



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MND MNSD FF

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution. The participatory hearing was held, by teleconference, on March 30, 2023. The Landlord applied for multiple remedies, pursuant to the *Residential Tenancy Act* (the "Act").

Both parties attended the hearing and provided affirmed testimony. The Tenants confirmed receipt of the Landlords' Notice of Dispute Resolution Proceeding and evidence package in advance of the hearing. The Landlord confirmed receipt of the Tenants' evidence package. No further service issues were raised.

Both parties 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 relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

The Landlord initially filed an application for \$1,680.00 for wall damage, plus \$175.00 for cleaning. Then after this, the Landlord uploaded a worksheet specifying that she is seeking \$2,856.67 for numerous other things. The Landlord failed to file an amendment. As stated in the hearing, the Landlord cannot increase her claim to include amounts that were not indicated on the initial application, and that were not amended to be included. I find the Landlord's claim is limited to \$1,680.00 for wall damage, plus \$175.00 for cleaning, as this is all that was specified on the application. All other items are dismissed, with leave to reapply.

Issues to be Decided

- Is the Landlord entitled to a monetary order for damage or loss under the Act?
- Is the Landlord entitled to retain all or a portion of the Tenant's security and pet deposit in partial satisfaction of the monetary order requested?

Background and Evidence

Both parties agree that monthly rent at the end of the tenancy was \$3,456.00, due on the first of the month. The Landlord collected, and still holds, a security deposit of \$1,700.00 and a pet deposit of \$1,700.00.

Both parties agreed that the tenancy started on or around June 15, 2020, and a move-in inspection was conducted on June 2, 2023. Both agree that they signed the move-in inspection. The Tenants moved out on or around May 31, 2022. Leading up to this, the Landlord explained that she was undergoing a surgery, so she was not available to attend the rental unit and do the move-out inspection herself, so she asked her new Tenants, who were moving in right after the Tenants on this application moved out, to do an informal inspection once they had keys.

The Landlord asked the Tenants on this application to fill out the move-out portion of the condition inspection report, and to forward it to the Landlord, once they completed it. The Tenants did this, and the Landlord stated that the new Tenants also sent a list of things they found, in terms of cleaning and damage, once they gained access to the unit. The Tenants on this application stated that they never agreed or wanted to do the inspection by themselves, nor did they want to meet the new Tenants to do their move-out inspection. Regardless, the Tenants stated that when they attended the unit to do the move-out inspection on May 31, 2022, as agreed in the email, no one was there for the Landlord (neither the Landlord, the new Tenants, nor any agent for the Landlord).

The Tenants stated that they completed the move-out inspection in the absence of the Landlord. The Tenants stated that they sent their forwarding address, in writing, to the Landlord on June 22, 2022, via registered mail. The Tenants could not locate the registered mail tracking information. However, they provided a screenshot from the Canada Post website showing it was sent on June 22, 2022. The Landlord confirmed she received the Tenants' forwarding address but could not recall when.

The Landlords are seeking the following, as per this application form:

1) \$1,680.00 – Wall damage/paint of affected areas

The Landlord stated that the Tenants damaged the wall in several areas at the time they were moving out. The Landlord provided photos of the damage, as well as a quote for the repairs.

The Tenants acknowledged that their movers damaged the wall at the time of move-out, and they do not dispute this item.

2) \$175.00 – Cleaning

The Landlord explained that the Tenants failed to do a proper move-out cleaning, and as a result, there were several dirty areas that required more cleaning before the next tenancy could begin. The Landlord stated that she paid for \$85.00 in cleaning supplies purchased by the new tenants, and she also paid the new tenants \$150.00 for their time spent to clean the unit once they moved in. The Landlord stated that blinds were dirty, light fixtures were dusty, ledges were dusty, baseboards were dirty, washing machine had hair and dirt, and kitchen cabinets were dirty. The Landlord provided photos taken after the Tenants moved out as well as a receipt for the cleaning products purchased, totalling nearly \$85.00. The Landlord did not specify how many hours were spent cleaning.

The Tenants refute that they left the unit dirty, as they had cleaners come regularly during the tenancy, and also at the end of the tenancy. The Tenants feel the house was generally clean.

Analysis

Security Deposit

Under sections 24, 35 and 36 of the Act, landlords and tenants can extinguish their rights in relation to the security deposit if they do not comply with the Act and Residential Tenancy Regulation (the “Regulations”). Further, section 38 of the Act sets out specific requirements for dealing with a security deposit at the end of a tenancy.

Section 35 of the Act states:

Condition inspection: end of tenancy

35 (1) *The landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit*

(a) on or after the day the tenant ceases to occupy the rental unit, or

(b) on another mutually agreed day.

(2) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.

(3) The landlord must complete a condition inspection report in accordance with the regulations.

(4) 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.

(5) The landlord may make the inspection and complete and sign the report without the tenant if

(a) the landlord has complied with subsection (2) and the tenant does not participate on either occasion, or

(b) the tenant has abandoned the rental unit.

Consequences for tenant and landlord if report requirements not met

36 (1) *The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if*

(a) the landlord complied with section 35 (2) [2 opportunities for inspection], and

(b) the tenant has not participated on either occasion.

(2) Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

(a) does not comply with section 35 (2) [2 opportunities for inspection],

(b) having complied with section 35 (2), does not participate on either occasion, or

(c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Although the Landlord asserts the Tenants were okay with doing the move-out inspection on their own, the Tenants do not agree. In any event, the parties may not contract out of the Act and the Regulations, and the parties are still required to comply with the Act, as set out above. I note the Landlord failed to complete a move-out condition inspection report, which is a breach of section 36(2)(c) of the Act. The Landlord cannot ask the Tenants to complete the inspection report for her. Further, the Landlord, or an agent, failed to attend the move out inspection which was set to be done on May 31, 2022, as per the email provided, and another opportunity was not offered to the Tenants, in writing. The Landlord breached multiple sections of the Act, and extinguished her right to claim against the security and pet deposit, for damage, in multiple ways. Further, I find the move out inspection report was not completed in accordance with the Act, and was only filled out by the Tenant. I find it is not reliable, and will not be considered further.

I am satisfied that the tenancy ended on May 31, 2022, which is the date the tenants moved out. The Tenants confirmed that they sent their forwarding address in writing on June 22, 2022, by registered mail. I note the Tenants provided a screenshot of mail tracking information for this, and although the Landlord could not recall when she received it, she did acknowledge receipt of the Tenant's forwarding address via registered mail. Pursuant to section 88 and 9 of the Act, I find the Landlord is deemed to have received the Tenant's forwarding address in writing 5 days after it was sent by mail.

Pursuant to section 38(1) of the Act, the Landlord would have had 15 days from the later of the end of the tenancy or the date the Landlord received the Tenants' forwarding address in writing to repay the security and pet deposit or file a claim against it. However, as stated above, the Landlord had extinguished their right to claim against the security and pet deposit for damage to the rental unit pursuant to section 36 of the Act and therefore the Landlord was required to claim against the deposit for something other than damage or return the security deposit to the Tenants within 15 days of June 27, 2022. In this case, the Landlord also filed this application for cleaning, which is different than for "damage". As such, I find the Landlord did not extinguish her rights to file this claim against the deposits.

Monetary Compensation

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

In this instance, the burden of proof is on the Landlord 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 Tenant. Once that has been established, the Landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord did everything possible to minimize the damage or losses that were incurred.

I have reviewed the testimony and evidence on this matter. I turn to the following:

1) \$1,680.00 – Wall damage/paint of affected areas

I award this item in full, since the Tenants acknowledge that this was damaged by the movers, which they hired.

2) \$175.00 – Cleaning

Although there is no move-out inspection report that is reliable, the Landlord provided a couple of photos taken at the end of the tenancy. However, I note these photos were taken by the new Tenants, after they had already gained access to the rental unit. These photos, and any related evidence proving the condition of the unit at the end of the tenancy, should have been taken and obtained before any new Tenants were granted access. This unconventional approach by the Landlord (asking the new Tenants to take photos for her for matters relating to a previous tenancy) leads me to question the reliability of the photos and the evidence showing the unit was unclean. I note the photos were undated and it is not clear when they were taken. Overall, I do not find they are reliable evidence as to the condition of the unit at the end of this tenancy.

The Tenants refute that they left the unit dirty, and assert they cleaned it well before leaving. I find the Landlord has not met the burden of proof to demonstrate it is the Tenants who ought to be responsible for any extra cleaning. Further, I find the Landlord failed to sufficiently demonstrate how much time it took to clean, and has failed to sufficiently demonstrate and substantiate the value of her loss in that regard. I dismiss this item, in full.

The Landlord granted the recovery of the filing fee paid, pursuant to section 72.

I award \$1,780.00, for the items noted above, and the Landlord may retain this from the deposits she holds.

Interest on deposits

The total amount of deposits is \$3416.37 based on the \$16.37 of interest that is owed on the deposit.

2020 \$3400.00: \$0.00 interest owing (0% rate for 83.62% of year)
2021 \$3400.00: \$0.00 interest owing (0% rate for 100.00% of year)
2022 \$3400.00: \$0.00 interest owing (0% rate for 100.00% of year)
2023 \$3400.00: \$16.37 interest owing (1.95% rate for 24.65% of year)

The Landlord must return \$1,636.37.

Conclusion

The Tenants are granted a monetary order pursuant to Section 67 in the amount of **\$1,636.37**. This order must be served on the Landlords. If the Landlords fail to comply with this order the Tenants 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: March 31, 2023

Residential Tenancy Branch