



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

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.

The landlord was represented at the hearing by an agent, who gave affirmed testimony and provided evidentiary material in advance of the hearing. However, the line remained open while the telephone system was monitored for 10 minutes prior to hearing any testimony and no one for the tenants joined the call.

The landlord's agent advised that the tenants were served individually with the Notice of Dispute Resolution Proceeding and all evidence by registered mail on December 7, 2022 and has provided a Canada Post cash register receipt bearing that date and containing 2 tracking numbers to confirm that service. I find that the tenants have been served in accordance with the *Residential Tenancy Act*.

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 May 1, 2021 and reverted to a month-to-month tenancy after April 30, 2022, which ultimately ended on October 31, 2022 after the tenants gave notice to end the tenancy. Rent in the amount of \$4,000.00 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 \$2,000.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a townhouse, and a copy of the tenancy agreement has been provided as evidence for this hearing.

The landlord has not received a forwarding address in writing from the tenants, however the landlord's agent went to swap keys with the tenants, and knew where they lived.

The landlord's agent further testified that a move-in condition inspection report was completed at the beginning of the tenancy and a move-out condition inspection report was completed at the end of the tenancy. Copies have been provided for this hearing, and copies had been provided to the tenants. The move-out portion contains a signature of the tenant agreeing that the landlord may keep the security deposit.

The landlord has provided a break-down of claims totaling \$5,488.75, as follows:

- \$1,000.00 for cracked glass;
- \$1,088.75 for strata fines;
- \$2,400.00 for a dryer; and
- \$1,000.00 for carpet discolor.

The glass has not been repaired yet, it will be too expensive. The building handyman and the manager went into the rental unit with the landlord's agent and advised that it was a \$1,000.00 repair.

Although the landlord's agent believed the correct evidence was uploaded, the strata fines amounted to \$1,088.75, however the document entitled "fine for the dogs" is a statement of account regarding strata fees and does not mention strata fines.

With respect to the dryer, the landlord's agent obtained a technical report; the filter was flattened by not cleaning it, and the landlord's agent tried to use tools to clean or vacuum the filter, but it is not repairable anymore. When the tenants moved in, everything was brand new. A copy of an Invoice dated November 15, 2022 for \$2,462.88 has been

provided for the purchase of a new dryer; the technician told the landlord's agent that it would be more expensive to repair than to purchase a new one.

The landlord does not claim \$1,000.00 for carpet discolouration, but \$288.75. The strata paid it and charged it back to the landlord. A copy of a letter from the strata dated November 15, 2022 has been provided for this hearing, along with an Invoice for the service call in the amount of \$288.75..

The owner wants the tenants to help with the expenses.

Analysis

In order to be successful in a claim for damage or loss, the onus is on the landlord 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 any damage or loss suffered.

In this case, I have reviewed all of the landlord's evidence and I find that the landlord has failed to establish element 3 in the test for damages with respect to cracked glass.

With respect to the \$1,088.75 claim for strata fines, I find that the landlord has failed to satisfy any of the elements in the test for damages.

I accept the undisputed testimony of the landlord's agent that the dryer was new at the beginning of the tenancy, and that a technician advised it would be more expensive to repair it than to purchase a new one. I suspect that is the motive for the tenant agreeing in writing that the landlord keep the \$2,000.00 security deposit. However, more importantly, having reviewed the move-in and move-out condition inspection reports, I find that the landlord has satisfied the elements in the test for damages in the amount of **\$2,462.88.**

I have also reviewed the Invoice from the strata and the photograph of the carpet, which appears to be in a common area of the building. The landlord's agent has decreased the claim from \$1,000.00 to **\$288.75**, and I find that the evidence supports that.

Since the landlord has been partially successful with the application the landlord is also entitled to recover the **\$100.00** filing fee from the tenants.

The landlord holds \$2,000.00 as a security deposit, and with interest calculated from the date it was paid (April 28, 2021) to the date of the hearing (August 25, 2023) amounting to \$25.40, I set those amounts off from the claim, and I grant a monetary order in favour of the landlord as against the tenants for the difference in the amount of **\$826.23** (\$2,462.88 for the dryer + \$288.75 for the carpet cleaning fee charged by the strata + \$100.00 for the filing fee = \$2,851.63 - \$2,025.40 security deposit and interest = \$826.23).

Conclusion

For the reasons set out above, I hereby order the landlord to keep the \$2,000.00 security deposit and \$25.40 interest in partial satisfaction of the claim, and I grant a monetary order in favour of the landlord as against the tenants pursuant to Section 67 of the *Residential Tenancy Act* in the amount of **\$826.23**.

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: August 30, 2023

Residential Tenancy Branch