



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNDCL-S, FFL
 MNSD-DR, FFT

Introduction

This hearing was convened by way of conference call concerning applications made by the landlord and by the tenant. The landlord has applied for:

- a monetary order for damage to the rental unit or property;
- a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement;
- an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and
- to recover the filing fee from the tenant for the cost of the application.

The tenant has applied for a monetary order for return of the pet damage deposit or security deposit and to recover the filing fee from the landlord. The tenant's application was made by way of the Direct Request Process, which was referred to this participatory hearing, joined to be heard with the landlord's application.

The landlord and one of the named tenants attended the hearing and each gave affirmed testimony. The parties were given the opportunity to question each other and to give submissions. The parties agree that all evidence has been exchanged, all of which has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Has the landlord established a monetary claim as against the tenants for damage to the rental unit or property?

- Has the landlord established a monetary claim as against the tenants for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for unpaid utilities?
- Should the landlord be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?
- Has the tenant established a monetary claim as against the landlord for all or part or double the amount of the security deposit?

Background and Evidence

The landlord testified that this fixed-term tenancy began on December 1, 2021 and expired on June 30, 2022, which ultimately ended my mutual agreement effective July 15, 2022. Rent in the amount of \$5,500.00 was payable on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$2,250.00 by way of e-transfer dated October 25, 2021. No pet damage deposit was collected, and the security deposit is still held in trust by the landlord. The rental unit is a house, and a copy of the tenancy agreement has been provided for this hearing.

The landlord further testified that a move-in condition inspection report was completed by the parties, and a copy has been provided for this hearing. The landlord scheduled the move-out condition inspection with the tenant by email and the tenant confirmed the date and time, but the tenant didn't show up. The landlord completed the move-out condition inspection report in the absence of the tenant. Copies of both reports were provided to the tenant. A second opportunity to schedule the move-out condition inspection report was not provided.

The landlord received the tenant's forwarding address in an email on July 19, 2022.

The landlord has provided a Monetary Order Worksheet setting out the following claims, totaling \$2,677.00:

- \$541.00 for utility bills;
- \$1,736.00 for kitchen flooring repairs; and
- \$400.00 for basement ceiling repairs.

The tenancy agreement did not include water bills, and the landlord claims \$368.00 for the water bill running from January, 2022 to April, 2022. The bill running from May to August was about \$356.00, but the tenants moved out prior to August, so the landlord is

claiming a pro-rated amount of \$173.00. Neither of the bills has been provided, however the landlord testified that copies of the bills had been uploaded to the Residential Tenancy Branch system, and does not know why they are not included as evidence.

The move-out inspection was completed on July 15, 2022 and the landlord found that the flooring was damaged by a dishwasher. The landlord called a plumber who found the water damage. The tenants had told the landlord that the dishwasher wasn't working correctly in May, 2022, however the landlord had a technician reach out to the tenants who replied that they couldn't reach the tenants. Because the tenancy was close to the end, nothing was done. As a result of the leak the flooring was damaged and there was water staining in the basement area. Photographs have been provided as evidence for this hearing, as well as an invoice dated August 3, 2022 in the amount of \$2,242.93 for kitchen floor repair and basement ceiling water stain removal.

The landlord received the email about the dishwasher from the tenant on May 1, 2022 and testified that the tenant wouldn't answer the phone. On May 4 the landlord replied to the tenant's email stating he would send a technician. The landlord had not been to the property during the tenancy.

The tenant testified that he received 2 water bills, one for \$332.04 and one for \$430.36 and didn't pay them because he didn't receive them until after vacating the rental unit. The tenant agrees to pay \$541.00 in total, the pro-rated amount claimed by the landlord.

The tenant has provided a copy of an Interac e-Transfer memo sent to the landlord in the amount of \$2,250.00 for the security deposit dated October 24, 2021.

With respect to water damage, the tenant testified that he noticed the dishwasher leaking in May and found water on the floor when he got up in the morning. The tenant informed the landlord about the malfunction, and about a leaking sink on May 1, 2022 by email. The landlord replied on May 4, 2022 saying he would call a technician. A copy of the email string has been provided for this hearing. The tenant testified that the tenants stopped using the dishwasher, and never heard from a technician. The landlord told the tenant not to contact any contractors, so he didn't.

A copy of an email exchange has been provided for this hearing by the tenant. On July 18, 2022 the tenant asks the landlord to use the tenant's email address for returning the deposit. On the same day the landlord asks the tenant to provide a forwarding address, and the following day the tenant replies with a forwarding address.

Analysis

Firstly, the tenant is not opposed to the landlord's claim of \$541.00 for utilities, and therefore, I find that the landlord is entitled to that amount.

In order to be successful in a claim for damage or loss, the onus is on the claiming party to satisfy the 4-part test:

1. that the damage or loss exists;
2. that the damage or loss exists as a result of the tenants' failure to comply with the *Act* or the tenancy agreement;
3. the amount of such damage or loss; and
4. what efforts the landlord made to mitigate any damage or loss suffered.

In this case, I am satisfied, considering the photographs and Invoice provided by the landlord, and considering the move-in condition inspection report, that the damage to the floor and water damage in the lower level exists. I am also satisfied that the landlord has established the amount of the damage or loss.

With respect to the other 2 elements, the landlord testified that a technician has attempted to contact the tenants, but the tenants didn't answer. There is no evidence to substantiate that, such as an Invoice for a service call.

Further, the tenants have provided evidence of notifying the landlord on May 1, 2022 about the broken dishwasher and a leaky sink, and the landlord replied on May 4 saying that the landlord would call a technician, which is 3 days after the tenants reported it. The landlord also testified that after receiving the tenants' email the tenant didn't answer the phone. The tenant testified that the tenants did not hear from a technician.

I am not satisfied that the landlord has established that the damage was caused as a result of the tenants' failure to comply with the *Act* or the tenancy agreement. I am satisfied that the landlord has failed to mitigate by acting on the tenants' requests for repair.

The landlord's application for a monetary order for damage to the rental unit is hereby dismissed.

With respect to the tenants' application, a landlord is required to return a security deposit and/or pet damage deposit in full to a tenant within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address

in writing, or must make an application for dispute resolution claiming against the deposit(s) within that 15 day period. If the landlord fails to do either, the landlord must repay the tenant double the amount(s).

In this case, the tenancy ended by mutual agreement on July 15, 2022, and the landlord's application was made on August 2, 2022.

The *Act* also specifies:

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.

36 (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.

The regulations state:

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.

In this case, the landlord did not provide the tenants with a second opportunity or provide the tenants with a notice of second opportunity in the approved form.

Therefore, I find that the landlord's right to make a claim against the security deposit for damages is extinguished.

However, the landlord's right to make a claim against the security deposit for unpaid utilities is not extinguished.

The tenant provided the landlord with a forwarding address in writing by email on July 19, 2022. The tenancy agreement shows an address of the landlord for service, that is not an email address. I note that the tenant served the landlord with Notice of the tenant's application at the landlord's address for service by registered mail. Although the landlord requested the tenants' forwarding address in an email and the tenants responded by email, the law states that documents may be served by several methods, one of which is (88 (j)) by any other means of service provided for in the regulations."

The regulations state:

43 (1) For the purposes of section 88 (j) *[how to give or serve documents generally]* of the Act, the documents described in section 88 of the Act may be given to or served on a person by emailing a copy to an email address provided as an address for service by the person.

In this case, there is no evidence that the landlord agreed to service by email. The tenants made the Application for Dispute Resolution on August 10, 2022 which also

contains the tenants' forwarding address, and have provided evidence of serving the landlord by registered mail on August 27, 2022 which is deemed to have been served 5 days later, or September 1, 2022. Since the landlord made the application on August 2, 2022, I find that the tenants are not entitled to double the amount of the security deposit.

Having found that the landlord is entitled to recovery of the utilities totalling \$541.00, and the landlord holds a security deposit in the amount of \$2,250.00, I set off the amounts and I grant a monetary order in favour of the tenants for the difference of \$1,709.00.

Since both parties have been partially successful, I decline to order that either party recover the filing fees.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenants as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,709.00.

This order is final and binding and may be enforced.

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: May 08, 2023

Residential Tenancy Branch