning as they possibly could to mitigate the amount of cleaning, however the landlord had an unreasonable and unrealistic expectation of the cleaning company that resulted in an argument and the cleaning company leaving. I find that the tenant made all reasonable attempts to satisfy the landlord, but he was unwilling to allow the tenant to have the cleaning company conduct their work, accordingly; I find that the landlord is not entitled to any compensation and dismiss this portion of their application.

Damages

Residential Tenancy Policy Guideline 1 states the following:

“Reasonable wear and tear refers to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. An arbitrator may determine whether or not repairs or

maintenance are required due to reasonable wear and tear or due to deliberate damage or neglect by the tenant. An arbitrator may also determine whether or not the condition of premises meets reasonable health, cleanliness and sanitary standards, which are not necessarily the standards of the arbitrator, the landlord or the tenant.”

In the landlord's own testimony, he stated that the damage was so minor that if you don't look closely "you'll miss it." I find that the alleged damage is normal wear and tear and not deliberate damage or neglect, accordingly; I dismiss this portion of the landlords claim.

The landlord has not been successful in his application.

Conclusion

The landlord's application is dismissed in its entirety without leave to reapply. The landlord must return the security and pet deposit back to the tenant. I grant the tenant an order under section 67 for the balance due of \$1350.00. 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 *Residential Tenancy Act*.

Dated: January 26, 2023

Residential Tenancy Branch