



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CAPREIT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover ITS filing fee for this application from the tenants pursuant to section 72.

The landlord's agent appeared. The tenant KK appeared. The occupant appeared. All in attendance were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The agent testified that the landlord served the tenants with the dispute resolution package on 12 December 2014 by registered mail. The landlord provided me with a Canada Post tracking number that showed the same. The agent testified that the landlord sent the dispute resolution package to the forwarding address provided on the condition move-out inspection report. On the basis of this evidence, I am satisfied that the tenants were deemed served with the dispute resolution package pursuant to sections 89 and 90 of the Act.

The landlord claims for \$355.00:

Item	Amount
Carpet Cleaning	\$125.00
Rental Unit Cleaning	180.00
Recover Filing Fee	50.00
Total Monetary Order Sought	\$355.00

Preliminary Issue – Landlord's Evidence

The landlord submitted 24 pages of documentary evidence and 8 photographs. The occupant confirmed receipt of the documentary evidence, but testified that the tenants did not receive the photographs. The agent could not testify whether or not the photographs were actually sent as the former administrator that would have been responsible for sending the photographs was no longer an employee of the landlord. The agent testified as to the landlord's normal practice.

I described the photographs in my possession. The agent did not have the same photographs available to her.

I explained to the parties the different outcomes available:

1. The evidence could be excluded.
2. The evidence could be included and the tenants could waive the right to respond.
3. The evidence could be included and the tenants could respond in writing.
4. The evidence could be included, reserved and the tenants could respond at a reconvened hearing.

The tenant KK and the occupant consented to the photographs being included and waived the right to respond. On the basis of the consent and waiver, I have included the photographs in evidence.

Issue(s) to be Decided

Is the landlord entitled to a portion of the tenants' security deposit in satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the landlord's claim and my findings around it are set out below.

This tenancy began 1 March 2013 and ended 30 November 2014. Monthly rent of \$1,073.10 was due on the first. At the beginning of the tenancy the landlord collected a security deposit in the amount of \$525.00.

I was provided with a written tenancy agreement. That agreement is between the tenant KK and the landlord. The tenant JG signed as guarantor of the agreement. The occupant is listed as an occupant on the tenancy agreement.

The agent testified that the carpets were professionally cleaned at the beginning of the tenancy.

The condition move in inspection occurred on 28 February 2013. I was provided with a copy of the report. There is nothing remarkable about this report.

The condition move out inspection occurred on 18 November 2014. The tenants' provided their forwarding address in writing on the condition inspection report. The condition move-out inspection report notes that the stove elements and oven are dirty, the tub was not cleaned, the toilet was dirty, and the bathroom fan was dirty. The report notes a charge of \$305.00. The occupant notes on the tenant's statement that they disagree with the report as there was no proof of professional cleaning provided. The note sets out that the tenants asked for receipts on 21 November 2014 and 26 November 2014, but none were provided.

The occupant testified that she did not agree with the charges on the basis that she wanted receipts for the costs actually being incurred. The occupant admits that the oven was not as clean as when they began occupation of the rental unit. The occupant admits that the carpets were not professionally cleaned at the end of the tenancy. The occupant testified that the rust stain would not come off.

The landlord provided me with a receipt produced by the landlord on 18 November 2014. The receipt sets out a charge for \$125.00 for carpet cleaning and a charge of \$180.00 for cleaning. The occupant testified that neither she nor the tenant KK received this receipt until they were provided with the dispute resolution package.

I was provided with eight photographs. The photograph of the oven shows that it is dirty with cooked on grease. The stove top appears clean, but there is no close up view of the elements. The toilet has minor staining. There is a rust spot on the edge of the bathtub. There is a photograph of the kitchen wall that shows yellow spots.

On or about 30 November 2014, the landlord returned \$220.00 of the tenants' security deposit.

I asked the agent how many hours were spent cleaning the rental unit. The agent testified that the landlord charges a flat fee for any cleaning. The fee is determined with

reference to the size of the rental unit. The fee for a two-bedroom rental unit is \$180.00. This fee is charged irrespective of the amount of cleaning required: The agent testified that it is the same charge whether it is one hour of cleaning or twenty.

Analysis

Subsection 32(2) of the Act requires a tenant to maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access. *Residential Tenancy Policy Guideline*, “1. Landlord & Tenant – Responsibility for Residential Premises” states:

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 that standard. ...

Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year.

Section 67 of the Act provides that, where an arbitrator has found that damages or loss results from a party not complying with the Act, an arbitrator may determine the amount of that damages or loss and order the wrongdoer to pay compensation to the claimant. The claimant bears the burden of proof. The claimant must show the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the Act by the wrongdoer. If this is established, the claimant must provide evidence of the monetary amount of the damage or loss. The amount of the loss or damage claimed is subject to the claimant’s duty to mitigate or minimize the loss pursuant to subsection 7(2) of the Act.

The tenant KK and the occupant occupied the rental unit for over one year. The occupant admits that she and the tenant KK did not have the carpets cleaned at the end of the tenancy. I find that the landlord has proven that the tenants breached the Act by failing to professionally clean the carpets. Accordingly, I find that the landlord is entitled to recover its cost of carpet cleaning. The agent testified that carpet cleaning services are provided to the landlord by a third party. I find that the landlord has proven the existence of the loss in the amount of \$125.00. I view the cost of carpet cleaning in the amount of \$125.00 as reasonable costs for carpet cleaning. The landlord is entitled to recover the full amount of the carpet cleaning from the tenants.

On the basis of the photographs provided and the occupant’s testimony I find that the tenants did not return the rental unit in a condition that complied with the Act. In particular, the toilet was not clean, the bathtub edge needed more cleaning, the oven

was dirty, and the kitchen wall was dirty. I find that these deficiencies were proven by the landlord and that the landlord suffered a loss as a result.

The landlord has claimed \$180.00 as its loss. The \$180.00 invoice was rendered on the date of the move out and was not based on any actual time involved in cleaning. I was not provided with any invoice prepared by a third party or even a related party. I find, on a balance of probabilities, that the landlord has failed to prove that \$180.00 is its real loss. Accordingly, I find that the landlord has failed to prove the amount of its loss; however, I acknowledge that the landlord did experience a loss by the tenants' failure to comply with the Act.

Where no significant loss has been proven, but there has been an infraction of a legal right, an arbitrator may award nominal damages. In this case, I award nominal damages in the amount of \$50.00 for the tenants' failure to fully clean the toilet, the bathtub, the oven, and the kitchen.

Subsection 72(1) permits an arbitrator to make a discretionary award of repayment of a filing fee from one party to another. Generally this repayment is ordered where a party has been successful in its application. In this case I am exercising my discretion to only award one half of the \$50.00 filing fee paid for in this application. I am doing so as the tenant KK and occupant sought proof of the actual costs from the landlord and none was provided. If the landlord had complied with the reasonable request, this application could have been avoided in its entirety.

Residential Tenancy Policy Guideline, "17. Security Deposit and Set off" provides guidance in this situation:

1. The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:
 - a landlord's application to retain all or part of the security deposit, or
 - a tenant's application for the return of the depositunless the tenant's right to the return of the deposit has been extinguished under the Act. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for arbitration for its return.

There is no evidence before me that indicates that the tenants' right to the security deposit has been extinguished. As there is a balance in the amount of \$105.00, I order that the balance of the tenants' security deposit shall be returned to the tenants forthwith.

Conclusion

I issue a monetary order in the tenants' favour in the amount of \$105.00 under the following terms:

Item	Amount
Remaining Security Deposit	\$305.00
Offset Carpet Cleaning	-125.00
Offset Damages for Cleaning	-50.00
Offset Half Filing Fee	-25.00
Total Monetary Order	\$105.00

The tenant(s) is provided with a monetary order in the above terms and the landlord(s) must be served with this order as soon as possible. Should the landlord(s) 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 subsection 9.1(1) of the Act.

Dated: July 17, 2015

Residential Tenancy Branch

