



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Introduction

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

The Landlord applied on May 3, 2022 for:

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

The Tenants applied on December 4, 2022 for:

1. An Order for the return of the security deposit - Section 38; and
2. 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.

Preliminary Matter

The Tenant states that when making their application under the direct request proceedings they were unable to select a claim for compensation, so they just added details of this claim under their claim for return of the security deposit. The Tenant states that they are seeking compensation in relation to the Landlord’s actions and the Tenants losses during their tenancy.

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. Whether or not the compensation claim has been properly included in the Tenants' application as this claim is not related to the claim for the return of the security deposit, I dismiss the compensation claim with leave to reapply. Leave to reapply is not an extension of any limitation period.

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 Landlord entitled to recovery of their filing fee?

Are the Tenants entitled to return of the security deposit?

Are the Tenants entitled to recovery of their filing fee?

Background and Evidence

The following are agreed or undisputed evidence: the tenancy under written agreement was signed on June 23, 2021. The tenancy started on August 16, 2021 and ended on April 22, 2022. Rent of \$1,300.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected \$650.00 as a security deposit and \$1,300.00 as a pet deposit. No move-in inspection or report was completed. The Tenants provided their forwarding address to the Landlord by posting it on the Landlord's door on April 28, 2022. The Landlord returned \$1,225.00 of the combined pet and security deposit and retains the remaining \$750.00. The Landlord made their application on May 3, 2022.

The Landlord states that the Parties mutually conducted a move-out inspection with a report completed and copied to the Tenants. The Tenant states that the report was not completed on a Residential Tenancy Branch (the "RTB") form and was done while the police were present. The Tenant states that an agreement between the Parties at the end of the tenancy sets out that the unit was left clean and undamaged.

The Landlord states that the Tenants left a DVD player remote damaged and claims \$50.00. The Landlord has not incurred this cost. The Tenant states that the remote was not left damaged by the Tenants.

The Landlord states that the Tenants left a rug dirty and that this rug was supposed to be stored by the Tenants for the term of the tenancy. The Landlord claims the estimated cleaning costs \$115.00 with no receipt. The Tenant states that the rug was unclean at the onset of the tenancy. The Tenant states that the Landlord also did not give the Tenants any opportunity to complete any cleaning by moving into and taking possession of the unit earlier than agreed.

The Landlord does not dispute that on April 2, 2022 the Parties agreed that the tenancy would end on April 23, 2022 but that the Landlord arrived a day earlier. The Landlord states that they offered to stay in the garage but that the Tenants refused to remain in the unit, left at 6:00 p.m. on April 22, 2022 and refused to return to clean the unit. The Landlord states that the Tenants were also offered the guest room to stay until the next day. The Landlord states that the Tenants were not under any obligation to leave but that the Landlord would remain in the unit. The Landlord further states that prior to the start of the tenancy there were discussions that the return date of the Landlord was flexible, and that the Landlord could return early. The Landlord states that the agreement also allowed the Landlord to occupy the unit for a single time period during the tenancy with 7 days notice. The Landlord states that they informed the Tenants on April 4, 2022 that the Landlord would return earlier. The Tenant argues that the "Landlord may stay" term of the tenancy agreement is both ambiguous and unfair and that the Landlord informed the Tenants that this clause would only be used for emergency purposes. The Tenant states that the Landlord did not give them any early return date and that between April 3 and 22, 2022, when the Landlord appeared, they had heard nothing from the Landlord.

The Landlord states that the Tenants left cracks on the wall plaster in a room that they were not to occupy as set out in the tenancy agreement. The Landlord claims an estimated repair cost of \$360.00. The Landlord states that the work was done and paid for by cash with no receipt asked for. The Landlord states that the repairs have also not been completed with the paint. The Tenant states that they did not leave any damage to this wall. The Tenant states that the damage is a plaster crack by the window and that this was not noticed during the tenancy. The Tenant believes the crack must have been pre-existing. The Landlord states that the Tenants emailed the Landlord a photo of the wall a day before move-out showing no damage. The Landlord states that they believe the damage occurred during the Tenants' move out.

The Landlord states that weights and towels were missing at the end of the tenancy. The Landlord claims the replacement cost of \$30.00 for the weights and provides a receipt. The Landlord claims \$30.00 for the towels but has not replaced the towels. The Tenant submits that there no weights or towels included with the tenancy or were missing at the end of the tenancy.

The Landlord states that the tenancy agreement provides that monthly hydro costs over \$200.00 and then \$230.00 per month are payable by the Tenants. The Landlord claims \$40.00 as the overage costs during the tenancy. The Landlord provides hydro bills for the period November 1, 2021 to January 1, 2022 in the amount of \$234.96, for January 1 to March 1, 2022 in the amount of \$248.66 and for March 1 to May 1, 2022 in the amount of \$245.24. The Tenant states that they shared the hydro with another unit and that they have no idea how the Landlord came up with the amount claimed. The Tenant states that they have never received a copy of any hydro bill from the Landlord.

The Landlord states that the Tenants let a carpet in the 2nd bedroom shredded. The Landlord claims the replace costs of \$100.00. The Landlord cannot find an invoice for

this claim. The Tenant states that this carpet was damaged at the outset of the tenancy.

The Landlord states that the Tenants left a floor lamp damaged. The Landlord claims half the estimated replacement cost of \$75.00. The Landlord has not replaced the lamp. The Tenant states that they did not damage the lamp and that the damage claimed by the Landlord is new to them.

The Landlord states that the Tenants left scrap lumber and rotting wood in the garage and on the lawn and did not clean the unit. The Landlord states that the Tenants also left garbage that required removal. The Landlord claims \$50.00 for the wood dump fees and \$12.00 for the garbage removal costs. The Landlord does not provide a receipt for a dump fee or garbage removal costs. The Landlord claims \$300.00 for the cleaning costs. The Tenant states that they intended to leave the unit clean and without damage but that the Landlord robbed them of their rights by moving into the unit earlier than agreed.

The Landlord states that the Tenants left a vacuum damaged and the Landlord claims half the replacement cost of \$75.00. The Landlord is unsure of the age stating that it is several years old. The Tenant states that there was never a vacuum in their possession to use.

The Landlord states that the Tenants left a table stained. The Landlord claims \$50.00 as the costs of the revarnishing materials. The Tenant states that the table was stained at move-in.

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 28(c) of the Act provides that a tenant is entitled to quiet

enjoyment including, but not limited to, exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 *[landlord's right to enter rental unit restricted]*. It is undisputed that the Landlord arrived to occupy the unit earlier than agreed and without any notice. There is no evidence of any emergency requiring the Landlord's entry without notice or permission from the Tenants. For these reasons I find that the Landlord breached the Tenant's right to exclusive possession of the rental unit and in doing so prevented the Tenant from meeting their obligations under the Act to leave the unit reasonably clean and undamaged. The Landlord may not now claim for any costs for cleaning to the unit including the rug or for the removal of any lumber, wood or garbage. I dismiss the claims for these costs.

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 that costs for the damage or loss have been incurred or established. It is noted that the tenancy agreement provides that the hydro costs of up to \$100.00 are included with the rent. The Landlord's evidence however is that the Tenants are only responsible for monthly costs over either 200.00 or \$230.00 per month. Given the tenancy agreement I find on a balance of probabilities that the Tenants are required to pay overage costs for the hydro. Given the Landlord's inconsistent evidence on what based costs are included with the rent I find that the Landlord is only entitled to costs over \$230.00 per month. Given the receipts for the period November 1, 2021 to March 1, 2022 I find on a balance of probabilities that the Landlord is entitled to overage hydro costs of **\$18.66 and \$4.96**.

As there is no evidence that the costs being claimed to replace the DVD remote were incurred, I find that the Landlord has not substantiated this claim and I dismiss it. As no

repairs have been made to the walls, I find that the Landlord has not substantiated that the costs claimed for those repairs have been incurred and I dismiss this claim.

Section 21 of the Regulations provides that a duly completed inspection report is evidence of the condition of the rental property, unless either the landlord or tenant has a preponderance of evidence to the contrary. As there is no move-in condition inspection report or any list of household items that were included in the tenancy I find that the Landlord has not substantiated that the Tenants caused the loss of any weights or towels. I dismiss the claim for these replacement costs.

Given the lack of a move-in condition report and considering the Tenant's evidence of pre-existing damage I find on a balance of probabilities that the Landlord has not substantiated that the Tenants caused damage to the carpet. I dismiss this claim.

As the Landlord did not incur any costs to replace the lamp and as there is no move-in report setting out the condition of the lamp I find on a balance of probabilities that the Landlord has not substantiated that the Tenants caused the damage or that the Landlord incurred the costs claimed. I dismiss the claim for the lamp.

As there is no move-in report indicating the presence and state of a vacuum, as there is no vacuum set out as provided in the tenancy agreement and given the Tenant's evidence of not having the vacuum in their possession, I find on a balance of probabilities that the Landlord has not substantiated that the Tenants caused the damage to the vacuum. I dismiss the claim for these claimed costs.

Given the lack of a move-in inspection report and given the Tenant's evidence of pre-existing damage to the table I find on a balance of probabilities that the Landlord has not substantiated that the Tenants left the table damaged. I dismiss the claim for varnishing costs.

As the Landlord's claims have been largely unsuccessful with a minor entitlement of \$23.62 and as some of these unsuccessful claims are due to the Landlord's own breach of the Act I find that the Landlord is not entitled to recovery of the filing fee and I dismiss this claim.

The Landlord is holding a security deposit amount of \$750.00. I calculate the interest on this amount from the date the tenancy agreement was signed on June 23, 2021 to be **\$5.77** for a total of **\$755.77**. Deducting the Landlord's entitlement of **\$23.62** from this amount leaves **\$732.14**. As the Tenants have been substantially successful with their claim for return of their remaining security deposit, I find that the Tenants are entitled to recovery of their **\$100.00** filing fee for a total return of **\$832.14**.

Conclusion

I grant the Tenants an order under Section 67 of the Act for **\$832.14**. 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 RTB under Section 9.1(1) of the Act.

Dated: May 24, 2023

Residential Tenancy Branch