



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes

For the landlord: MNDL-S MNDCL-S FFL
For the tenant: MNSDS-DR FFT

Introduction

This dispute relates to an Application for Dispute Resolution (application) by both parties seeking remedy under the *Residential Tenancy Act* (Act) for the following:

1. \$3,388.90 by the landlord for damages and compensation and filing fee,
2. \$1,175 by the tenant for the return of the security deposit and filing fee.

The hearing began on March 30, 2023, and after 60 minutes was adjourned to allow additional time to consider evidence from the parties. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing and make submissions to me.

An Interim Decision was issued dated March 30, 2020 (Interim Decision), which should be read in conjunction with this decision. On May 23, 2023, the hearing reconvened and after an additional 16 minutes, the hearing concluded.

The parties raised no valid concerns regarding service.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). Only the evidence relevant to the issues and findings in this matter are described in this decision. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matter

The parties confirmed their respective email addresses during the hearing and confirmed that they understood that the decision would be emailed to both parties.

Issues to be Decided

- Is either party entitled to a monetary order?
- What should happen to the tenant's security deposit?
- Is either party entitled to the filing fee?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on October 1, 2015, and converted to a month-to-month tenancy after September 30, 2016. The tenant writes on their application that the tenancy ended May 31, 2022. The landlord stated that the tenant did not vacate until June 3, 2022.

During the tenancy, monthly rent was \$1,950 per month and due on the first day of each month. The tenant paid a security deposit of \$975, which the landlord continues to hold. The interest on the security deposit will be calculated later in this decision.

The landlords' monetary claim of \$3,388.90 reduced to \$3,066.40 based on the monetary order worksheet which is comprised as follows:

1. Repair of damages, \$2,600,
2. Overholding, \$216.40,
3. Cleaning, \$150,
4. Filing fee, \$100.

The tenant's application of \$1,175 contains an addition error and is actually \$1,075 comprised as follows:

1. Return of security deposit, \$975
2. Filing fee, \$100.

Landlord's claim

Regarding item 1, the landlord has claimed \$2,600 for damages. The landlord confirmed that they did not have a receipt or invoice and instead are relying on a contractor's email dated June 6, 2022, which states the following in part:

For your part:

Repainting of the walls, ceilings, doors, and skirting boards

Installation of the lighting (clients provide all the lights)

Change the carpet in the master bedroom, hallway, and staircases

Remove the old flooring in the basement and change to waterproof vinyl plank flooring

The fee for your part amounts to \$6,300

For your former tenant:

Repaint the wall in the master bedroom, the 2nd bedroom, and the basement

Change the carpet for the 2nd and 3rd bedroom

Repair the big hole at the back of the door in the 2nd bedroom

Repair the closet door in the 2nd bedroom

Recover the lower part of the island

The fee for your former tenant amounts to \$2,600

The items for consideration are the 5 items listed above under "for your former tenant". The landlord submitted the Condition Inspection Report (CIR). The incoming CIR is dated September 10, 2015, and the outgoing portion is dated June 3, 2022.

On the outgoing portion of the CIR, the tenant signed that they agree with the \$975 deduction from their security deposit, which I will address later in this decision. The tenant was asked about this and claims they were confused when they signed the outgoing CIR.

The landlord confirmed that they purchased the home in 2014 and the tenancy began in October 2015. The age of the townhome was indicated as 2003 by the tenant. The landlord stated the carpets were not original carpets, while the tenant claims they were the original carpets. According to the outgoing CIR, the bedroom carpet was stained and was supported by the landlord's photo evidence. The tenant signed the outgoing CIR agreeing with the damage to the carpet.

The tenant admitted that their son damaged a door by punching a hole in the door. The dent in the door is clearly visible in the photo evidence submitted.

In terms of wall paint, as the tenancy began in 2015 and ended in 2022, the wall paint was over 4 years, which I will address later in this decision.

Regarding item 2, the landlord has claimed \$216.40 for overholding. The tenant claims they vacated the rental unit on May 31, 2022, whereas the landlord claims the tenant did not vacate until June 3, 2022.

Regarding item 3, the landlord has claimed \$150 for cleaning costs. The landlord stated that the tenant sent an SMS message on June 21, 2022, indicating that they were willing to deduct \$500 for cleaning costs. That SMS message was not submitted in evidence. The landlord presented several colour photos of the basement floor, kitchen floor and windowsill being dirty and not cleaned by the end of the tenancy. There was no receipt submitted for cleaning costs. The landlord says the photo evidence submitted was taken on June 3, 2022, the same date as the outgoing CIR.

The tenant's response was that they were out on May 15, 2022, and that they have proof of that. That proof was not submitted in evidence. The tenant also claims that "everything was clean", which I will address later in this decision.

The tenant is claiming for the return of their security deposit, which I will address later in this decision.

I will also address both filing fees.

Analysis

Based on the documentary evidence presented and the testimony of the parties, and on the balance of probabilities, I find the following.

Regarding the tenant's security deposit of \$975, I find the tenant has no right to the return of any amount of the deposit based on their signature on the outgoing CIR where the tenant consented in writing to the landlord deducting the entire \$975 on June 3, 2022. As a result, I dismiss the tenant's application in full without leave to reapply as the tenant should have known, or ought to have known that before they signed the outgoing CIR, that they were giving up all rights to their \$975 security deposit. I find that contract law applies and that the tenant is bound by the decision they made to sign a legal agreement, the outgoing CIR.

I will now address the remainder of the landlord's claim.

Item 1 – The landlord has claimed \$2,600 for damages. Regarding the carpets, RTB Policy Guideline 40 – *Useful Life of Building Elements* (Guideline 40) states that carpets have a useful life of 10 years. I am not satisfied that there is sufficient evidence before me to support that the carpets were changed during the tenancy due to the absence of

any carpet installation receipts. Accordingly, as the house was built in 2003, I find the carpets are fully depreciated by 100% and therefore I dismiss the carpet related costs.

As the tenant admitted that their son damaged a door by punching a hole in the door, which is supported by the dent in the door. I find a reasonable amount to replace the door would be \$500 including material and labour and therefore I grant that amount to the landlord. I do not apply depreciation to purposely damaged items such as a punched door.

I award no amount to wall paint as the useful life of interior paint is 4 years and the tenancy exceed that amount of time so is depreciated by 100%. Given the above, I find the landlord is entitled to \$500 for item 1 and any amount higher is dismissed without leave to reapply, due to insufficient evidence.

Item 2- The landlord has claimed \$216.40 for overholding. I find there is insufficient evidence to support that the tenant overheld the rental unit and I dismiss this amount as a result. As the landlord bears the onus to prove their claim, I find that both versions from the landlord and tenant could be true and that the landlord has failed to meet the burden of proof as a result.

Item 3 - The landlord has claimed \$150 for cleaning costs. Based on the photo evidence alone, I prefer the evidence of the landlord over that of the tenant. I disagree with the tenant that the rental unit was left in a reasonably clean condition. I also find that \$150 is reasonable to clean what was shown in the photo evidence. Therefore, I award the landlord **\$150** as claimed for cleaning costs. I find the tenant breached section 37(2)(a) of the Act which requires reasonable cleaning to occur, which I find the tenant failed to do.

As the landlord application had merit, I award the landlord the \$100 filing fee pursuant to section 72 of the Act.

As the tenant's application fails in full, I decline to grant the tenant the filing fee.

The \$975 security deposit has accrued \$7.92 in interest under the Act, for a total security deposit/interest of \$982.92.

Although the landlord's application totals \$750, I authorize the landlord to retain the full security deposit/interest of \$982.92 as I find the tenant is bound by contract law having

surrendered the entire amount to the landlord. I base this finding on the signed outgoing CIR.

As a result, I decline to grant any balance for the different to the tenant.

Conclusion

The tenant's claim is dismissed as it has no merit.

The landlords' claim has some merit and is partially successful.

The landlords have proven a monetary claim as described above and may retain the entire security deposit/interest as indicated above.

I find there is no need for a monetary order under the Act.

This decision will be emailed to both parties.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 1, 2023

Residential Tenancy Branch