



Dispute Resolution Services

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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 a pet damage deposit or security deposit; and to recover the filing fee from the tenant for the cost of the application.

The landlord and the tenant attended the hearing and each gave affirmed testimony. The parties were given the opportunity to question each other and to give submissions.

At the commencement of the hearing the tenant agreed that the landlord has provided evidence to the tenant, however during the course of the hearing the tenant testified that the tenant did not receive a handyman invoice, or a copy of a move-out fee, or a copy of the tenancy agreement, indicating that the tenancy agreement that the tenant has differs from the landlord's copy.

The tenant agreed that the tenant has not provided the landlord with any of the tenant's evidence.

Any evidence that a party wishes to rely on must be provided to the other party, even if they already have a copy, because it is important for the parties to know what is before me. Since the tenant has not provided any evidentiary material to the landlord, I decline to consider it. Similarly, the landlord was not able to satisfy me when or how or if the tenant received a copy of the move-out fee or tenancy agreement or handyman invoice, I decline to consider that evidence. All other evidence of the landlord has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Has the landlord established a monetary claim as against the tenant 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 testified that this fixed-term tenancy began on November 1, 2016 and reverted to a month-to-month tenancy after October 31, 2017, which ultimately ended on April 1, 2023. Rent in the amount of \$1,400.00 was originally payable on the 1st day of each month, which was increased from time to time to \$1,540.00 per month and there are no rental arrears. On October 14, 2021 the landlord collected a security deposit from the tenant in the amount of \$700.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is an apartment suite, and the landlord does not reside on the property.

Move-in and move-out condition inspection reports were completed at the beginning and end of the tenancy, and copies have been provided for this hearing. The move-out portion was completed on April 1, 2023. It also contains a forwarding address of the tenant.

The landlord further testified that the tenancy ended after the tenant was served with a Two Month Notice to End Tenancy For Landlord's Use of Property, and the buyer intended to move in.

After the tenant vacated, the landlord went to the property and found it a mess. There was damage to walls, a light was broken, the carpet was not cleaned and the stove/oven was left very dirty. The landlord had to order a cleaning company to clean the apartment and the carpet. The front entrance light and cabinet lights were broken; the sink drain stopper was not working, damage existed on the walls, and dents were left on baseboards.

The tenant's move-out was in violation of the strata because the tenant didn't book the elevator or pay the strata move-out fee of \$200.00. A cleaning fee invoice has been provided for this hearing dated April 12, 2023 in the amount of \$295.00, as well as a carpet cleaning invoice dated April 13, 2023 in the amount of \$140.00. The landlord

also testified that a handy-man invoice was given for \$643.01 charging for purchasing and installing the lights.

The landlord claims \$1,378.00 which includes a \$200.00 move-out fee charged by the strata.

The tenant testified that the rental unit had been cleaned before the tenant vacated. When the landlord wanted to show the place to sell, out of courtesy the tenant had a cleaner arrive for showings, who came for about 3 hours every 6 weeks for general cleaning and 5 hours on the 30th and 5 hours on the 31st of March. The cleaners took care of the floors, walls, fixtures, kitchen and bathroom.

The tenant agrees that the tenant broke the light fixture on his way out. The tenant had someone buy a replacement of the fixture, with no components, at a cost of \$29.00. The property manager said not to use it and wanted to charge a lot more for it but on the condition inspection report the parties agreed to the sum of \$236.25. The property manager was throwing numbers around and the parties agreed on that amount for the damage to the light fixture and scuff marks. Damage to the door was caused by the landlord during staging. The tenant allowed the landlord to stage the apartment and was more than helpful. The landlord even used the photographs of the rental unit for selling.

The tenant lived in the rental unit for 7 years and has no memory of what marks were on the walls. Walls need to be touched up every 4 years, and nothing was done during the tenancy.

The tenant also disagrees that the oven was not clean; it was returned in the same state. The property manager had already filled out that part of the move-out condition inspection report, but the tenant didn't agree to it.

The tenant was not made aware of a move-out fee.

The landlord gave the tenant a great reference at move-out, indicating that the tenant had been there for 7 years, there were no issues during the tenancy, the rental unit was super clean and no damage.

SUBMISSIONS OF THE LANDLORD:

The rental unit has been sold. It was a 1 year old building when the tenant moved in. The landlord has not included damages to the door because it was not caused by the tenant; the invoice was for other work. The landlord had a hard time dealing with the strata, and the strata was not happy with the way the tenant moved out, holding up 3 elevators without notice. The landlord had a lot of explaining to do and talking to the strata; fines were removed but the landlord still had to pay the \$200.00 move-out fee. The tenant said he couldn't book it.

SUBMISSIONS OF THE TENANT:

Before moving out, the tenant emailed the property manager, on the 13th of March explaining that he was moving out but received no response from the property manager and the tenant had to follow-up asking about final steps. There was no mention of anything the tenant had to do to avoid this. The property manager did not work with the tenant to get it done smoothly, but only gave the tenant 1 date at 10:00 a.m. to move out. The tenant was very fair during the staging process, and for 7 years never had any issue about service or payments, and the tenant was a zero-maintenance tenant. The tenant has not made an application claiming the return of the security deposit.

Analysis

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 other party's 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 claiming party made to mitigate any damage or loss suffered.

The *Act* requires a tenant to leave a rental unit reasonably clean and undamaged at the end of a tenancy, and 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. I have reviewed the reports and notice that there are absolutely no indications of the condition of the entry on the move-in portion of the report.

The report shows that the cabinets and doors and oven were not clean at the end of the tenancy. The main bathroom shows as clean at the end of the tenancy.

In this case, the landlord claims \$299.00 for a cleaning fee and has provided an invoice totaling \$295.00 dated April 12, 2023. It includes disinfecting and cleaning the bathroom, wiping countertops and cabinets inside and out in the kitchen as well as wiping the fridge and detailing the oven. It also includes disinfecting all traffic areas, doors and light switches and mild dusting of blinds, baseboards and window trims, as well as sweeping and mopping all floors.

A landlord is not entitled to claim damages for disinfecting; that is not damage caused by a tenant. The move-out report states that the bathroom was clean at the end of the tenancy and the only cleaning required in the kitchen at the end of the tenancy were cabinets and doors, and the oven. There is no mention in the report of the countertops requiring cleaning or blinds or baseboards. The invoice does not break down any amounts for cleaning cabinets, doors or the oven. Therefore, I find that the landlord has failed to satisfy element 1, 2 or 3 in the test for damages and the landlord is not entitled to recover the \$295.00 cleaning bill from the tenant.

A tenant is required to have carpets cleaned at the end of a tenancy if the tenancy lasts for more than 1 year or the tenant has a pet that is not kept in a cage. In this case, I accept that the landlord has satisfied the \$140.00 claim for carpet cleaning.

Since the landlord has not provided all of the evidence to the tenant, I find that the landlord has failed to establish the cost of the handyman invoice or the move-out fee.

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

The landlord currently holds a security deposit of \$700.00. I order that the landlord may keep \$240.00 of the security deposit. The landlord must return the balance of \$460.00 to the tenant. If the landlord fails to do so within 15 days of the date of this Decision, the tenant will be at liberty to apply for double the amount of the security deposit, less the \$240.00 award to the landlord.

Conclusion

For the reasons set out above, I hereby order the landlord to keep \$240.00 of the security deposit and to return the balance of \$460.00 to the tenant within 15 days of the

date of this Decision, failing which the tenant will be at liberty to apply for double the security deposit, less the \$240.00 award to the landlord.

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: November 08, 2023

Residential Tenancy Branch