



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ACTION PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCL-S, FFL

Introduction

This teleconference hearing was scheduled in response to an application by the Landlord under the *Residential Tenancy Act* (the “Act”) for a Monetary Order for damage or compensation, to retain the security deposit towards the amount owed and for the recovery of the filing fee paid for this application.

An agent for the Landlord (the “Landlord”) and the Tenant were both present for the duration of the teleconference hearing. A witness for the Tenant called in to provide testimony during the hearing. All parties were affirmed to be truthful in their testimony.

The Tenant confirmed receipt of the Notice of Dispute Resolution Proceeding package and copies of the Landlord’s evidence by registered mail. The Tenant did not submit any documentary evidence prior to the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issues to be Decided

Is the Landlord entitled to a Monetary Order for damage or compensation?

Is the Landlord entitled to retain the security deposit towards compensation owed?

Background and Evidence

The Tenant and Landlord were in agreement as to the details of the tenancy. The tenancy began on February 23, 2018 and was for a fixed term of one year. Monthly rent in the amount of

\$1,300.00 was due on the first day of the month and a security deposit in the amount of \$650.00 was paid at the outset of the tenancy. On March 21, 2018, the Landlord and Tenant signed a mutual agreement to end the tenancy on April 30, 2018. The Landlord is still in possession of the full security deposit.

The Landlord submitted a monetary order worksheet outlining their claims. They are claiming \$105.00 in cleaning fees, \$4.40 for fees from the city dump and \$94.50 for the labour costs of removing garbage left in the rental unit and taking it to the dump.

The Landlord testified that the rental unit needed to be cleaned after the tenant moved out. An invoice was submitted in evidence for 3 hours of cleaning at \$33.33 per hour. The invoice came to \$105.00 with tax. The Landlord stated that the window sills needed cleaning, there was hair in the bathroom cabinets, the floors required sweeping and mopping, there were crumbs in the kitchen cabinets and the fan in the main bathroom was dirty.

A Condition Inspection Report was submitted into evidence. The report was signed by the Landlord and Tenant at move-in on February 23, 2018. The move-out report was completed on April 30, 2018 with only the Landlord present. The Landlord testified that a final notice for the inspection was sent to the Tenant and a time arranged with the Tenant for a friend to attend on her behalf. The Landlord stated that neither the friend nor the Tenant showed up on April 30, 2018, so the inspection was completed and signed by the Landlord.

The move-in Condition Inspection Report notes some damage and dirt throughout the rental unit. On this report, the Landlord noted that the Tenant would be reimbursed for one hour of cleaning due to the condition of the unit when she moved in. The move-out Condition Inspection Report notes dust and dirt throughout the home, as well as items left in the garage and food left in the fridge.

The Tenant testified that she never received compensation for one hour of cleaning at the time of moving into the unit, despite having to clean the rental unit. During the hearing, the Landlord checked their records and confirmed that compensation for this was never provided. As such, the Landlord agreed to reduce their claim for cleaning from 3 hours to 2 hours. At \$33.33 per hour, the Landlord reduced their claims for cleaning costs including tax from \$105.00 to \$70.00.

A witness for the Tenant provided testimony that she helped the Tenant clean the rental unit before moving out. Although the witness could not remember the exact day the unit was cleaned, she agreed with the Tenant that it was the day before the Tenant moved out in April 2018. The witness stated that the house was clean throughout and empty, aside from the Tenant's boxes which were ready to move.

The Tenant testified that the house was spotless when she moved out and she does not agree with the Condition Inspection Report upon move-out. She reported that the rental unit was in poor condition when she moved in and required a lot of cleaning, which was why she was

credited for one hour of cleaning costs upon moving in. The Tenant also testified that the fan in the bathroom was dirty as it was not working and she was told it would be replaced after calling the afterhours number for the Landlord on April 20, 2018. The Tenant stated that the fan was not replaced before she moved out.

The Landlord testified that they did not have any record of the issue with the fan.

The Tenant provided testimony that she had arranged for her friend to attend the move-out Condition Inspection Report as her representative, but unintentionally provided the wrong date to her friend. As such, the inspection was completed without the Tenant or her friend.

The Landlord is claiming \$94.50 for the cost of removing the garbage left in the home, as well as \$4.40 for the recovery of the fees charged to them at the city dump. Invoices for these amounts were submitted, one from the city for the dumping of the garbage and one from the Landlord's maintenance worker who billed two hours at \$45.00 per hour, for a total of \$94.50 including tax.

The Landlord stated that there was garbage left in the recycle bins, full garbage bags in the garage and food left in the fridge and freezer. The Landlord testified that these were the items their maintenance worker cleaned up and took to the dump.

The Tenant testified that there was some food left in the fridge and that there might have been something left in the recycle bin, but that there were no items left in the garage. The Tenant provided testimony that the garage was half full of junk when she moved in, but stated that she cleaned it out and nothing was left upon move-out.

The Tenant also stated that there may have been a plastic children's pool left outside under the snow that was there when she moved in. The Landlord was unsure if this was included in the junk that was removed from the property, but that if it was on the property, it would have been removed with the other garbage.

The Tenant and Landlord agreed that the Tenant's forwarding address was provided in writing on April 27, 2018.

Analysis

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

The parties were not in agreement as to the condition of the rental unit on April 30, 2018 when the tenancy ended. However, the Tenant did agree that some food was left in the fridge, that an item may have been left outside and that garbage may have been left in the recycle bin. The Tenant did not agree that the home needed dusting, sweeping or mopping, or that there was garbage left in the garage that needed cleaning up.

As the parties were not in agreement, I look to the evidence to make a determination. I find that the purpose of the Condition Inspection Report is to document the condition of the rental unit at the start and end of the tenancy. The move-out report notes dirt and items left in the home, and does not match what was listed on the inspection report at move-in. As no photos were submitted in evidence by either party, I find the Condition Inspection Report to be the best record of the condition of the rental unit upon the Tenant vacating the unit.

Although the Tenant disagreed with the report during the hearing, I find that her absence at the move-out inspection on April 30, 2018, was due to her own error as the Landlord had previously arranged the date and time of the inspection with the Tenant. Participating in the inspection provides an opportunity for both parties to assess the state of the rental unit at the end of the tenancy. Without sufficient evidence to demonstrate that the move-out report is not accurate, I find that by not attending the move-out inspection, the Tenant waived her right to disagree with the report.

Section 37(2)(a) of the *Act* states that the rental unit must be left reasonably clean and undamaged. As the Condition Inspection Report states that the unit was not left reasonably clean, the Landlord became responsible for the costs of bringing the unit to a reasonably clean state. Section 7 of the *Act* states that when one party is not in compliance with the *Act*, they must compensate the other party for any loss that occurs as a result.

As per the analysis outlined above, I accept the Landlord's claims for compensation as referenced on the Monetary Order Worksheet and according to the invoices submitted in evidence. As determined during the hearing, one hour of cleaning time will be removed in the amount of \$33.33 per hour plus tax, to compensate the Tenant for cleaning costs incurred at the start of her tenancy.

As the Landlord has claimed compensation against the security deposit, I look to Section 38 of the *Act* to confirm whether the security deposit can be withheld towards the total amount owed.

Section 38(1) states that a landlord has 15 days from the later of when the tenancy ends or the forwarding address is provided in writing to either repay the security deposit or file a claim against it. As the tenancy ended on April 30, 2018, and the Landlord applied for Dispute Resolution on May 9, 2018, I find that they were in compliance with Section 38(1) of the *Act* and thus able to apply the security deposit towards the compensation owed.

As the Landlord was successful in their application, I also award the recovery of the filing fee in the amount of \$100.00. A Monetary Order will be issued to the Tenant for the return of the remainder of the security deposit in the amount outlined below.

Monetary Order Calculations

Security deposit held in trust for Tenant	\$650.00
<i>Less 2 hours of cleaning</i>	<i>(\$70.00)</i>
<i>Less dump fees</i>	<i>(\$4.40)</i>
<i>Less garbage removal costs</i>	<i>(\$94.50)</i>
<i>Less filing fee</i>	<i>(\$100.00)</i>
Total owing to Tenant	\$381.10

Conclusion

Pursuant to Sections 67 and 72 of the *Act*, I grant the Tenant a **Monetary Order** in the amount of **\$381.10** for the return of the remainder of the security deposit after the deductions for compensation to the Landlord. The Tenant is provided with this Order in the above terms and the Landlord must be served with **this Order** as soon as possible. Should the Landlord 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: June 26, 2018

Residential Tenancy Branch