



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL
 MNSD, MNDCT

Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) that was filed by the Landlord under the *Residential Tenancy Act* (the “Act”), seeking:

- Compensation for damage or loss;
- Retention of all or part of the security and pet damage deposits; and
- Recovery of the filing fee.

This hearing also dealt with a Cross-Application for Dispute Resolution that was filed by the Tenant under the *Act*, seeking:

- Compensation for loss or other money owed; and
- The return of the security and pet damage deposits.

The hearing was convened by telephone conference call and was attended by the Landlord, and agent for the Landlord (the “Agent”) and the Tenant, all of whom provided affirmed testimony. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”); however, I refer only to the relevant facts and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be emailed to them at the email address provided in the hearing.

Issue(s) to be Decided

- Is the Landlord entitled compensation for damage or loss?
- Is the Landlord entitled to recovery of the filing fee?

- Is the Landlord entitled to retain any amounts claimed from the security or pet damage deposits?
- Is the Tenant entitled to compensation for loss or other money owed?
- Is the Tenant entitled to the return of double the amount of their security and pet damage deposits?

Background and Evidence

The tenancy agreement in the documentary evidence before me states that the fixed term tenancy, which commenced March 15, 2017, was set to end on February 28, 2018, and that rent in the amount of \$1,900.00 was due on the first day of each month. The parties were in agreement that the tenancy ended on February 28, 2018, as the result of an undisputed Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice") as well as the Tenant's written notice to end the tenancy. The parties agreed that although the Tenant gave written notice on January 16, 2018, to end the tenancy early on February 1, 2018, the tenant was unable to move out until late February and as a result, the tenancy did not end until February 28, 2018. The parties agreed that the Tenant's forwarding address was provided to the Landlord in writing on March 1, 2018, and that the Landlord still holds a \$950.00 security deposit and a \$500.00 pet damage deposit.

The parties were in agreement that move-in and move-out condition inspections were completed and that the Tenant was provided with copies of both reports by the Landlord. However, the parties disagreed about the condition of the rental unit at the end of the tenancy as well as the extent and cause of some damage. The Landlord testified that the bathroom, the walls, and baseboards required cleaning and provided both an estimate and an invoice for these cleaning services. The Landlord further testified that the actual cleaning costs were \$140.00 but he is only seeking \$120.00 as that was the quoted cost for these services. The Tenant disputed that the rental unit was unclean as she works as a cleaner and stated that any dirt pointed out by the Landlord during the move-out inspection was removed by her at that time.

The Landlord stated that despite the fact that the tenancy agreement specifically states that only small picture hangers and nails are to be used in the walls of the rental unit, the Tenant used screws throughout the apartment without permission. As a result, the Landlord sought \$312.50 for the cost of removing the screws and repairing the holes. In support of his claim the Landlord submitted photographs of the screws, a quote for the repairs as well as an invoice. The Tenant acknowledged that she placed screws in the walls of the rental unit as she wanted to hang pictures and stated that due to the

construction of the walls themselves, screws were required. She also stated that she did not remove the screws or repair the holes made by them at the end of the tenancy as she felt that they were in a good location for other people to use in the future and therefore should not be responsible for their removal or the wall repairs.

The Landlord asserted that the towel hooks and a towel bar had been ripped from the wall in a bathroom and that the drywall plugs were stripped; however, the Tenant stated that this is untrue and that in any event, the hooks and the towel bar were never properly anchored to the wall. In support of his claim the Landlord submitted a photograph of the towel bar, a written estimate to remove and re-mount the hooks and towel bar and the move-out condition inspection report. Although the Tenant denied that the hooks and the towel bar were removed from the wall, she stated that any looseness in their fastening is the result of reasonable wear and tear due to their improper anchoring. The Tenant submitted a photograph of the towel hooks in support of her testimony.

Although both parties agreed that the stair railing was loose at the end of the tenancy, they disputed the cause and extent of the damage to the stair railing. The Tenant argued that any damage to the stair railing was caused by normal use and improper mounting as the railing is positioned in a manner that would make improper use (such as sliding down it) impossible. The Landlord disagreed stating that it had been removed and re-mounted just prior to the start of the tenancy. Further to this, the Landlord stated that the damage was more than what would be expected as reasonable wear and tear during the duration of the tenancy as one screw and another screw and drywall anchor were pulled free from the wall. In support of his testimony the Landlord provided several photographs of the damage, the condition inspection reports as well as a quote and invoice for the repair.

The Landlord testified that the Tenant stained and scratched the wood flooring in the bedroom and also stained an area of the wood flooring in the living room. As a result, her sought \$400.00 for the cost of sanding and refinishing the affected areas. The Landlord submitted photographic evidence of the stain in the bedroom, the move-in and move-out condition inspection reports noting the condition of the flooring at the start and the end of the tenancy, as well as a quote and an invoice for the sanding and re-finishing of the flooring where the staining and scratching was present. The Tenant acknowledged that she stained the floor in the bedroom but stated that it was an accident as a cold-pack leaked on the floor and denied that there was a stain in the living room or scratching on the bedroom floor.

The Landlord also stated that the blinds in the rental unit were damaged and sought \$105.00 for their repair. In support of his claim the Landlord submitted a quote and an invoice for this cost. Although the Tenant acknowledged that the blinds were new and functional at the start of the tenancy she argued that the blinds simply broke during normal use. As a result, she stated that she should not be responsible for this cost.

In addition to the Landlord's claims, the Tenant also filed several monetary claims of her own and requested the return of both her security and pet damage deposits. The parties both agreed that the Two Month Notice served on the Tenant stated that the reason for ending the tenancy was because the Landlord or their close family member intended in good faith to occupy the rental unit. The Tenant stated that despite vacating the rental unit as required by the Two Month Notice, the Landlord primarily left the rental unit vacant and has only occupied it for a few days. As a result, the Tenant stated that she is entitled to compensation in the amount of \$3,800.00 as the Landlord failed to use the rental unit for the purpose stated in the Two Month Notice.

In addition to the compensation sought above, the Tenant stated that she incurred \$700.00 in moving costs, increased rent, and increased utilities as a result of her compliance with the Two Month Notice and that the Landlord should be responsible for these costs as they have not used the rental unit for the stated purpose. The Tenant did not submit any documentary evidence in support of the amounts claimed. The Tenant also requested the return of her security and pet damage deposits as she stated she has not damaged the property.

The Landlord acknowledged that the Two Month Notice was served because he and his fiancé intended in good faith to occupy the rental unit but disagreed with the Tenant's testimony that he has failed to do so. The Landlord agreed that the rental unit remained vacant for some time so that some small renovations and repairs could be completed prior to their occupancy but stated that the rental unit has always been in his possession since the end of the tenancy and is now occupied by him and his wife. The Landlord also stated that there was a delay in their move-in date as he and his fiancé went on their honeymoon prior to moving in. As a result, the Landlord stated the Tenant is not entitled to any compensation. The Landlord also disagreed that the Tenant has not damaged the property and stated that his claim seeking retention of the deposits was filed in compliance with the *Act*.

Analysis

Section 37 of the *Act* states that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. Section 7 of the *Act* states that if a landlord or tenant does not comply with the *Act*, the regulations or their tenancy agreement, the non-complying party must compensate the other for damage or loss that results. With this in mind, I will now turn to the claims before me.

Cleaning Costs

Residential Tenancy Policy Guideline (the “Policy Guideline”) 1 states that the tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with this required standard. In the hearing the parties disputed the level of cleanliness of the rental unit at the end of the tenancy; however, the Landlord submitted a copy of the move-out condition inspection report for my review which I find compelling, wherein the lack of cleanliness in the bathroom was noted. Although the Tenant failed to sign section 4 of the report, the parties both agreed in the hearing that they were present during the move-out inspection and the Tenant signed sections 1 and 2 of the report indicating she was present for the move-out inspection. I also find it significant and noteworthy that the Tenant did not indicate on the condition inspection report that she disagreed with the condition noted in the report for the rental unit at the end of the tenancy. In addition to this, the Landlord also submitted an invoice for four hours of cleaning in the rental unit.

Based on the above, I find that the Landlord has satisfied me, on a balance of probabilities, that the rental unit was not left reasonably clean at the end of the tenancy as required by section 37 of the *Act* and pursuant to section 7 of the *Act*, I therefore find that the Landlord is entitled to the \$120.00 sought in cleaning costs.

Screw Hole Repairs

The Tenant acknowledged that she placed screws in the walls of the rental unit and the tenancy agreement in the documentary evidence before me states that “Only small picture hooks & small nails may be used for hanging pictures on the premises”. Policy Guideline 1 states that the tenant is generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest and that any changes to the rental unit and/or residential property not explicitly consented to by the landlord must be returned to the original condition before vacating

or the landlord may return the rental unit and/or residential property to its original condition and claim the costs against the tenant. Further to this, the Policy Guideline specifically states that while most tenants will put up pictures in their unit, the landlord may set rules as to how this can be done and that the tenant must pay for repairing walls where the rules have not been followed or screws have been used and left wall damage.

Based on the documentary evidence before me from the Landlord and the testimony of both parties, I find that the Tenant did not have permission to place screws in the walls of the rental unit, failed to comply with the written requirements for picture hanging laid out in the tenancy agreement and failed to return the rental unit to its original condition at the end of the tenancy. As a result, I find that the Landlord was entitled to return the rental unit to its original condition by removing the screws and repairing the holes left behind by them and to charge the cost of this repair to the Tenant. Further to this, I find that the Landlord acted reasonably to minimize this cost by charging the Tenant only for the quoted cost of these repairs instead of their more expensive actual cost. As a result, I find that the Landlord is entitled to the \$312.50 sought for these repairs pursuant to section 7 of the *Act*.

Towel bar and Hooks

While the Landlord asserted that the towel bar and hooks had been ripped from the wall and the drywall plugs stripped, there was no photographic or video evidence to support this claim and the Tenant stated that this is untrue. Further to this, the Tenant argued that the towel bar and hooks were never properly anchored to the wall and any looseness in their fastening was therefore the result of reasonable wear and tear. Although the move-out condition inspection report states “Damaged hangers”, this information lacks detail or specificity and I find the photographic evidence submitted by both parties for my consideration clearly shows the towel bar and hooks affixed to the wall. Based on the above, I find that the Landlord has failed to satisfy me, on a balance of probabilities, that the towel hooks were not affixed to the wall at the end of the tenancy or that any looseness in these hooks was not the result of reasonable wear and tear. As a result, I dismiss the Landlord’s \$90.00 claim for their repair without leave to reapply.

Stair Railing

Although both parties agreed that the stair railing was loose at the end of the tenancy, they disputed the cause and extent of the damage to the stair railing. Although the

Tenant argued that any damage to the stair railing was caused by normal use, the Landlord disagreed stating that it had been removed and re-mounted just prior to the start of the tenancy. Further to this, the Landlord stated that the damage was more than what would be expected as reasonable wear and tear during the duration of the tenancy.

While I acknowledged that there was damage to the stair railing during the course of the tenancy, it appears to me from the documentary evidence and the testimony of the parties in the hearing that the railing was mounted to the wall using drywall anchors. Given the nature and purpose of a stair railing, I am not satisfied that mounting it to the wall in this manner is sufficient to prevent the type of damage that occurred in this case during normal use of the railing. As a result, I am not satisfied that this damage is anything other than normal wear and tear and I therefore dismiss the Landlord's \$72.50 claim for this cost without leave to reapply.

Floor Stains

While the Tenant disputed the cause, number and size of the stains to the flooring of the rental unit, she acknowledged that she stained the floor. The Landlord submitted photographic evidence of the stain, the move-in and move-out condition inspection reports noting the condition of the flooring at the start and end of the tenancy, as well as a quote and an invoice for the sanding and re-finishing of the flooring where the staining was present.

Based on the testimony of the parties and the documentary evidence before me for consideration I am satisfied, on a balance of probabilities, that the Tenant stained the flooring of the rental unit and that the nature and extent of the flooring damage is as described by the Landlord. However, I do not find that the Landlord is entitled to the \$300.00 sought for this repair as this was the quote for the repair cost, not the actual cost for the repair. As the invoice in the documentary evidence before me states that the cost of this repair was only \$150.00, I find that the Landlord is only entitled to \$150.00 for floor repair.

Blinds

Although the Tenant argued that the blinds simply broke during normal use, she acknowledged that the blinds were new and functional at the start of the tenancy and damaged at the end. As the Tenant was in possession of the rental unit for less than a year and the blinds were new at the start of the tenancy, I do not accept that this

damaged by the Tenant or persons permitted on the property by her during the course of the tenancy. Pursuant to sections 37 and 7 of the *Act*, I therefore find that the Landlord is entitled to the cost of repairing these blinds. Although the Landlord sought \$105.00 for this cost in the Monetary Order Worksheet, the invoice in the documentary evidence before me states that the cost of repairing the blinds was only \$100.00. As a result, I find that the Landlord is only entitled to \$100.00 for the cost of repairing the blinds.

Compensation under Section 51 of the Act

Section 51(2) of the version of the *Act* that was in force at the time of the tenancy states that if steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice or if the rental unit is not used for that stated purpose for at least six months beginning within a reasonable period after the effective date of the notice, the landlord must pay the tenant an amount that is equivalent of double the monthly rent payable under the tenancy agreement.

Although the Tenant argued that she is entitled to \$3,800.00 pursuant to section 51(2) of the *Act*, I do not agree. The basis of the Tenant's argument is that the Landlord and his fiancé have primarily left the rental unit vacant after the end of her tenancy instead of occupying it as stated in the Two Month Notice. Although the parties agreed that the Two Month Notice was served because the Landlord or their close family member intended in good faith to occupy the rental unit, I find that the term "occupy" contains within its meaning the right to exclusively possess, not just reside in, the subject property. As a result, I find that the Landlord was lawfully entitled under the *Act* to leave the unit vacant, to occupy it himself, or to have a close family member occupy the rental unit.

There is no evidence before me that anyone other than the Landlord or their close family member resided in or possessed the rental unit within six months of the effective date of the Two Month Notice. Based on the above, I am not satisfied, on a balance of probabilities, that the Landlord breached the *Act* by leaving the rental unit vacant for several months after the end of the tenancy and prior to his occupancy of the rental unit in order to complete repairs and go on his honeymoon. As a result, I dismiss the Tenant's claim for \$3,800.00 in compensation pursuant to section 51(2) of the *Act* without leave to reapply.

Tenant's Claim for loss or damage under the Act

Although the Tenant sought \$700.00 in compensation for costs associated with moving and finding new accommodation, she acknowledged that she voluntarily complied with the Two Month Notice. Further to this, the Tenant herself gave written notice to end the tenancy on a date earlier than the effective date of the Two Month Notice. As a result, I find that even if the tenancy had not ended as a result of the undisputed Two Month Notice, it would have ended based on the Tenant's written notice to end her tenancy. Based on the above, I find that the costs sought by the Tenant are a result of her voluntary compliance with the Two Month Notice and her own written notice to end the tenancy, not a breach of the *Act*, the regulation, or the tenancy agreement on the part of the Landlord. As a result, I find that the Tenant is not entitled to the \$700.00 sought and I therefore dismiss this claim without leave to reapply.

Return of Security and Pet Damage Deposits

Section 38(1) of the *Act* states that except as provided in subsection (3) or (4) (a), within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must do one of the following:

- repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations; or
- make an application for dispute resolution claiming against the security deposit or pet damage deposit.

The parties agreed that the tenancy ended on February 28, 2018, and that the Tenant's forwarding address was provided to the Landlord in writing on March 1, 2018. As a result, I find that the Landlord had until March 16, 2018, to either return the security and pet damage deposits to the Tenant or file a claim against them with the Branch. As the Landlord's Application seeking retention of the Tenant's security deposit was filed on March 15, 2018, I find that the Landlord complied with section 38(1) of the *Act*.

As stated above, I have already found that the Landlord is entitled to compensation in the amount of \$682.50 in compensation for damage to the rental unit. Pursuant to section 72 of the *Act*, I also find that the Landlord is entitled to \$100.00 for recovery of the filing fee. As a result, I find that the Landlord is entitled to compensation from the Tenant in the amount of \$782.50, which he is entitled to deduct from the \$1,450.00 held in deposits pursuant to section 72 of the *Act*.

Based on the above, and in compliance with Policy Guideline 17, the Tenant is therefore only entitled to a Monetary Order in the amount of \$662.50 for the return of the remaining balance of her security and pet damage deposits; \$1,450.00, less the \$787.50 owed to the Landlord.

Conclusion

Pursuant to section 72 of the *Act*, the Landlord is entitled to withhold \$782.50 from the Tenant's security and pet damage deposits.

Pursuant to section 67 of the *Act*, I grant the Tenant a Monetary Order in the amount of \$662.50. The Tenant is provided with this Order in the above terms and the Landlord must be served with this Order as soon as possible. Should the Landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

Although this decision has been rendered more than 30 days after the conclusion of the proceedings, I note that section 77(2) of the *Act* states that the director does not lose authority in a dispute resolution proceeding, nor is the validity of a decision affected, if a decision is given after the 30 day period in subsection (1)(d).

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 7, 2018

Residential Tenancy Branch