



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding TOP VISION REALTY INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S, FFL

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord seeking a monetary order for damage to the rental unit or property; 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 tenants for the cost of the application.

An agent for the landlord and both 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 have uploaded evidence to the Residential Tenancy Branch site, however the tenants indicated that they had not received the landlord's evidence. The landlord's agent submitted that the evidence and the Notice of Dispute Resolution Proceeding were sent to the tenants by email, but did not have the consent of the tenants to deliver legal documents in that manner, and did not indicate a date. The tenants submitted that all of the tenants' evidence, including videos were hand-delivered to the landlord. The tenants were able to locate the landlord's evidence during the hearing.

Section 88 of the *Act* permits documents to be served by email, at an email address provided by the party for service of documents. I have reviewed the tenancy agreement, and there is no indication that the tenants provided an email address for the service of documents.

However, the landlord has provided copies of 2 Canada Post Registered Domestic Customer Receipts addressed to the tenants dated August 31, 2022. The landlord has also provided a copy of 36 pages of evidence, which includes the notice of Dispute Resolution Proceeding dated August 29, 2022, as well as a copy of the tenancy

agreement, invoices and a move-in/move-out condition inspection report. The landlord's agent testified that the documents were sent by email. I have no indication what documents were sent by registered mail to the tenants or what documents were sent by email, considering the submissions of the landlord's agent that the documents were served by email. Considering that the landlord's application was made on August 12, 2022 and the landlord was provided with the Notice of Dispute Resolution Proceeding to serve on the tenants on August 30, 2022, I give the benefit of doubt to the landlord. I also accept the submission of the tenants that the landlord was provided with the tenants' evidentiary material by hand delivering it to the landlord.

All evidence of the parties 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?
- Should the landlord be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlord's agent testified that this fixed term tenancy began on June 15, 2021 and was to revert to a month-to-month tenancy after June 30, 2022, however the tenants vacated the rental unit on June 30, 2022. Rent in the amount of \$2,200.00 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 tenants in the amount of \$1,100.00, which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a house which contains a basement suite that is occupied by other tenants.

The landlord's agent further testified that move-in and move-out condition inspection reports were completed at the beginning and end of the tenancy, and provided copies to the tenants. Also, photographs were taken at move-in which were compared at move-out and the parties had different opinions about cleaning and garbage collection. The landlord's agent gave an invoice to the tenants of \$1,299.50 for cleaning, carpet cleaning, garbage and painting. Professional cleaners were hired to do the carpets and clean the full house which cost \$525.00 for cleaning the rental unit, including taxes, and

\$180.00 for carpets. Someone was also hired for garbage collection and to cut the grass, at a cost of \$120.00 and \$70.00 respectively. Painting cost the landlord \$619.50, which included taxes for painting, garbage removal and landscaping.

The landlord received the tenants' forwarding address sometime in July, 2022 by text message.

When questioned about the painting on June 28, 2022 as noted in the Invoice, but the tenants didn't vacate until June 30, 2022, the landlord's response was, "I don't know." Also, the cleaning invoice shows a cost of \$500.00, not \$525.00 as claimed, again the landlord responded, "I don't know."

The first tenant (SS) testified that when the tenants moved in, the paint was not in good condition. There were patches on walls, and photographs have been provided for this hearing. The carpet was also in bad condition, and the tenants do not agree with any of the landlord's claims. The tenants hired someone to do the cleaning, but paid in cash so don't have a receipt, but the tenant (SS) helped with the cleaning, and the other tenant completed the carpet cleaning. Messages were sent to the landlord saying that the tenants had removed the garbage on July 13, 2022. Numerous text messages exchanged between the parties have also been provided for this hearing.

The tenants did not get a copy of the move-in or move-out condition inspection reports except with the Notice of Dispute Resolution Proceeding.

The tenants provided the landlord with a forwarding address by registered mail on August 3, 2022.

The second tenant (MS) testified that the landlord's agents are getting pressure from the landlord to act in a certain way. The tenants paid 15 days rent to secure the rental unit and moved in around July 1. The tenants believed the landlord would renovate. When the tenants asked about paint, the landlord did some patching and said that it would be good enough. The whole house was in bad shape.

The landlord had stuff stored between floors and in the shed. There were people moving in and out downstairs who left lots of garbage. There was always clutter around from tenants in the basement suite, and the tenants are being left with all this claim.

The house is currently listed for sale, with extensive renovations completed. The tenants feel that they cleaned thoroughly and just want their security deposit back.

Analysis

Firstly, the *Residential Tenancy Act* requires a landlord to provide to the tenants a copy of a move-in condition inspection report within 7 days and a copy of a move-out condition inspection report within 15 days. If the landlord fails to do so, the landlord's right to make a claim against a security deposit for damage to the residential property is extinguished, meaning that the landlord may make a claim for damages, but must not withhold a security deposit. The landlord's agent has not provided any evidence that the tenants were provided with copies of the reports except with the Notice of Dispute Resolution Proceeding and evidence. Therefore, I am not satisfied that the landlord has complied with the *Act*, and I find that the landlord's right to claim against the security deposit for damages is extinguished.

Where a party makes 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 *Residential Tenancy Act* or the tenancy agreement;
3. the amount of such damage or loss; and
4. what efforts the landlord made to mitigate such damage or loss.

In this case, the landlord has not indicated when the rental unit was last painted, and the useful life of interior paint is deemed to be 4 years. The tenant testified that the landlord patched the walls during the tenancy and the move-in condition inspection report confirms that. Therefore, I am not satisfied that the landlord has established element 2 in the test for damages with respect to painting.

The *Residential Tenancy Act* specifies that the move-in and move-out condition inspection reports are evidence of the condition of the rental unit at move-in and move-out. In this case, the move-in condition inspection report also indicates that the carpet was damaged in the bedroom, and the move-out condition inspection report makes no mention of carpets not being cleaned. Therefore, I am not satisfied that the landlord has established a claim for carpet cleaning.

The move-out condition inspection report contains a notation that the floor in the kitchen is "clean not good," but no other comments about lack of cleaning. The invoice is dated July 8 and includes house cleaning, carpet hot steam cleaning, floor waxing and pressure washing. The landlord has also provided a carpet cleaning invoice dated July

11, 2022. I do not accept that the landlord's claim of \$525.00 for cleaning has satisfied elements 1 or 2 in the test for damages.

The text messages provided by the tenants for this hearing show that the garbage and unwanted items left at the property did not belong to the tenants. The tenants also testified that people were moving in and out of the basement suite. The landlord's agent did not dispute that testimony, and I dismiss the landlord's claim for garbage removal.

The move-in and move-out condition inspection reports are silent with respect to landscaping, and I dismiss that portion of the landlord's claim.

A landlord is required to return a security deposit and/or pet damage deposit to a landlord 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 a claim against the security deposit within that 15 day period. If the landlord fails to do so, the landlord must repay the tenant double the amount(s). In this case, having found that the landlord's right to make a claim against the security deposit for damages is extinguished, the landlord ought to have returned the security deposit to the tenants.

The tenants' testimony is that the landlord was provided with the tenants' forwarding address by registered mail on August 3, 2022. The landlord's agent testified that the forwarding address was received prior to the tenants vacating the rental unit by text message. The landlord's agent was not able to provide accurate testimony, and I prefer the testimony of the tenants. I find that the landlord received the tenants' forwarding address on August 8, 2022, 5 days after mailing, and the landlord must repay the tenants double the amount, or \$2,200.00.

Conclusion

For the reasons set out above, the landlord's application is hereby dismissed in its entirety without leave to reapply.

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 \$2,200.00.

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: June 07, 2023

Residential Tenancy Branch