



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”).

The Landlord applied on May 16, 2022 for:

1. A Monetary Order for damages to the unit - Section 67;
2. An Order to retain the security deposit - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Tenant applied on September 19, 2022 for:

1. An Order for the return of the security deposit - Section 38;
2. A Monetary Order for compensation or loss - Section 67; and
3. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Parties confirm receipt of each other's relevant evidence.

Preliminary Matter

The Tenant's claim for compensation is in relation to a notice to end tenancy for landlord's use. Rule 2.3 of the Residential Tenancy Branch Rules of Procedure provides that claims made in an application must be related to each other and unrelated claims may be dismissed with or without leave to reapply. As the Tenant's claim for compensation is not related to the return of the security deposit the damages to the unit,

I dismiss the claim with leave to reapply. Leave to reapply is not an extension of any limitation date.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Is the Landlord entitled to retain the security deposit?

Is the Tenant entitled to return of the security deposit?

Are the Parties entitled to recovery of their filing fees?

Relevant Background and Evidence

The following are agreed facts: The tenancy under written agreement of an upper unit in a house started on August 1, 2009 and ended on April 30, 2022. Rent of \$1,860.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected \$700.00 as a security deposit. The Tenant provided their forwarding address to the Landlord by text on May 13, 2022 and by registered mail on May 31, 2022.

The Landlord states that a move-in inspection was done with the previous partner of the Tenant as the Tenant moved in a couple of days later. The Landlord states that although a report was completed and copied to the previous partner the Landlord does not have a copy of that report. The Tenant states that they moved in with the previous partner at the same time and no inspection was done.

The Landlord states that the Parties mutually conducted a move-out inspection with a completed report and that although they gave it to the Tenant for signature the Tenant refused. The Landlord states that the Tenant also refused to take a copy of the report from the Landlord. The Tenant states that there was no mutual inspection of the unit as the Tenants only stood in the hallway where the Landlord informed the Tenant that the Landlord had already inspected the unit and that all was fine except for a door. The Tenant states that no copy of a move-out inspection was offered to the Tenant. The

Landlord states that they had another person attend the inspection as a witness who signed the inspection report provided by the Landlord for this hearing.

The Tenant does not dispute the Landlord's claims of **\$259.88** and **\$133.01** for the costs of labour and supplies to repair a door left damaged by the Tenant.

The Landlord states that the Tenant left three walls with damage to the paint and drywall. The Landlord claim \$564.53 as the cost for repair and paint to the walls. The Landlord provides the invoice. The Landlord states that the drywall was original to the unit built in 1979 and the unit was last painted before the tenancy started in 2009. The Tenant states that they do not recall any walls being damaged and that they did not damage any walls.

The Landlord states that the Tenant left the vinyl kitchen flooring damaged. The Landlord states that the flooring was new in 2009. The Landlord does not have supporting evidence of the age of the flooring. The Landlord claims \$866.25 as the costs to remove the flooring and install laminate flooring. The Landlord claims \$1,124.26 as the cost of the laminate and supplies. The Landlord agrees that vinyl flooring likely does not have a greater life than either tile or hardwood flooring.

The Landlord states that they suspect that the Tenant damaged a pipe that broke on April 28, 2022 causing a flood leaving damage to the kitchen subfloor and the lower unit's basement ceiling. The Landlord does not provide any repair report or investigation report on the cause of the damaged pipe. The Landlord gave no evidence of the age of the pipe. The Landlord claims \$2,126.25 for the repair of the subfloor and \$1,669.50 for the repairs to the basement ceiling. The Tenant states that they had numerous water leak problems over the years and that the Landlord was constantly making repairs for the leaks. The Tenant states that they did nothing to cause the pipe to break. The Tenant states that the Landlord's photos of the subfloor shows mold and the Tenant

states that they were dismayed when they saw the photos as this meant that the Tenant had been living in a unit with mold.

Analysis

Section 37 of the Act provides that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party. As the Landlord has no evidence to support that the pipe break was caused either by an act or negligence of the Tenant and given the Tenant's evidence that they did not cause the pipe break I find on a balance of probabilities that the Landlord has not substantiated that the Tenant caused the damage to the pipe that caused the flood. I therefore dismiss the claims for costs to repair the subfloor and basement ceiling.

Guideline #40 that sets out the useful life of building elements provides that interior paint has a useful life of 4 years, and that drywall has a useful life of 20 years. As the paints and drywall were past their useful life I find that the repairs were made at the Landlord's own cost. This same guideline provides that tile flooring has a useful life of 10 years and hardwood flooring has a life of 20 years. Given that the flooring was at least 13 years old at the end of the tenancy I find on a balance of probabilities that the flooring at the end of the tenancy was at the end of its useful life. Any costs to replace or improve the flooring therefore remains with the Landlord and I dismiss the costs claimed in relation to the flooring.

As the Tenant does not dispute the Landlord's claims to **\$392.89** (\$259.88 + \$133.01) for damages to a door I find that the Landlord has substantiated this entitlement. As the

Landlord's other claims have not met with success I find that the Landlord is not entitled to recovery of the filing fee and I dismiss this claim.

Section 24(2) of the Act provides that the right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if, inter alia, the landlord does not complete a move-in report with a copy to the tenant. The Landlord has not provided any supporting evidence that a move-in inspection was conducted with only the Tenant's previous partner or that an inspection report was completed. Given the Tenant's evidence I therefore find on a balance of probabilities that the Landlord has not substantiated that a move-in inspection was done or that a report was duly completed. For these reasons I find that the Landlord's right to claim against the security deposit was extinguished at move-in.

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. Policy Guideline #17 provides that return of double the deposit will be ordered if the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act.. As the Landlord's right to claim against the security deposit was extinguished at move-in and as the Landlord did not return the security deposit to the Tenant within 15 day receipt of the Tenant's forwarding address I find that the Landlord must now pay the Tenant **\$1,400.00** as double the security deposit. As the Tenant's claim for return of the deposit has been successful I find that the Tenant is also entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$1,500.00**.

Deducting the Landlord's entitlement of **\$392.89** from the Tenant's entitlement of **\$1,500.00** leaves **\$1,107.11** to be returned to the Tenant forthwith.

Conclusion

I Order the Landlord to retain **\$392.89** from the doubled security deposit plus interest of \$1,500.00 in full satisfaction of the claim.

I grant the Tenant an order under Section 67 of the Act for **\$1,107.11**. If necessary, 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 Act.

Dated: January 31, 2023

Residential Tenancy Branch