



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL, MNSDB-DR, FFT

Introduction

This hearing was convened in response to applications by the landlord and the tenant.

The landlord's application filed May 15, 2022, is seeking orders as follows:

1. For a monetary order for damage;
2. To keep all or part of the security deposit and pet damage deposit (the "Deposits"); and
3. To recover the cost of filing the application.

The tenant's application filed on December 16, 2022 is seeking orders as follows:

1. Return all or part of the Deposits; and
2. To recover the cost of filing the application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions at the hearing.

The tenant stated they received the evidence of the landlord; however, the last package sent by the landlords was not received 14 days before the hearing as it was received on January 24, 2023.

The landlord responded that the package was sent to the tenant by registered mail on January 17, 2022 and is deemed served 5 days later. The landlord stated it was in response to the tenant's application and they only had to provide that to the tenant 7 days before the hearing.

I am satisfied that the landlord sent their last package to the tenant in response to the tenant's application. The tenant was deemed served on January 22, 2023, which is 7 days before the hearing. Therefore, all evidence submitted by both parties will be considered if presented at this hearing.

Issues to be Decided

Is the landlord entitled to a monetary order for damages?

Is the landlord entitled to keep all or part of the Deposits?

Is the tenant entitled to the return of the Deposits?

Background and Evidence

The tenancy began on April 16, 2021. Rent in the amount of \$1,725.00 was payable on the first of each month. A security deposit of \$862.00 and a pet damage deposit of \$862.50 were paid by the tenant. The tenancy ended on April 30, 2022.

The parties agreed a move-in and move-out condition inspection report (the "CIR") was completed. Filed in evidence is a copy of the CIR. The tenant agreed in the CIR that the report fairly represents the condition of the rental unit. The tenant also agreed in the report that the landlord was entitled to keep the total amount of \$930.50 from the Deposits for itemized costs.

The tenant submits the landlord extinguished their rights to claim against the Deposits because the landlord failed to offer them at least 2 opportunities to conduct the inspection. The tenant submits that because of this breach of the Act by the landlord, the landlord was not entitled to claim against the Deposits or entitled to obtain their written consent to keep any portion of the Deposits.

The tenant stated that the Act and the Regulations require the landlord to propose two or more dates; not just one. The tenant stated that landlord only proposed one date and time to which they attended and participated in the CIR.

The landlord submits that no breached occurred. The landlord proposed the date and the tenant attended.

The landlord claims as follows:

<i>Document Number</i>	<i>Receipt / Estimate From</i>	<i>For</i>	<i>Amount</i>
#1	Agreed by Tenant - cond. insp. report	Suite Cleaning	\$252.00
#2	Agreed by Tenant - cond. insp. report	Kitchen Cabinet Damage	\$231.00
#3	Agreed by Tenant - cond. insp. report	Painting Damage	\$367.50
#4	Agreed by Tenant - cond. insp. report	Dryer Heat Exch. Door	\$55.00
#5	Samsung Canada Parts (total \$160.88)	Dryer Heat Exch. Door	\$105.88
#6	Agreed by Tenant - cond. insp. report	Dryer Cleaning Tool Brush	\$25.00
#7	Samsung Canada Quote (total \$109.98)	Dryer Cleaning Tool Brush	\$84.98
#8	NSG Carpets Ltd.	1 Box - Vinyl Plank Flooring	\$94.22
#9	Tesso Construction Inc.	Floor Re. + Re. Labour	\$393.75
#10	n/a	n/a	\$0.00
Total monetary order claim			\$1609. ³³

The landlord testified that the tenant agreed in the CIR that they are responsible for items #1, #2, #3 and there was no change to the amounts the tenant authorized them to keep in writing to be deducted from their Deposits.

The landlord testified that item #4 and #5, the tenant agreed in the CIR that they were responsible for the damage cause to the dyer heat door and that the tenant authorized them to keep the amount of \$55.00; however, the actual cost was \$160.88. The landlord seeks to recover the actual cost.

The landlord testified that item #6 and #7, the tenant agreed in the CIR that they were responsible for the loss of the dyer cleaning tool brush tool and that the tenant authorized them to keep the amount of \$25.00; however, the actual coast was \$109.98. The landlord stated that they were told that the dyer cleaning tool brush was accidentally pack in the tenant's belongings; however, it was never returned. The landlord seeks to recover the actual cost.

The landlord testified that the tenant caused damage to the flooring, as their furniture left rust stains on the new flooring. The landlord stated that this could have only occurred by the floors getting wet, such as too much water when mopping or from the pet urinating on the flooring. The landlord stated that at the start of the tenancy they gave the tenants furniture pads to place on the feet of their furniture.

The landlord testified that no amount was agreed upon in the CIR regarding the flooring. The landlord stated that their original thought was that they could remove the staining by additional cleaning; however, this did not work. The landlord stated that the only way they could remove the damage floorboard was by having that piece removed and reinstalled. The landlord stated that this involved removing the baseboard, removing a portion of the floor, installing the new floorboard, and then reinstalling the existing floor. The landlord seeks to recover the cost of \$94.22 for the box of floorboards and \$393.83 for labour.

The tenant acknowledged that they are responsible for the damage to the door and missing tool brush. The tenant stated they did not find the missing tool when unpacking their belongings. The tenant stated that they told the landlord that could have more time to get the correct amounts rather than putting an amount in the CIR. The tenant stated that the landlord keeps moving the goal post.

The tenant testified that the landlord did not give them furniture pads when they moved into the premises. The tenant stated they had purchased their own. The tenant stated that simply because there are small rust stains in the floorboard does not mean it must be replaced as the stain is minimal and does not impact the use of the floor. The tenant stated that this is cosmetics.

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 claim.

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.

The Residential Tenancy Branch Regulations 16 and 17 read as follows:

Scheduling of the inspection

- 16** (1)The landlord and tenant must attempt in good faith to mutually agree on a date and time for a condition inspection.
- (2)A condition inspection must be scheduled and conducted between 8 a.m. and 9 p.m., unless the parties agree on a different time.

Two opportunities for inspection

- 17** (1)A landlord must offer to a tenant a first opportunity to schedule the condition inspection by proposing one or more dates and times.
- (2)If the tenant is not available at a time offered under subsection (1),
- (a)the tenant may propose an alternative time to the landlord, who must consider this time prior to acting under paragraph (b), and
 - (b)the landlord must propose a second opportunity, different from the opportunity described in subsection (1), to the tenant by providing the tenant with a notice in the approved form.
- (3)When providing each other with an opportunity to schedule a condition inspection, the landlord and tenant must consider any reasonable time limitations of the other party that are known and that affect that party's availability to attend the inspection.

Evidentiary weight of a condition inspection report

- 21** In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

In this case, I do not accept the tenant's submission that the landlord extinguished their rights to claim against the Deposits or the right to obtain the tenant's written consent to

keep an amount from the Deposits because the landlord did not propose two or more dates and times for the condition inspection when proposing the first opportunity.

The landlord offered to the tenant a date to conduct the moveout condition inspection. The tenant did not inform the landlord that they were not available at the time offer or propose an alternative time to the landlord. In fact, the tenant attended the condition inspection that was first offer by the landlord and fully participated in that inspection. I find the tenants have failed to prove a violation of the Act, by the landlord. I find the landlord complied with the provisions of the Act.

Section 21 of the Regulations states the condition inspection report completed in accordance is evidence of the state of repair and condition of the rental unit. I find the tenant did not provide a preponderance of evidence to the contrary. The evidence was the tenant did cause damage to the dryer heat exchange door and lost the cleaning brush. The tenant also confirmed their furniture left rust stains on the floor. I find the CIR is the evidence of the state of repair and condition and is binding on the parties.

The tenant acknowledged in the CIR that they are responsible for items #1, #2, #3, and the agreed amount to be deducted from the Deposits, I find it was unnecessary for the landlord to make an application claiming against the Deposits for these amounts as the landlord is entitled to retain those amounts from the Deposits, pursuant to section 38(4) of the Act. Therefore, I find the landlord is entitled to keep the amount claim in the total amount of **\$859.50**.

The tenant acknowledged in the CIR that they were responsible for the broken dryer heat exchange door. The tenant agreed that the landlord could keep the amount of \$55.00; however, the actual cost of the repair was the amount of \$160.88. The landlord filed their application within 15 days claiming the amount over the authorized amount by the tenant. I find the landlord was entitled to do so under the Act. As the tenant acknowledge they broke the dryer heat exchange door, I find the landlord is entitled to recover the actual cost to repair the door in the amount of **\$160.88**.

The tenant acknowledged in the CIR that they were responsible for the missing dryer cleaning brush. The tenant agreed that the landlord could keep the amount of \$25.00; however, the actual cost of the missing dry cleaning brush was the amount of \$109.98. The landlord filed their application within 15 days claiming the amount over the authorized amount by the tenant. I find the landlord was entitled to do so under the Act. As the tenant did acknowledge they lost the dryer cleaning brush, I find the landlord is entitled to recover the actual cost of the missing brush in the amount of **\$109.98**.

The tenant acknowledged in the CIR that they were responsible for the stained flooring. The landlord attempted to have the stains removed without success. The landlord had the one floorboard removed and replaced. The tenant submits the landlord should not be entitled to compensation for the damage as this is cosmetic and does not impact the function of the floor. However, section 37 of the Act states the tenant must leave the rental unit undamaged except for reasonable wear and tear. I find the rust that penetrated the floor from the tenant's furniture does constitute damage by their actions or neglect as this is not normal wear and tear as this was preventable.

The landlord is claiming the amount of \$94.22 for the box of the flooring. While I accept, they could not buy one piece; however, the landlord now has the rest of the box should future damage occur to the floor. I find it reasonable to reduce the amount claimed of the flooring by 50% and I grant the landlord the cost of \$47.11. I find it reasonable that the tenant is responsible for the entire labour to repair the damage in the amount of \$393.75. Therefore, I grant the landlord the total amount for the repair of the flooring in the amount of **\$440.86**.

I find that the landlord has established a total monetary claim of **\$1,671.22** comprised of the above described amounts and the \$100.00 fee paid for this application.

I order that the landlord retain the amount of **\$1,671.22** from the Deposits of **\$1,725.00** in full satisfaction of the claim. I order the balance of the Deposits of **\$53.78** be returned to the tenant. I grant the tenant a formal order, pursuant to section 67 of the Act, should the landlord fail to comply with returning the balance due.

As the tenant was not success with their application and the landlord was entitled to retain the Deposits until the outcome of this hearing. I find the tenant is not entitled to recover the cost of their filing fee.

Conclusion

The landlord is granted a monetary order and may keep a portion of the Deposits in full satisfaction of the claim. The landlord is to return the balance due of the Deposit to the tenant.

The tenant's application is dismissed.

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: February 1, 2023

Residential Tenancy Branch