



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PROLINE MANAGEMENT LTD
and [tenant name suppressed to protect privacy]

DECISION

Code MND, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord filed under the Residential Tenancy Act (the “Act”), for a monetary order for damages to the unit and for an order to retain the security deposit in partial satisfaction of the claim.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Is the landlord entitled to monetary compensation for damages?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The parties agreed that the tenancy began on December 1, 2012. Rent in the amount of \$1,195.00 was payable on the first of each month. The tenant paid a security deposit of \$595.00. The tenancy ended on April 30, 2015.

The parties agreed a move-in and move-out condition inspection report was completed. The tenant did not sign the move-out condition inspection report as they did not agree with the report.

The landlord claims as follows:

a.	Replace Bathroom countertop	\$ 500.00
b.	Repair vanity cabinet	\$ 367.50
c.	Repair blinds	\$ 138.50
d.	Replace lights	\$ 123.41
e.	Emergency cleaning	\$ 102.90
f.	Compensation to new renters for cleaning	\$ 180.00
g.	Hotel stay for new renters	\$ 161.45
h.	Overholding 1 day	\$ 39.83
i.	Repair hot tub	\$ 134.77
g.	Replacement remote for fireplace	\$ 147.92
	Filing fee	\$ 50.00
	Total claimed	\$1,946.28

Replace Bathroom countertop

The landlord's agent testified that that when they were showing the rental unit to potential new renters they discovered that the limestone countertop in the bathroom was cracked, which at no time were they informed by the tenant. The agent stated that the countertop was inspected and they were informed that the damage was caused by either excessive weight or impact. The agent stated that they were given two options either to replace the countertop or make the repair. The agent stated that they decided to make the repair; however, they are still seeking compensation for the cost to replace the countertop as the crack has devalued the item. The landlord seeks to recover the cost of \$500.00. Filed in evidence is an email dated April 1, 2015, from the countertop repair person. Filed in evidence are photographs of the countertop. Filed in evidence is a receipt for repair.

The tenant testified that the landlord did a walk through of the rental unit on March 30, 2015 and it was just a few weeks prior that they noticed the crack. The tenant did not inform the landlord when they first became aware of the crack.

The tenant testified that they never put any pressure on the countertop and believe it is more likely a maintenance issue as the last paragraph in the email dated April 1, 2015, submitted by the landlord refers to regular maintenance. The tenant stated that this is normal wear and tear.

Repair vanity cabinet

The landlord's agent testified that as a result of the tenant not reporting the cracked countertop it allowed water to drip and damage the cabinet below. The agent stated that had the tenant informed them of the crack when it occurred, they could have had the repair completed before it caused damage to the cabinet. The landlord seeks to

recover the cost to repair the cabinet in the amount of \$367.50. Filed in evidence are photographs of the cabinet. Filed in evidence is a receipt for repair.

The tenant testified that they did not damage the cabinet and this in normal wear and tear from lack of maintenance of the countertop.

Repair blinds

The landlord's agent testified that the blinds were in poor condition as they did not tilt or draw properly and there was a slat missing and was found in the laundry room. The agent stated that the tenant must not have been using the blinds properly as they do not break down in two years. The landlord seeks to recover the cost of the repair in the amount of \$136.50.

The tenant testified that they deny causing damage to the blinds except for one singular vertical panel which fell off the track. The tenant stated that they did not use the tilts or pulls on the blinds in a neglectful matter.

Replace lights

The landlord's agent testified that at the end of the tenancy there were burnt out light bulbs or missing light bulbs which had to be replaced. The agent stated that when they replaced the bulbs it was discovered that the light socket was broken previously when a light bulb was taken out by the tenant and as a result the socket on the fixture had to be repaired. The landlord seeks to recover the cost of the light bulbs and repair the light fixture in the amount of \$123.41. Filed in evidence is a receipt.

The tenant testified that they were informed by the building manager that the tenant was only responsible to replace the everyday bulbs and that it was the landlord's responsibility to replace the specialized bulbs. The tenant stated that although they did not agree they were responsible for the bulbs, they paid the landlord the amount of \$53.00. The tenant stated that they do not understand how the amount increased.

The landlord's agent stated the difference was an addition hour of labour as they had to repair the light fixture which they were not expecting to repair.

Emergency cleaning

The landlord's agent testified that the tenant left the rental unit in a mess and they had to have a cleaner attend to complete 3.5 hours of emergency cleaning. The agent stated that the entire rental unit needed to be cleaned, which included the kitchen, the kitchen sink, the dishwasher, toilet, floors and the tenant also left items in the kitchen cupboards. The agent stated that the exterior patio also had to be cleaned as there were stains from the tenant's dog using the patio to urinate and defecate. The landlord seeks to recover the cost for emergency cleaning in the amount of \$102.90. Filed in evidence are photographs of the rental unit. Filed in evidence is a receipt for cleaning

Filed in evidence in support of the landlord is a joint witness statement of CT and CS which in part reads,

“Upon arrival at 1pm, we observed two workers performing various repairs including lighting for the entire suite and the bathroom countertop. As soon as we entered the suite, **we detected a strong odor of epoxy and immediately needed to go outside for ventilation. This left us with no choice but to spend the night at a hotel.** We looked around the apartment and discovered the poor overall condition of the suite. The toilet was filthy and the inside of the drain cap in the sink was covered in black scum. The top of the kitchen sink was also covered with the same black dirt. The floors baseboards all over the condo were left unclean. We notice many stains on the walls. The laundry closet floor was covered in dust and soap stains and the laundry appliance not cleaned.....

We moved in on May 1, 2015, and had to leave all our furniture and boxes in the middle of the living room and bedroom to allow space for cleaning. We came back **the next morning to find the suite in the same condition we left in** and spent 6 hours cleaning ...”

[Reproduced as written.]
[My emphasis added.]

The tenant testified that they left the rental unit reasonably clean. The tenant testified that with the assistance of their mother they had completed the majority of the cleaning; however, they still had hired a profession cleaning company to complete an additional four hours of cleaning and the carpets were also professionally cleaned by a separate company. The tenant stated that they are not responsible to leave the rental unit perfect as the property agent wanted. Filed in evidence are photographs of the rental unit. Filed in evidence are receipts for cleaning the rental unit and carpets.

Filed in evidence in support of the tenant is a witness statement of PM, which in part reads,

“I spent most of the day on April 29, 2015 clearing out my daughter ... condo, and eventually getting to work scrubbing the place down and I spent upwards of 5 hours vacuuming, cleaning windows, washing countertops and clearing off any marks from the walls. The condo looked in a reasonable and presentable standard even before the cleaners arrived to the condo. ...

[Reproduced as written.]

Filed in evidence in support of the tenant is a witness statement of AM, which in part reads,

“... called me to come alongside her as her witness in turning over the keys and meeting with both [AT] and [AC] promptly on May 1st, 2015.

...

The condo was most definitely clean- both the interior and patio deck were of a standard that would be both reasonable and presentable. There was no mess, with the exception of a small amount of items left out of sight and visibility in a cupboard on the top of the fridge. The cleaning lady was unaware of these items, and both ... and I proceeded to take care of them at which point both ... told us “Not to bother, because we’d be paying for emergency cleaning anyways.

... The state of the condo was in good condition, and smelt absolutely clean. The deck had been thoroughly washed and any wet stain or debris looked exactly as her neighboring patio decks from various winds, rain, or fallen petals from natural outside elements. ...”

[Reproduced as written.]

Compensation to new renters for cleaning

The landlord’s agent testified that the new renters were also given compensation for having to spend an additional six hours of cleaning. The landlord seeks to recover the amount of \$180.00.

The tenant testified that they left the rental unit reasonably clean and is not responsible for compensating the new renters for cleaning.

Hotel stay for new renters

The landlord’s agent testified that the as a result of the tenant not cleaning the rental unit, they paid for the new renters to stay in a hotel. The landlord seeks to recover the cost of the hotel stay in the amount of \$161.45. Filed in evidence is a receipt.

The tenant testified they left the rental unit reasonably clean and are not responsible for hotel costs.

Overholding 1 day

The landlord’s agent testified that the tenant was required to return possession of the rental unit to the landlord on April 30, 2015. The landlord stated that they did not get possession back until May 1, 2015 at 9:00am. The landlord seeks to recover one day of overholding in the amount of \$39.83.

The tenant testified that they did not overhold the rental unit, as they were out on April 30, 2015. The tenant stated that they arranged to meet at the rental unit on May 1, 2015 at 9:00am to return the keys and conduct the move-out condition inspection.

Repair hot tub

The landlord's agent testified that the tenant did not pay for the damage that was caused to the hot tub. The landlord seeks to recover the amount of \$134.77.

The tenant testified that this matter occurred in December 2013, and the matter was resolved when they paid for the repair.

Filed in evidence is a receipt for the repair, which I allowed the tenant to submit after the hearing, as the landlord should have known of the payment made to their company before they made this portion of their claim.

Replacement remote for fireplace

The landlord's agent testified that the tenant was given a remote control to the fireplace at the start of the tenancy, which was missing at the end of the tenancy. The landlord seeks to recover the cost for the missing remote in the amount of \$147.92.

The tenant testified that they never received a remote for the fireplace at the start of the tenancy. The tenant stated that they believed the landlord's agent has altered the report.

The landlord's agent denied making any changes to the report.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the landlord has the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

How to leave the rental unit at the end of the tenancy is defined in Part 2 of the Act.

Leaving the rental unit at the end of a tenancy

37 (2) When a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Normal wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

An arbitrator may also determine whether or not the condition of premises meets reasonable health, cleanliness and sanitary standards, which are not necessarily the standards of the arbitrator, the landlord or the tenant.

Section 21 of the Act States a condition inspection report completed in accordance with this section is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

Replace Bathroom countertop

In this case, the move-in condition inspection report shows the bathroom countertop in good condition at the start of the tenancy. The countertop was found cracked when the landlord was showing the unit to potential new renters. Although the tenant indicated that this is normal wear and tear that is not supported by the documentary evidence as the email dated April 1, 2015, from the repair person indicated that the crack happened by weight or impact, not from the natural deterioration of the item.

Further, the tenant has provided no evidence to the contrary such as obtaining a second opinion by a qualified person. I find the tenant breached the Act, when they failed to make the necessary repair and this caused losses to the landlord.

In this case, the landlord was present with two options for the repair, to either make the repair or replace the item. The landlord made the choice to have the item repaired. The email confirmed the repair would cost \$90.00 plus 5% GST and the repair will be the appearance of a vein in the stone.

The email also shows additional work was suggested as the stone was said to look tired and polishing, redoing the silicone between the sink and countertop and apply a sealer for maximum protection for an additional cost of \$90.00, plus 5% GST.

Although the landlord seeks to recover the cost to replace the countertop as the item has been devalued, I find that unreasonable as there was no evidence that the item has

been devalued. Further, the landlord paid the total amount of \$189.00, which include polishing the tired stone, redoing the silicone and apply a sealer for maximum protection. Those costs are the landlord's responsibility as it was their choice install limestone countertops and regular maintenance is their responsibility.

Therefore, I grant the landlord compensation in the amount of \$90.00, plus 5% GST to recover the cost the repair to the countertop in the total amount of **\$94.50**.

Repair vanity cabinet

I accept the landlord's agent evidence that had the tenant reported the crack in the countertop when it was first noticed, damage to the cabinet below would not have occurred. As a result, I find the tenants actions of not reporting the crack in the countertop to be neglectful and as a result the landlord suffered a loss. Therefore, I find the landlord is entitled to recover the cost of the repair to the vanity cabinet in the amount of **\$262.50** (\$250.00, plus 5% GST)

Although I note the landlord was claiming the amount of \$367.50, the receipt indicates a repair was made to the kitchen cabinet door in the amount of \$100.00. No evidence was provided on a broken kitchen cabinet door, the move-out inspection does not note any repair was required. Therefore, no compensation was given for this item.

Repair blinds

A tenant may be liable for replacing internal window coverings, or paying for their depreciated value, when he or she has damaged the internal window coverings deliberately, or has misused them by not using the "pulls" or "tilts".

The tenant acknowledged that a singular panel fell off the blind during their tenancy. The tenant denied causing damage to the tilts or pulls on the blinds and indicated this is normal wear and tear.

In this case, I refer to the move-out condition inspection report, which notes "1 stale missing from the living room" and the "bedroom blind was out of adjustment".

While both parties have provided their own opinion for the tilts and pulls that required repair, I cannot determine by the evidence that this was caused by the tenant's actions of being neglectful, as the blinds were not new when the tenancy commenced and this simply could be a maintenance issue, which the "out of adjustment" would suggest that this is simply normal wear and tear due to reasonable use and the aging process.

Further, I have reviewed the receipt and I am unable to determine the value of fixing the singular slate that was damaged by the tenant. Therefore, to recognize the tenant breached the Act, when they failed to make the necessary repair, I grant the landlord a nominal amount of **\$1.00**.

Replace lights

In this case, the landlord is claiming the amount of \$123.41 for replacing light bulbs and making a repair to a light socket. On April 23, 2015, the tenant paid the amount of \$53.00, which the landlord did not disclose during their testimony. While I accept additional work may have been done, I find the invoice provided by the lighting company does not support the evidence of either party and I am unable to determine based on the invoice what work was completed by the lighting company or what the additional \$70.00 was for. However, as the landlord has received \$53.00, from the tenant, I find the landlord has been adequately compensated for the replacement of light bulbs. Therefore, I dismiss this portion of their claim.

Emergency cleaning

In this case, the tenant did not agree with the move-out condition inspection report. Both parties have provided a different version as to whether or not the tenant left the rental unit reasonably. The landlord's version was that the tenant left the rental in such a condition that emergency cleaning was required. The tenant's version was the rental unit was left reasonably clean.

I have reviewed the landlord's photographs and the tenant's photographs and the witness statements provided. I find the premise meets reasonable health, cleanliness and sanitary standards as the tenant is not required to meet a higher standard set by the landlord. While I accept there were a few minor items missed by the tenant, I find the overall condition of the rental unit was left reasonably clean.

I also find it more likely than not that the new renters expected a standard that neither the tenant nor the landlord could fulfill, as the landlord hired a cleaner on an emergency basis who cleaned for 3.5 hours, yet the next day the new renters claimed the rental unit was still in the same condition as when they had left, I find that highly unlikely.

As I have found the tenant did not breach section 37 of the Act, I find the landlord is not entitled to recover emergency cleaning. Therefore, I dismiss this portion of the landlord's claim.

Compensation to new renters for cleaning

As I have found the tenant did not breach section 37 of the Act. I find the tenant is not responsible to pay for compensation that the new renters were given to bring the rental to their standards. New renters should be expected to perform cleaning at their own expense should they expect a higher standard than required by the Act.

Hotel stay for new renters

Base on the evidence, I find this cost is excessive and I find it unreasonable that the new renters stayed in a hotel. The rental unit was not left in an unreasonable state.

Further the landlord had an additional 3.5 hours of cleaning completed on the day the new renters took possession, which was likely unnecessary or to bring the unit to the landlord standards, which they are entitled to do. This; however, is at their own cost. I find the landlords have failed to prove a violation of the Act. Therefore, I dismiss this portion of their claim.

Overholding 1 day

In this case, the new renters were given possession of the rental unit on May 1, 2015. Although I accept the parties completed the move-out condition inspection on the same date that date and time was agreed upon by the parties. Further, the landlord has provided no evidence that they suffered a loss as a result as the new renters took possession. Therefore I dismiss this portion of their claim.

Repair hot tub

In this case the landlord claimed for an item that was paid by the tenant in December 2013, although the receipt indicated that the tenant's payment was short by \$1.00. I find the landlord was unreasonable for not obtaining the material facts on this matter prior to making this claim. The landlord should have known of this payment, as the receipt was issued by their company and it is their duty to ensure proper records are maintained and material facts are properly presented to the Arbitrator.

I further find that even though there was a shortfall of \$1.00, that issue should have been brought that to the tenant's attention and or dealt with in the year 2013. I find the landlord failed to mitigate as required by the Act, I find the landlord is not entitled to recover the \$1.00 owed by the tenant.

Replacement remote for fireplace

In this case, the move-in condition inspection report shows the tenant was provided a remote to the fireplace. Although the tenant alleged the move-in condition inspection report has been altered, I find the tenant has not provided any evidence to support that allegation. The tenant could have submitted into evidence a copy of the move-in inspection report that they were given at the start of the tenancy to support such an allegation.

I find the tenant has failed to prove a preponderance of evidence to the contrary as required by section 21 of the Act. I find the tenant breached the Act, when they failed to return the remote to the fireplace, and this caused losses to the landlord. Therefore, I find the landlord is entitled to recover the cost for the remote in the amount of **\$147.92**.

I find that the landlord has established a total monetary claim of **\$555.92** comprised of the above described amounts and the \$50.00 fee paid for this application.

I order that the landlord retain the amount of \$555. 92 from the tenant's security deposit in full satisfaction of the claim and I grant the tenant an order under section 67 of the Act for the balance due of their security deposit in the amount of **\$39.08**.

Should the landlord fail to return the above amount to the tenant, this order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The landlord is granted a monetary order and may keep a portion of the security deposit in full satisfaction of the claim. The tenant is granted a formal order for the balance due of their security deposit.

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 5, 2015

Residential Tenancy Branch

