



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL

Introduction

On June 25, 2018, the Landlord applied for a Dispute Resolution proceeding seeking a Monetary Order for cleaning, painting, repairs to damage, and refuse removal pursuant to Section 67 of the *Residential Tenancy Act* (the “*Act*”), seeking to apply the security deposit and pet damage deposit towards these debts pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Landlord attended the hearing with F.K. who was the Landlord’s agent. The Tenant attended the hearing as well. All in attendance provided a solemn affirmation.

The Landlord advised that he served the Tenants a Notice of Hearing package and evidence by hand on June 26, 2018 and the Tenant acknowledged that they received these packages. In accordance with Sections 89 and 90 of the *Act*, and based on this undisputed testimony, I am satisfied that the Tenants were served the Landlord’s Notice of Hearing packages and evidence.

The Tenant advised that she served their evidence to the Landlord by hand “about a week ago” and the Landlord confirmed that he received this evidence. As well, he stated that he was prepared to respond to this evidence. While the evidence may have been served late and not in compliance with Rule 3.15 of the Rules of Procedure, as the Landlord was prepared to respond to it, I have accepted this evidence and will consider it when rendering this decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to a Monetary Order for cleaning, painting, repairs to damage, and refuse removal?
- Is the Landlord entitled to apply the security deposit and pet damage deposit towards these debts?
- Is the Landlord entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on May 25, 2015 and the tenancy ended when the Tenants vacated the rental unit on November 30, 2017. Rent was currently established at \$2,065.00 per month, due on the first day of each month. A security deposit of \$997.50 and a pet damage deposit of \$997.50 were also paid.

The Landlord advised that a move-in inspection report was conducted with the Tenants and a copy of this report was submitted as evidence. On the report, the condition of the premises was documented, and Tenant A.A. signed the report agreeing that the report fairly represents the condition of the rental unit.

The Landlord advised that a move-out inspection report was conducted with the Tenants and a copy of this report was submitted as evidence. On the report, the condition of the premises was documented, and Tenant A.A. signed the report disagreeing that the report fairly represents the condition of the rental unit.

The Landlord submitted that he was seeking **\$17.92** for the cost to replace a broken slat in the blinds caused by the Tenants' negligence. He submitted evidence of the broken blind and the invoice to repair it.

The Tenant advised that these were long, vertical blinds, that she has kids, and that she tried to fix the broken blind. However, she stated that these blinds snap easily, and she attributed this damage to normal wear and tear.

The Landlord submitted that he was seeking **\$315.00** for the cost to dispose of patio furniture and other refuse that the Tenants left behind. As the city would not dispose of these items, the Landlord had to pay to have these items disposed of properly. He submitted evidence of these items and the invoice for disposal.

The Tenant advised that she was not present at the time of the move-out inspection; however, she acknowledged that they were responsible for these items and she stated that she was willing to pay for the cost of removal of these items.

The Landlord submitted that he was seeking **\$350.00** for the cost of cleaning the rental unit and he submitted evidence showing that the walls were scuffed, marked, and not in good condition, that the appliances needed to be cleaned, and that there was garbage that was left behind. He stated that the walls needed to be cleaned as well and he submitted an invoice for the cost of rectifying these issues.

The Tenant stated that the rental unit was not cleaned at the beginning of the tenancy and the condition was not great. She advised that she spent a month cleaning at the beginning of the tenancy and that she “tried” to clean up after her children. She acknowledged that her children were involved in a silly string incident that left blue marks on the ceiling that she attempted to clean and fix, unsuccessfully. She advised that she swept; however, she did not have a small broom or dustpan. It was also her opinion that they should not be responsible for the dirt in the front of the house as the Landlord had a landscaping project directly in front of the house and the Tenants could not help but track dirt into the house. She advised that the pictures she submitted into evidence demonstrate that the rental unit was taken care of.

The Landlord submitted that he was seeking **\$1,260.00** for the cost of repainting the rental unit. He submitted evidence showing the damage to the ceiling and that there were drawings on the walls and doors. He stated that the painters advised him that it was not cost effective to just repaint the areas that the Tenants damaged and that they only did one coat to minimize the cost. He submitted the invoice for the cost of painting; however, he did not know how much it would have cost to repair just the issues caused specifically by the Tenants.

The Tenant stated that they lived there for two and a half years and it was her belief that the Landlord should have painted between tenancies. While she acknowledged that they were responsible for some of the issues, it was her belief that it was not necessary to repaint the entire rental unit. She stated that if they are held responsible for the cost

of painting, she should be consulted on this as it is not fair to have the home brought back to a fully renovated condition.

The Landlord submitted that he was seeking **\$19.54** for the cost of fixing a broken latch on the front patio sliding door. He submitted a receipt for this and indicated that he did the repairs himself to minimize costs.

The Tenant stated that she did not know this was broken and she attributed this to wear and tear.

The Landlord submitted that he was seeking \$59.88 for the cost of repairing heating registers that were damaged. He is also seeking \$ 451.32 for the cost of replacing bifold doors that were broken by the Tenants' negligence. He submitted evidence to demonstrate this damage and a receipt for these repairs, totalling **\$572.54** including taxes.

The Tenant advised that the heating register vents are fragile, and any amount of pressure would cause them to break. She also acknowledged that they broke the bifold door; however, she stated that the door is fragile and of poor quality. As well, she attributed this damage to her children and that this damage is simply wear and tear.

Both parties agreed that a forwarding address in writing was provided on December 1, 2017.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

Section 38(1) of the *Act* requires the Landlord, within 15 days of the end of the tenancy or the date on which the Landlord receives the Tenants' forwarding address in writing, to either return the deposits in full or file an Application for Dispute Resolution seeking an Order allowing the Landlord to retain the deposits. If the Landlord fails to comply with Section 38(1), then the Landlord may not make a claim against the deposits, and the Landlord must pay double the deposits to the Tenants, pursuant to Section 38(6) of the *Act*.

Based on the evidence before me, I am satisfied that the Landlord had the Tenants' forwarding address in writing on December 1, 2017. As the tenancy ended on November 30, 2017, I find that December 1, 2017 is the date which initiated the 15-day time limit for the Landlord to deal with the deposits. The undisputed evidence before me is that the Landlord made his initial Application to claim against the deposits on December 15, 2017, but this Application was dismissed with leave to reapply. As the Landlord complied with the requirements of the *Act* by applying within the legislated timeframes, I am satisfied that the doubling provisions do not apply to the security deposit.

However, the pet damage deposit can only be claimed against if there is damage due to the pets. As the Landlord did not advise of any damage that was due to the pets, the pet damage deposit should have been returned in full within 15 days of December 1, 2017. As the Landlord did not return the pet damage deposit in full within 15 days of December 1, 2017, the Landlord in essence illegally withheld the pet damage deposit contrary to the *Act*. Thus, I am satisfied that the Landlord breached the requirements of Section 38. As such, under these provisions, I grant the Tenants a Monetary Order amounting to double the original pet damage deposit, or **\$1,995.00**.

With respect to the Landlord's claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

Regarding the Landlord's claim for the broken blinds, the undisputed evidence before me is that the Tenant acknowledged that their children were responsible for breaking the blinds. I do not find the Tenant's excuse that the blinds snap easily to be considered normal wear and tear. As the blinds were broken due to the negligence of the Tenants, I am satisfied that the Landlord has substantiated a claim in the amount of **\$17.92** as compensation for the cost to repair this issue.

With respect to the Landlord's claim for the cost to dispose of refuse that the Tenants left behind, as the Tenant agreed that they were responsible for leaving these items, I am satisfied that the Landlord has substantiated a claim in the amount of **\$315.00** as compensation for the cost to rectify this issue.

With respect to the Landlord's claim for the cost of cleaning the rental unit, I have before me pictures of the deficiencies and an invoice for cleaning from the Landlord. When I weigh this against the Tenant's evidence, I do not find the Tenant's reasoning that the rental unit was not cleaned at the start of the tenancy to be relevant as that was an issue that should have been addressed at the start of the tenancy. In addition, the move-in inspection report that Tenant A.A. signed indicates that there were no deficiencies. Furthermore, the Tenant acknowledged being responsible for some damage and her submissions of "trying" to clean do not compel me to be persuaded that they left the premises in a reasonable state of cleanliness at the end of tenancy. Moreover, given that she admitted to being responsible for all the refuse that was left behind, I find this is another factor that weighs against the Tenant's claims of the condition she left the rental unit in. Finally, I do not find it logical that she attributes the Landlord's landscaping project in the front yard to account for the partial uncleanness of the rental unit. When weighing the totality of the evidence before me, I find it more likely than not that the Landlord has substantiated a claim in the amount of **\$350.00** as compensation for the cost to clean the rental unit.

With respect to the Landlord's claim for the cost of repainting the rental unit, the Tenant acknowledged that they were responsible for some of the damage and the Landlord provided many pictures demonstrating the condition of the walls and ceiling. However, I do not find it reasonable that the Tenant should bear the entire cost of repainting the entire rental unit. I find it important to note that the move-in inspection report indicates that the paint was new at the start of the tenancy. As well, Policy Guideline # 40 outlines that the average useful life of interior paint is approximately four years. As the length of the tenancy was over two years, and as the rental unit required repainting due to the negligence of the Tenants, I am satisfied that the Landlord should be compensated in a portion of the cost to repaint. As such, I find that the Landlord has substantiated a claim in the amount of **\$550.00** as compensation for the cost to repaint the rental unit.

With respect to the Landlord's claim for the cost of replacing the broken latch on the patio door, the broken heating register, and the broken bifold door, I find it important to note that the Tenant is responsible for leaving the rental unit in a similar condition as when it was rented initially, and to repair or replace broken items before vacating the rental unit. I do not find the Tenant's disregard of these issues by attempting to blame poor quality or attribute this damage simply to wear and tear to be legitimate or valid. Furthermore, she stated in her evidence that she does not "[deny] the absence of damage that occurred over two and a half years of family life..." Policy Guideline #1 states that "Reasonable wear and tear refers to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable

fashion.” Based on the totality of the evidence before me, I am satisfied that the damage outlined is beyond natural deterioration but clearly due to the Tenants’ negligence. As such, I find that the Landlord has substantiated a claim in the amount of **\$19.54** and **\$572.54** as compensation for the cost to replace these items.

As the Landlord was successful in his claims, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this application. Under the offsetting provisions of Section 72 of the *Act*, I allow the Landlord to retain the security deposit in partial satisfaction of the debts outstanding.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Tenants a Monetary Order as follows:

Calculation of Monetary Award Payable by the Landlord to the Tenants

Double the pet damage deposit	\$1,995.00
TOTAL MONETARY AWARD	\$1,995.00

Calculation of Monetary Award Payable by the Tenants to the Landlord

Repair of broken blinds	\$17.92
Disposal of refuse	\$315.00
Cleaning	\$350.00
Repainting and repairs to walls	\$550.00
Broken latch	\$19.54
Broken heat register and bifold door	\$572.54
Security deposit	-\$997.50
Filing fee	\$100.00
TOTAL MONETARY AWARD	\$927.50

Conclusion

The Tenants are provided with a Monetary Order in the amount of **\$1,067.50** 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.

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 6, 2018

Residential Tenancy Branch