



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CLIMA ENTERPRISES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND MNSD MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord under the *Residential Tenancy Act* (the “*Act*”) for a monetary order for damage to the unit, site or property, for authority to keep all or part of the security deposit, for money owed or compensation for damage or loss under the *Act*, regulation, or tenancy agreement, and to recover the filing fee.

Two agents for the landlord (the “agents”), the tenant, and an advocate for the tenant (the “advocate”) appeared at the teleconference hearing and gave affirmed testimony. During the hearing the parties were given the opportunity to provide their evidence orally and ask questions about the hearing process. A summary of the evidence is provided below and includes only that which is relevant to the matters before me.

At the outset of the hearing, the parties confirmed that they received documentary evidence from the other party prior to the hearing and had the opportunity to review that documentary evidence. I find the parties were sufficiently served in accordance with the *Act* as a result.

Issues to be Decided

- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenant’s security deposit under the *Act*?

Background and Evidence

A copy of the written tenancy agreement was submitted in evidence which indicates that a fixed term tenancy began on July 1, 2013, and was scheduled to revert to a month to month tenancy after June 30, 2014. Monthly rent in the amount of \$1,250.00 was due

on the first day of each month. A security deposit of \$625.00 was paid by the tenant, which the landlord continues to hold.

The landlord has applied for a monetary claim in the amount of \$1,692.82 comprised of the following:

Item 1. Cleaning costs (suite)	\$50.00
Item 2. Venetian blind cleaning	\$93.45
Item 3. Painting (labour)	\$1,155.00
Item 4. Paint	\$394.37
TOTAL	\$1,692.82

The parties agree that an incoming condition inspection report was completed on July 1, 2013. A copy of the condition inspection report was submitted in evidence and is dated July 1, 2013. The tenant disputed that an outgoing condition inspection was completed. The tenant testified that when he returned the rental unit keys an inspection was not completed. An agent for the landlord testified that because the tenant did not sign the outgoing condition inspection report at the end of the document, the landlord did not sign it either.

The tenant testified during the hearing that he signed under “PART V – MOVE-OUT INSPECTION” under the area that indicates that the tenant agrees that this report fairly represents the condition of the rental unit, in error. Based on the above, there was a dispute between the parties as to the completion of the outgoing portion of the condition inspection report. The landlord did not submit in evidence a copy of any notices to the tenant to schedule an outgoing condition inspection report at the end of the tenancy.

Regarding item #1, the landlord is claiming \$50.00 for cleaning of the rental unit. A receipt in the amount of \$50.00 was submitted in evidence. The receipt is dated March 1, 2014 and indicates 2.5 hours at \$20.00 for a total of \$50.00 to clean and reads in part “...washing all wood cabinets eg. kitchen cabinets, closet shelves, doors and windows due to damage caused by cigarette smoke...”. The tenant disputed that cleaning was required, and says the rental unit was left clean at the end of the tenancy. The landlord submitted thirteen colour photos submitted in evidence with some photos dated July 1, 2013, at the start of the tenancy, and others dated February 26, 2014, at the end of the tenancy, in support of the cleaning required.

Regarding item #2, the landlord is claiming \$93.45 for venetian blind cleaning. The condition inspection report submitted in evidence indicates code “C” for “needs cleaning” at the start of the tenancy. The landlord submitted a receipt for this portion of their claim in the amount of \$93.45.

Regarding items #3 and #4, the landlord is claiming \$1,155.00 for the cost of painting labour, plus \$394.37 for the cost of the paint. The landlord submitted two receipts in support of this portion of their claim. The tenant disputed that the rental unit required repainting and denied smoke damage in the rental unit. The condition inspection report does not indicate smoke or smoke damage in the report. An agent for the landlord testified that the painting was completed on March 5, 2014. The paint receipt submitted in evidence indicates the order date for the paint was March 6, 2014.

The agents were asked how old the paint was at the start of the tenancy. An agent for the landlord stated that the age of the paint at the start of the tenancy was “days old, three at most”. The landlord did not submit documentary evidence to support that the paint was new at the start of the tenancy. An agent for the landlord testified that on a June 30, 2013 invoice he was reading from during the hearing that was not submitted in evidence, that the invoice indicated “touching up” regarding the interior paint and was in the amount of \$105.00. An agent for the landlord later testified during the hearing that on November 19, 2010, the rental unit had been fully repainted and read from an invoice in the amount of \$1,575.00 that was also not submitted in evidence. The agent stated that the amount of \$1,575.00 also included work performed in two other rental units.

Analysis

Based on the documentary evidence and testimony provided during the hearing, and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;

3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the tenant. Once that has been established, the landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the landlord did everything possible to minimize the damage or losses that were incurred.

Item #1 – The landlord has claimed \$50.00 for cleaning the rental unit, which the tenant denies was dirty at the end of the tenancy. Section 37 of the *Act* applies and states:

Leaving the rental unit at the end of a tenancy

37 (1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.

(2) When a tenant vacates a rental unit, the tenant must

(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and

(b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

[my emphasis added]

Based on the above, I find the landlord has met the burden of proof as I find the photo evidence supports that the rental unit was not left reasonably clean by the tenant at the end of the tenancy. In addition, the landlord submitted an invoice that supports that \$50.00 was paid to clean the rental unit on March 1, 2014. As a result, **I grant** the landlord **\$50.00** as claimed, for cleaning costs.

Item #2 – The landlord has claimed \$93.45 for venetian blind cleaning, however, the condition inspection report submitted in evidence indicates that the venetian blinds needed cleaning at the start of the tenancy. As a result, **I find** the landlord has failed to meet the burden of proof for this portion of their claim. Therefore **I dismiss** this portion of the landlord's claim, due to insufficient evidence, **without leave to reapply**.

Items #3 and #4 – I have combined these items as both relate to the landlord's claim for paint and painting labour. According to Residential Tenancy Branch Policy Guideline

#40 – Useful Life of Building Elements, the useful life of interior paint is four years. **I find** the landlord has failed to prove the age of the interior paint, due to insufficient and contradictory evidence. The landlord first testified that the rental unit interior paint was three days old at the start of the tenancy, then later testified during the hearing that only touch ups to the interior paint were done as of June 30, 2013, and that the rental unit was re-painted in November 2010, which is several years before the tenancy began and would not be “days old” as a result. Furthermore, an agent for the landlord stated under oath that the rental unit was re-painted on March 5, 2014, yet the receipt from a paint supply store is dated March 6, 2014, and reads in part “Order Date: 03/06/2014”, which conflicts with testimony that the painting was completed on March 5, 2014, the day before the paint had been ordered.

Given the above, **I find** that landlord has failed to meet the burden of proof for items #3 and #4. Therefore, items #3 and #4 are **dismissed**, due to insufficient and contradictory evidence, **without leave to reapply**. I do not find it necessary to consider the dispute between the parties over the contents of the outgoing condition inspection report further, as items #3 and #4 have been dismissed due to insufficient and contradictory evidence.

As the landlord was successful with only a small portion of their claim, **I grant** the landlord the recovery of half of the \$50.00 filing fee in the amount of **\$25.00**. The landlord continues to hold the tenant’s security deposit of \$625.00 which has accrued \$0.00 in interest to date.

Monetary Order – **I find** that the landlord has established a total monetary claim in the amount of **\$75.00** comprised of \$50.00 for cleaning costs, plus \$25.00 of the filing fee. I find this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the tenant’s security deposit. **I ORDER** the landlord to retain **\$75.00** of the tenant’s \$625.00 security deposit in full satisfaction of the landlord’s claim, leaving a security deposit balance owing to the tenant in the amount of \$550.00.

I ORDER the landlord to immediately return the tenant’s **\$550.00** security deposit balance to the tenant. **I grant** the tenant a monetary order under section 67 for the security deposit balance due to the tenant in the amount of **\$550.00**. Should the tenant require enforcement of the monetary order, the monetary order must first be served on the landlord and then may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

Conclusion

The landlord has established a total monetary claim in the amount of \$75.00. The landlord has been ordered to retain \$75.00 of the tenant's \$625.00 security deposit in full satisfaction of the landlord's monetary claim.

The landlord has been ordered to immediately return the tenant's remaining **\$550.00** security deposit balance to the tenant. The tenant has been granted a monetary order under section 67 for the security deposit balance due to the tenant in the amount of **\$550.00**. Should the tenant require enforcement of the monetary order, the monetary order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: July 14, 2014

Residential Tenancy Branch

