



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MACGREGOR REALTY & MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MNDC MNSD FF

Introduction:

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) A monetary order pursuant to Section 67 for unpaid charges and damages to the property;
- b) An Order to retain the security deposit pursuant to Section 38; and
- c) An order to recover the filing fee pursuant to Section 72.

This hearing also dealt with an application by the tenant pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- d) For a return of the security deposit pursuant to section 38; and
- f) To recover the filing fee for this application.

SERVICE

Both parties attended the hearing and each confirmed receipt of each other's Application for Dispute Resolution. I find the documents were legally served pursuant to sections 88 and 89 of the Act for the purposes of this hearing.

Issue(s) to be Decided:

The tenant vacated the unit. Has the landlord proved on the balance of probabilities that the tenant did not pay a move-out fee and left the unit dirty and the amount it cost to remedy the situation? If so, what is the amount of the compensation and is the landlord entitled to recover filing fees also?

Is the tenant entitled to the security deposit refunded and to recover filing fees for the application?

Background and Evidence:

Both parties attended the hearing and were given opportunity to be heard, to present evidence and to make submissions. It is undisputed that the tenancy commenced on

August 1, 2012, that rent was \$500 a month and a security deposit of \$900 was paid on July 20, 2012. It is undisputed that the tenant paid rent until the end of October 2014.

The tenant said they vacated on October 28, 2014 and were cleaning the unit. They requested the landlord to meet them in the evening of Friday, October 31, 2014 for the move-out inspection but he said he was busy with children and Hallowe'en night and would meet them on Monday November 3, 2014. When they met, the landlord said the unit required a lot more cleaning; they said they cleaned again and took photographs but it did not satisfy the landlord. The tenant said they had had two realtors look at it and their opinion was that it was in 'move-in' condition and they were not expected to return a new unit when they rented an old one. They request the return of their security deposit.

The landlord provided a move-in and move-out report. In the move-in report, all parts of the unit are checked as being fine but on the move-out report, many areas are reported as dirty. The landlord also provided photographs. He said the main problem was that many items were laden with grease (showing up as yellow stains on the photographs) and there was a lot of body hair everywhere. He claims \$336 as invoiced for cleaning. The landlord also claims \$315 for various aspects of filing the application and for contacting a number of cleaners to find one who could come immediately as a tenant was ready to move in. He said he spent about an hour calling and usually would charge \$50 for an hour of this kind of work. The landlord also claims \$300 for 5 days pro-rated rent as the new tenant was unable to move into the unit due to its condition until after the cleaning was finished on November 6, 2014.

The landlord also claims \$125 as reimbursement for the move-out fee as the tenant did not pay it and the landlord had to pay it to the strata. The tenant objected that the page of evidence was only sent two days ago and he did not have time to look up his accounts; the landlord pointed out the accounts page which was sent on December 12, 2014 as part of the evidence and said the one referenced by the tenant was only an update to show it was still not paid.

In evidence are photographs from both parties, a cheque showing the move-in fee was paid, the rental ledger, registered mail receipts, a management agreement, a cleaning invoice, move-in and move-out reports, a cleaning check list and a copy of the cheque paying the security deposit on July 20, 2012. On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

Analysis

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.

The onus is on each applicant to prove on a balance of probabilities their claim. I find the landlord's evidence credible that the tenants did not clean as required. Section 32 of the Act, Residential Tenancy Policy Guideline 1 and the addendums to the tenancy agreement all provide it is the tenant's responsibility to keep and leave the premises in a clean and sanitary condition. I find the move-in and move-out reports support the landlord's credibility and his evidence for no items are noted as 'dirty' at move-in but many are noted as 'dirty' at move-out. Although both parties invited me to examine their photographs as evidence, I find photographs taken from a distance are of limited value. I do note, however, that both the landlord's and tenant's photographs of the stove area show filters etc. with grease (yellowed, brown). I also note other items that appear to have bits of dirt or hair in the landlord's photographs. I find the weight of the evidence is that the unit required more thorough cleaning when the tenants vacated so the new tenant could not move in until November 6, 2015. I find the landlord was put to the cost of cleaning and suffered rental loss due to the tenant's violations. I find the landlord entitled to recover \$336 for cleaning which was proven by the professional invoice and \$300 rental loss for November 1-5. (1800/30 x 5) I also find the email evidence supports the landlord's evidence for he constantly emphasized the problems in the cleaning.

In respect to the \$315 claim for preparing and attending the hearing, I find these costs of the process are not recoverable under the Act; there is a \$50 filing fee provided in section 72 of the Act and I find the landlord entitled to recover that. I dismiss the balance of the \$315 claimed except for the \$50 charged to the landlord for the agent's fee of finding a cleaning company that could come immediately (one hour of his time).

In respect to the move-out fee, I find the weight of the evidence is that the tenant owed this but did not pay it. I find the landlord provided him with this evidence first in December and then gave him an update a few days ago showing nothing had been paid on it. I find the landlord's evidence credible as it is supported by the ledger of the strata.

On the tenant's application, the onus is on him to prove on the balance of probabilities that the security deposit should be refunded in accordance with section 38 of the Act. I find the tenant vacated on or about October 28, 2014 but the unit was not sufficiently clean for occupancy until November 6, 2014. Although the tenant said some agents had told him the unit was move-in ready, I find this hearsay evidence without support does not outweigh the landlord's evidence. I find the landlord filed his application on November 6, 2014 which is within the 15 days provided in section 38 of the Act to avoid the doubling provision. The security deposit will be calculated in the monetary amount awarded.

Conclusion:

I find the tenant not entitled to recover filing fees for his application as the evidence shows in emails that the landlord made many attempts to settle this matter for a lesser amount but the tenant refused. The security deposit will be used in the calculation.

I find the landlord entitled to a monetary order as calculated below and to recover filing fees for the application.

Calculation of Monetary Award:

Cleaning cost per invoice	336.00
Pro-rated rent for Nov. 1-5	300.00
Time billed to landlord for getting a cleaner	50.00
Unpaid move-out fee	125.00
Landlord filing fee	50.00
Less security deposit (no interest 2012-15)	-900.00
Balance Order in favour of tenant	-39.00

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: June 24, 2015

Residential Tenancy Branch

