



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNDL-S, MNDCL, FFL, MNSD, FFT

Introduction

This hearing dealt with monetary cross applications. The landlord applied for monetary compensation for damage and cleaning losses, recovery of legal fees; and, authorization to retain the tenant's security deposit and pet damage deposit. The tenants applied for return of double their security deposit and pet damage deposit.

All parties appeared at the hearing and were affirmed.

The hearing was held over three dates and two Interim Decisions were issued. The Interim Decisions should be read in conjunction with this decision.

It should be noted that I was provided with a significant amount of evidence and submissions, both orally and in the form of documentation and photographs, all of which I have considered; however, with a view to brevity in writing this decision, I have only summarized the parties' respective positions and the evidence relevant to understanding my decision.

Issue(s) to be Decided

1. Has the landlord established an entitlement to compensation for damage to the property and cleaning costs, as claimed?
2. Was or is the landlord authorized to retain all or part of the tenant's security deposit and pet damage deposit?
3. Are the tenants entitled to doubling of their deposits?
4. Award of the filing fee(s).

Background and Evidence

The tenancy started on February 1, 2021. The tenants paid a security deposit of \$1400.00 and a pet damage deposit of \$1400.00. The monthly rent was \$2800.00 payable on the first day of every month. The tenancy ended on May 31, 2022.

Condition Inspection Reports

The parties were in agreement that a move-in inspection report was completed. The tenants provided a copy of it in their evidence.

A move-out inspection report was also prepared by the landlord and tenant AD. There are four different dates on the move-out inspection report: May 31, 2022, June 1, 2022, June 3, 2022 and June 4, 2022.

The landlord explained that on May 31, 2022 the tenants were not ready for the inspection so it was delayed to June 1, 2022. On June 1, 2022 the tenants were fighting and the inspection was re-scheduled to June 3, 2022. On June 3, 2022 the landlord performed an inspection with AD and a video was taken; however, the landlord did not provide the video as evidence. More cleaning was identified by the landlord, which AD did before the final inspection was held on June 4, 2022. The landlord pointed out that the tenant AD initialled the move-out inspection report beside all four dates.

Security deposit and pet damage deposit

The tenant was of the position the tenant AD authorized her to retain the deposits on the move-out inspection report.

The landlord testified that she did not have estimates for the amounts she sought to recover from the tenants and that she intended to send the balance of the deposits after deducting the costs of repairs and cleaning. The landlord sent an e-transfer to the tenant in the net amount of \$366.02 but the tenant would not accept it.

The tenant testified that she was told to sign the move-out inspection report with verbal assurance from the landlord that she would be returning the full amount of the deposits. The tenant AD has difficulty in understanding written things. The tenant confirmed that the e-transfer was not accepted because they did not agree that the landlord could withhold any part of their deposits.

Forwarding address

The tenant sent a forwarding address to the landlord on June 1, 2022 via email. The tenant acknowledged that he did not have the landlord's agreement or consent to serve by email but explained he used email because he was not allowed on the property by the landlord. The tenant did not send the forwarding address to the landlord in any other way, such as regular or registered mail.

The landlord acknowledged receiving the tenant's forwarding address via email but she was uncertain as to the date she received it.

Landlord's application

In filing her application, the landlord seeks to retain the tenant's security deposit and pet damage deposit and obtain a Monetary Order for the balance owed for damage and cleaning. The landlord seeks compensation totalling \$8528.72 from the tenants by way of a Monetary Order and retention of their deposits. Although the landlord did not provide a detailed calculation, the landlord provided receipts, invoices and estimates in support of the amount claimed.

The landlord's application also included a request for \$3000.00 for legal fees to represent her in this dispute; however, I did not hear that matter further as such fees are not recoverable under the Act.

Below, I have summarized the landlord's claims against the tenants and the tenant's responses.

Cleaning

The landlord seeks \$550.00 for cleaning, of which the landlord attributes \$100.00 to cleaning because of the tenant's dogs. The landlord provided a detailed listing of hours spent cleaning by four people, not including the tenant AD who was also cleaning. The listing indicates the tasks performed were for "deep cleaning" the rental unit and the patios. The landlord charged for 22 hours at \$25.00 per hour.

The tenants objected to this charge, stating they left the rental unit clean, the tenants are not responsible for deep cleaning, the dogs were kept out of the bedrooms, the tenants washed the walls top to bottom, and the tenant power washed the patio the

dogs had access to at the end of the tenancy. The tenant provided a photograph of his carpet cleaner and presser washing machine.

Blind replacement

The landlord seeks to recover \$88.30 from the tenants' pet damage deposit to replace all 15 blinds in the rental unit. The landlord acknowledged the blinds were inexpensive fabric blinds that were meant to more temporary but that she had to replace them due to the dog smell that could not be removed despite application of a fabric refresher product. The blinds were one year old and the landlord expected them to last five years, as she has the same blinds and hers are still in good condition.

The tenants objected to this charge, stating the blinds provided to them were cheap and temporary that were supposed to be replaced during their tenancy with "real" blinds but were not. The landlord even had a person come in and measure for new blinds during their tenancy.

The landlord acknowledged that at one point she did contemplate getting longer lasting "real" blinds but that she did not pursue that any further.

Painting (Baseboard and windowsill damage)

The landlord submits that the baseboards and windowsills were damaged by dog scratches and water spilling from the dog's water bowl. The landlord testified that the estimate to rectify the damage was \$660.00 plus tax; however, the two pages of estimate dated June 14 ,2022 show a balance of \$462.00 on one page and highlighted amounts of \$195.00, \$50.00 and \$125.00 on the second page. The landlord testified that she has decided not to make the repairs unless she is successful in this claim. The landlord acknowledged that she re-rented the unit without making these repairs for the same amount of rent.

The tenants denied that they or their pets caused damage to the baseboards or windowsills and suggested the swollen baseboards and scratches could be from cleaning efforts. The tenant testified they had put a towel down on the windowsill for the dog to sit on when in the windowsill. Also, the baseboard material should be able to withstand cleaning with a damp mop.

Cleaning supplies

The landlord seeks to recover \$162.74 for cleaning supplies, of which the landlord attributes 50% to clean areas of dog mess and odour. The landlord read aloud the cleaning supplies purchased as the tenants stated they did not have copy of this receipt. The charges included several cleaning solutions, sponges, plus a mop and bucket.

The tenants objected to this claim, stating the rental unit was left clean and the landlord's claim for cleaning supplies is excessive in any event considering the landlord's receipt includes six bottles of bleach, which the tenants suspect the landlord purchased for other properties as well. The tenant was of the position the landlord wanted the rental unit "deep cleaned", which the tenant was trying to do to satisfy the landlord, and the new tenants started moving in while AD was cleaning.

Carpet cleaning

The landlord seeks to recover \$140.18 from the tenant's pet damage deposit for professionally cleaning the carpeting. The landlord stated the carpets were stained by pet vomit and feces and the tenancy agreement requires professional cleaning of the carpets.

The tenants objected to this claim, stating they did not permit the dogs in the bedroom and they had a carpet cleaner that they used several times during the tenancy, including three times at the end of the tenancy.

Concrete damage

The landlord submitted that there was a broken section in the sidewalk and the landlord seeks to recover \$6063.75 from the tenants to tear up the sidewalk and lay a new sidewalk. The landlord is of the position this damage occurred when the tenants were moving out and they must have dropped something heavy on it.

The tenants denied dropping anything on the sidewalk and stated they contacted the person who helped them move and he denied dropping anything heavy as well. The tenants provided a copy of a text message exchange with this other person. The tenant

also pointed out that there is often construction activity at the residential property and provided a photographs of construction activity.

Tenant's application

The tenants seek return of double the security deposit and pet damage deposit on the basis the landlord did not return the deposits or make a claim against them within 15 days of the tenant sending the forwarding address to the landlord via email.

The landlord was of the position that tenant AD signed over the deposits, even though the landlord had agreed to send a partial refund after deducting amounts. The landlord also pointed out that her losses are well in excess of the tenants' deposits.

Analysis

Upon consideration of everything before me, I provide the following findings and reasons.

Tenant's application

The tenants seek return of double the security deposit and pet damage deposit.

The landlord was of the position the tenant signed over the deposits to her on the move-out inspection report.

When I review the section of the move-out report that deals with deductions from a deposit, I do not see that the tenant signed in the area that authorizes the landlord to make deductions. Rather, in this space, I see what appears to be the tenant's last name printed, but it is not her signature. The tenant's signature appears in the section below, where both parties are to sign the report which serves as evidence as to the attendance at the move-out inspection and review of the report by the parties. Therefore, I find the tenant did not sign over the deposits to the landlord during the move-out inspection and the security deposit and pet damage deposit remained in trust, to be administered in accordance with section 38 of the Act.

The landlord sent an etransfer to the tenant for a portion of the pet damage deposit; however, that was not accepted and deposited by the tenant. As such, I consider the landlord to be holding the entire amount of the deposits, of \$2800.00.

Section 38(1) of the Act provides that the landlord has 15 days, from the date the tenancy ends or the tenant provides a forwarding address in writing, whichever date is later, to either refund the security deposit, get the tenant's written consent to retain it, or make an Application for Dispute Resolution to claim against it. Section 38(6) provides that if the landlord violates section 38(1) the landlord must pay the tenant double the security deposit.

The landlord filed her Application for Dispute Resolution claiming against the deposits on June 14, 2022 and the tenancy ended on May 31, 2022. Even if I were to deem the landlord in receipt of the forwarding address via the email on June 1, 2022, the landlord met her obligation to make a claim within 15 days of the tenancy ending or receiving the forwarding address. Therefore, I find the tenants are not entitled to doubling of the deposits and the tenant's application is dismissed.

Having dismissed the tenant's application, I make no award for recovery of the filing fee they paid.

Landlord's application

A party that makes an application for monetary compensation against another party has the burden to prove their claim. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. Awards for compensation are provided in section 7 and 67 of the Act, and, as provided in Residential Tenancy Policy Guideline 16: *Compensation for Damage or Loss* it is before me to consider whether:

- a party to the tenancy agreement violated the Act, regulation or tenancy agreement;
- the violation resulted in damages or loss for the party making the claim;
- the party who suffered the damages or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

As the claimant, the landlord bears the burden to prove entitlement to the amounts she is claiming against the tenants and their deposits.

The burden of proof is based on the balance of probabilities. It is important to note that where one party provides a version of events in one way, and the other party provides a

version of events that are equally probable, the claim will fail for the party with the onus to prove their claim.

Cleaning and cleaning supplies

Under section 37 of the Act, a tenant is required to leave a rental unit “reasonably clean” at the end of the tenancy. This standard is less than say perfectly clean, impeccably clean or deep cleaned. While it is not uncommon for landlords to turn over a perfectly clean or impeccably clean unit to the incoming tenants, the cost to bring the rental unit up to that level of cleanliness is the landlord’s burden to bear, not the tenants. The tenant is only required to leave the rental unit “reasonably clean” and a landlord may only recover the cost to bring the unit up to a “reasonably clean” condition.

From the landlord’s detailed listing of cleaning activities, it is clear the landlord is describing activities to “deep clean” the rental unit. Not only is the document entitled “Detailed Deep Cleaning” but many of the activities are consistent with deep cleaning such as use of the following descriptive words: “sanitizing” and “deeply cleaning” and “deeply scrubbing”. Although the landlord stated during the hearing that she considers the phrase deep cleaning to mean the same as cleaning, I find it more likely that the landlord was having the rental unit cleaned beyond reasonably clean when I consider :

- The cleaning supplies receipt includes six bottles of bleach in addition to several other cleaning solutions and I find that to be an excessive amount of bleach required to clean a two bedroom suite;
- 22 hours were spent cleaning the two bedroom basement suite which is approximately the equivalent of a person working three full days and I cannot image how it would take 3 working days to bring the rental unit up to “reasonably clean” unless it was left absolutely filthy;
- Of the 22 hours spent cleaning, 3 hours were attributed to cleaning the entry way door, the small area of flooring in front of the door and a shelf and this appears to be a tremendous amount of time on such a small area; and,
- In an email to the tenant, the landlord also described deep cleaning the rental unit, as seen in her email that I have reproduced below:

I took a video with her with our move out walk through , so that we don't have to fight about anything and we agreed to do the deep cleaning together on Saturday for the next renter moving in. That way it helps with the security deposit ! You made a great effort to clean everything up and out and it looked so much better than the day before . Kudos to you, I said it in the video as well , and you really moved a mountain!!!
I saw that you were exhausted!!

When I view the landlord's photographs, I do so some areas that require additional cleaning, including vent covers, the lint trap on the dryer, and dusty window screen frames and streaks on the glass door. However, the tenant questioned when these photographs were taken and I consider that a valid consideration since the landlord inspected the unit on four different occasions and there are no dates visible on the photographs. As such, it is entirely possible the photographs provided as evidence were taken before the tenants finished their cleaning efforts.

The landlord also provided a copy of the move-out inspection report and the landlord appears to have marked nearly every surface as being dirty. Section 21 of the Residential Tenancy Regulations provides that a condition inspection report is the best evidence of the condition of a rental unit so long as it is prepared in accordance with the regulations or there is not a preponderance of evidence to the contrary.

After reviewing the move-out inspection report and all of the areas marked as dirty, one would expect to see an obviously filthy rental unit. However, that is not what I see in the landlord's photographs. The landlord's photographs do show some isolated areas that require additional cleaning and in some of the photographs I have to strain to see any sign of dirt or I do not see it at all. Also of consideration is that the move-out inspection report was prepared before the tenant had finished cleaning as the landlord described on the move-out inspection report that the tenant was returning the following day to continue cleaning, which the tenant did. Therefore, I find the move-out inspection report inaccurately describes or exaggerates the extent of cleaning required to bring the rental unit to a "reasonably clean" condition after the tenant finished cleaning.

In light of the above, I find the landlord's cleaning claim to be an excessive and likely reflects her efforts to "deep clean" the rental unit and beyond the tenants' legal obligation to leave it "reasonably clean" and I am uncertain as to the loss the landlord suffered to bring the rental unit to a level of "reasonably clean" by the time the tenant finished cleaning efforts on June 4, 2023. Since the landlord has the burden of proof, and I am uncertain as to what loss the landlord suffered to bring the rental unit to a reasonably clean condition, I find the landlord has not met her burden and I dismiss her claim for cleaning and cleaning supplies.

Blind replacement

The landlord seeks compensation to replace all of the inexpensive blinds in the unit due to dog odour. When I turn to the move-out inspection report, I see the landlord

identified the windowsills or window tracks as needing cleaning but not the blinds. Nor do I see mention of dog odour on the blinds.

Considering the blinds were very inexpensive fabric blinds (costing \$4.99 each) that were over one year old by the time they were replaced, and I do not see notation that they smelled on the move-out inspection report, I am of the view the blinds were likely replaced because they do not have a long life expectancy and to meet the landlord's high expectations that exceed the tenant's legal obligation. Therefore, I do not hold the tenants liable to pay for the cost to replace the blinds.

Painting (baseboard and windowsill damage)

From the landlord's photographs, it is clear there are some baseboards that have swelling at the bottom, closest to the floor. To me, this appears to be from excess water or steam coming in contact with the baseboard which is made up of a material that swells when it comes in contact with moisture. The issue is whether the damage is the result of water spilled from the dog bowls, as suggested by the landlord, or from cleaning the floors as suggested by the tenant.

Some scratches are also visible on the windowsill; however, the tenants denied responsibility for this damage as well.

When I turn to the move-out inspection report, I see notations that there is baseboard water damage in the AD's bedroom and windowsill scratches in the living room; however, in the section of the inspection report that describes the damage the tenants are responsible for, the landlord wrote (names of tenants obscured by me for privacy purposes):

Z. End of Tenancy

List Damage to the rental unit or residential property for which the tenant is responsible:

See video and report, copy for ...

^{Landlord} will do a cleaning on Saturday and () offered to help with it - It will reduce the costs taken from Deposit or renter insurance

As seen above, there is no mention the landlord is holding the tenants responsible for swollen baseboards or scratched windowsills.

Also of consideration is that the landlord's testimony as to the amount of the loss is unclear as her testimony during the hearing was that it was \$660.00 plus tax; however, the estimates reflect different amounts.

Finally, I am not satisfied the landlord has suffered a loss for this damage based on her testimony that she will not repair the damage unless she was awarded compensation for it and the landlord re-rented the rental unit after the subject tenancy ended without suffering a loss of revenue.

In light of all of the above, I find I am unsatisfied that the tenants are liable for compensating the landlord for damage to the baseboards or windowsill and I dismiss this portion of the landlord's claim.

Carpet cleaning

The Addendum to the tenancy agreement requires the tenants to have the carpets professionally cleaned at the end of the tenancy or else it will be taken from the tenant's deposit, as seen below:

Floor Maintenance & Cleaning: Spot cleaning & prevention of permanent staining is the responsibility of the tenant. Carpet cleaning is recommended on an annual basis to maintain Normal Wear & Tear. Carpets shall be professionally cleaned at the end of the tenancy & taken from damage deposit

Where a term in a tenancy agreement conflicts or exceeds the requirements set out in the Act or regulations, the term will not be enforced, as provided under section 6 of the Act.

As stated previously, the Act requires the tenants to leave the rental unit "reasonably clean" at the end of the tenancy. Residential Tenancy Policy Guideline 1 sets out an interpretation of the Act for property maintenance and cleaning. The policy guideline provides that tenants are expected to have the carpets cleaned (steam cleaned or shampooed) at the end of the tenancy if the tenancy is at least one year in duration or the tenant had pets, which applies in this case.

Nowhere in the Act or the policy guideline does it require a tenant have the carpets "professionally" cleaned. Also, the Act specifically prohibits any term that provides for automatic deduction or forfeiture of a deposit. Accordingly, I find the term in the tenancy

agreement is not enforceable and I find the tenants are responsible for steam cleaning or shampooing the carpets at the end of the tenancy, but not necessarily by a professional carpet cleaning company.

The landlord produced an invoice showing she had the carpets cleaned by a carpet cleaning company; however, the tenants stated this is not their burden to pay for it since they had used their own steam cleaning machine to clean the carpets at the end of the tenancy.

I note that the landlord's carpet cleaning invoice reflects that the landlord had scheduled the carpet cleaning company on May 31, 2022, to come to the rental unit on June 7, 2022. While the move-out inspection report indicates the carpets are dirty, as I stated previously, I find the move-out inspection report is not accurate in that it was prepared over a number of dates and the landlord's email to the tenant indicates that the tenants did a lot more cleaning after she inspected the unit. Also, the carpet cleaning invoice does not contain any remarks in the space provided indicating the carpets were stained or dirty. Rather, it merely indicates the carpet cleaning was done for "move-in" and "move-out" purposes and that there had been a pet in the unit.

Given the landlord's desire for "deep cleaning" and belief that she could require the tenants to have the carpets "professionally" cleaned, I am of the view the landlord was likely going to proceed with a professional carpet cleaning company regardless of how clean the tenant's left the carpet unless they produced a receipt for a professional carpet cleaner, as there was a notation of requesting such on the move-out inspection report. Since this requirement exceeds the tenant's legal obligation, I deny the landlord's request to recover the cost to "professionally" clean the carpets.

Concrete sidewalk damage

It was undisputed that there was some damage to the sidewalk on the property; however, the parties were in dispute as to whether the tenants or a person permitted on the property by the tenants caused the damage.

This portion of the landlord's claim, an amount that exceeds \$6000.00 is by far the largest component of the landlord's claim; yet I was not provided a single photograph of the damage by the landlord so as to determine whether replacement is necessary or the cost claimed is reasonable when compared to the damage. I find the absence of a photograph to be peculiar and telling considering the landlord provided numerous photographs in an attempt to justify the much smaller charge of \$550.00 for cleaning.

The parties provided disputed oral theories as to how the sidewalk was damaged and I find the disputed theories to be insufficient to meet the landlord's burden to prove the tenants are responsible.

In light of the above, I dismiss the landlord's claim for concrete sidewalk damage.

Summary of landlord's claims

The landlord was unsuccessful in establishing an entitlement to the amounts claimed against the tenants and their deposits and I dismiss the landlord's claim in its entirety.

Disposition of the security deposit and pet damage deposit

Since the landlord's claims against the tenants and their deposits was unsuccessful, I order the landlord to return the deposits to the tenants, in the single amount, plus accrued interest, as provided under Residential Tenancy Policy Guideline 17,.

I calculate the interest on the tenant's deposits to be: \$33.26 as of this date.

Provided to the tenants with this decision is a Monetary Order for the sum of their deposits, plus interest, or \$2833.26.

Conclusion

The landlord's claim against the tenants and their deposits is dismissed and the landlord is ordered to return the tenants' deposits, plus accrued interest, to them. The tenants claim for doubling of their deposits is dismissed.

Provided to the tenants with this decision is a Monetary Order for return of the single amount of their deposits, plus interest, in the sum of \$2833.26, to serve and enforce upon the landlord.

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 10, 2023

Residential Tenancy Branch