



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MENGYANG FU MACDONALD COMMERCIAL REAL ESTATE LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCL-S, MNDL-S, FFL

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 unpaid rent, damages or compensation for losses under the *Act*, an order to retain the security deposit and for the return of their filing fee. The matter was set for a conference call.

Both parties attended the conference call hearing and were affirmed to be truthful in their testimony. Both parties were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The parties confirmed receipt of all evidence submissions.

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

- Are the Landlords entitled to a monetary order for unpaid rent?
- Are the Landlords entitled to monetary compensation for damages under the *Act*?
- Are the Landlords entitled to retain the security deposit in partial satisfaction of the claim?
- Are the Landlords entitled to the return for their filing fee for this application?

Background and Evidence

Both parties agreed they signed a one-year fixed term tenancy that began on November 1, 2017. Rent in the amount of 2,230.00 was payable on the first of each month, and the Tenants paid a security deposit of \$1,075.00 at the outset of the tenancy. The Landlord provided a copy of the tenancy agreement into documentary evidence.

The parties also agreed that they entered into a Mutual Agreement to End the Tenancy as of April 14, 2018. Both parties confirmed that the move-out inspection was completed and the Tenants had provided their forwarding address to the Landlord. The Landlord provided a copy of the move-out inspection as well as the Mutual Agreement to End a Tenancy into documentary evidence.

Both parties were in agreement that the Tenants owe \$60.00 for the removal of a shelf, \$40.00 to patch a hole in the laminate floor, and \$55.00 to repair damage to the entrance door.

The parties are in dispute as to the Tenants responsibility for the following.

- \$1,115.00 in liquidated damages for the Tenants ending their tenancy early,
- \$70.00 to repair nail holes,
- \$150.00 as compensation for a discoloured range hood, and
- \$84.00 for additional carpet cleaning.

The Landlord testified that page six of the tenancy agreement includes a provision for a one month's liquidated damages charge for ending the tenancy early as well as an additional half month rent charge for re-renting the property. The Landlord testified that since she was able to re-rent the unit for June 1, 2018, she was not asking for the full liquidated damages amount, just the re-rental charge of a half months rent.

The Landlord also testified that she had added an amendment to the Mutual Agreement to End Tenancy, to this effect, signed by the Tenants on April 14, 2018. The Landlord testified that she had written this addendum in the space above where the Tenants were to sign, and that the addendum stated; "Tenants agreed to pay the owner half month rent \$1,115 as the earlier termination liquidate damage compensation to the owner."

The Landlord testified that she is also seeking the costs associated with repairing nail holes left by the Tenants. The Landlord testified that page four of the tenancy agreement, Tenant Duties, states that the Tenants need to obtain written permission from the Landlord to hang anything in the rental unit. The Landlord testified that the Tenants had not received written approval from the Landlord to hang their pictures and are therefore responsible for the cost to repair the nail holes. The Landlord confirmed,

that she expected that the Tenants get her permission to hang anything in the rental unit, including pictures and shelves.

Additionally, the Landlord testified that she is seeking compensation for there being a discoloured patch on the range hood. The Landlord testified that the Tenants had used the wrong cleaner to clean the range hood, causing the discoloration damage and therefore should have to compensate the Landlord.

The Landlord advised that she was not seeking the full cost to replace the range hood, at over \$1000.00, she is just looking for \$150.00 to represent a small portion of compensation due to the damage the Tenants caused. The Landlord also testified that they are seeking carpet cleaning costs in the amount of \$84.00, due to additional cleaning that was required at the end of tenancy.

The Tenant testified that she does not agree to pay for the repair of the few nail holes in the rental unit as she felt that hanging pictures was a normal part of any tenancy. The Tenant testified that it was unreasonable for the Landlord to expect that a Tenant would need to get written consent before hanging any pictures, and a Landlord should expect a few nail holes during a tenancy.

The Tenant testified that there was a small amount of discoloration on the range hood, but that it was due to normal wear and tear, not damage. The Tenant also testified that they had not received any special instructions from the Landlord regarding the need for specialized cleaning products. The Tenant also testified that they had cleaned the carpets at the end of their tenancy.

The Tenant testified that she had signed the Mutual Agreement to End Tenancy form provided to them by the Landlord, but that she had no memory of the amendment the Landlord had added. The Tenant testified that she had visited the Residential Tenancy Branch website and had reviewed the form in advance, so she would be prepared to sign.

The Tenant also testified that she was not expecting the Landlord to add an amendment and did not look for one at the time of signing, nor had it been brought to her attention by the Landlord. The Tenant also added that the Landlord had used an online service for the signing of this document and that the Tenant was not overly familiar with this service, and that the service had not prompted her to acknowledge the addendum.

Analysis

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

I find the tenancy ended, in accordance with the *Act*, on April 14, 2018, when both parties signed the Residential Tenancy Branches' form # RTB-8, Mutual Agreement to End a Tenancy.

I have reviewed the Landlord's tenancy agreement, Section 14, Ending the Tenancy, the section states:

“If the Tenant ends the fixed term tenancy before the end of the original term as set out above, the Landlord may, at the Landlord's option, treat this Tenancy Agreement as being at an end. In such event, the Tenant shall pay to the Landlord, as liquidated damages, one month's rent”

I note that this tenancy ended by Mutual agreement. As such, I find that the Landlord cannot now assert Section 14 because the Tenant did not unilaterally end the tenancy rather the parties agreed to it. I find that Section 14 of the tenancy agreement is of no force and effect as the conditions set out in this tenancy agreement regarding the responsibility of the Tenants for liquidated damages and re-rental cost, ceased with the signing of the Mutual Agreement to End Tenancy.

I have also carefully reviewed the signed Mutual Agreement to End a Tenancy and find that the document had been amended from its original form found on the Residential Tenancy Branch website. I noted that the amendment was written in a noticeably smaller font than the rest of the document and that neither party to this agreement had initialled the amendment. I find it reasonable given the size of the font used and the fact that the amendment was not initialled, that the Tenants had no knowledge of this amended term. In the absence of initials, I am not satisfied that the Tenants had full knowledge of this added condition when they signed. Therefore, I find the amendment to the Mutual Agreement to End a Tenancy of no force and effect.

I accept the move-out inspection report and checklist to be the agreed-upon condition of the rental unit at the end of the tenancy. The move-out inspection indicated that there were several agreed deficiencies. However, I noted that there was no agreed upon amount or estimated amount list for the cost, as required under section 2(1) of the

Residential Tenancy Regulations schedule. I find that the requirement to list the agreed amount, for each item, was not met on this document, and in the absence of that, I find that there can be no enforceable agreement on the Tenants for deductions to their security deposit. However, I will still address each of Landlord's remaining claims for damages under the *Act*, as a disputed claim.

Regarding the claim for the repair of nail holes, I have reviewed the Landlord's tenancy agreement, section 10, Duties and Repairs, and find the Landlord's conditions requiring the Tenant to obtain written consent from the Landlord before hanging anything in the rental unit to be unreasonable. The Residential Tenancy policy guideline #1 states:

"Nail Holes:

1. Most tenants will put up pictures in their unit. The landlord may set rules as to how this can be done e.g. no adhesive hangers or only picture hook nails may be used. If the tenant follows the landlord's reasonable instructions for hanging and removing pictures/mirrors/wall hangings/ceiling hooks, it is not considered damage and he or she is not responsible for filling the holes or the cost of filling the holes.
2. The tenant must pay for repairing walls where there are an excessive number of nail holes, or large nails, or screws or tape have been used and left wall damage.
3. The tenant is responsible for all deliberate or negligent damage to the walls."

I find that the Landlord was unreasonable in requiring the Tenants to obtain written permission to hang anything in the unit. While it may be reasonable for the landlord to request an opportunity to approve the hanging devices there is nothing in this tenancy agreement that would prevent the Tenants from hanging something on the wall in the rental unit. Also, any attempt to include such a term would not be enforceable as it would be contrary to the previously mentioned policy guide.

I also find that the Landlord has not provided any evidence to show that the Tenants had put an excessive number of nail holes in the walls or damaged the walls. The policy clearly states that nail holes are "not considered damage and he or she is not responsible for filling the holes or the cost of filling the holes." Therefore, I am not granting the Landlord's request for damages due to nail holes in the rental unit.

As for the Landlord's request for compensation due to discoloration on the range hood. I accept the Landlord's testimony that the range hood required a special cleaner and that

the Tenants may have used of the wrong cleaning product and that has caused the discoloration.

However, I also accept the Tenant's testimony that the Landlord had not advised them that they would need to use a special cleaner on the range hood. I have also reviewed the tenancy agreement and could not find a written requirement informing/advising the Tenants of these special cleaning requirements. Therefore, I am not granting the Landlord's request for compensation for the discolouration of the range hood.

As for the Landlord's claim for the cost for further carpet cleaning, I have carefully reviewed the move-out inspection checklist and noted that the floors in all rooms were listed as "satisfactory" except in the dining room, where the Tenants have agreed to pay for a chip in the laminate. I have no evidence before me that the carpets required additional cleaning. Therefore, I am not granting the Landlord's request for additional carpet cleaning.

As the Landlord has been partially successful in this application, I find that the Landlord is entitled to recover half of their filing fee paid for this application. I allow the Landlord an award in the amount of \$289.00 and the Landlord must return the balance of the security deposit, \$870.00 to the Tenants.

Pursuant to section 38 and 67 of the *Act*, I grant the Tenants a monetary order in the amount of \$870.00. The Order is comprised of the return of the Tenants security deposit, less the \$239.00 owed to the Landlord for repairs to the rental unit and the return of \$50.00 of the Landlord's filing fee.

<u>Awarded Item's</u>	<u>Due</u>
Shelf Removal	\$60.00
Floor Repair	\$40.00
Front Door Damage	\$55.00
	\$155.00

Security Deposit	-\$1,075.00
	-\$920.00
Filing fee	\$50.00
Return of Security Deposit	-\$870.00

Conclusion

I find that the Landlord has not provided sufficient evidence to support all of their claim. Therefore, I am ordering the Landlord to return the Tenants security deposit, less the agreed upon amounts.

I find for the Tenants under sections 38 of the Act. I grant the Tenants a **Monetary Order** in the amount of **\$870.00** for the return of the Tenants security deposit, less the \$239.00 owed to the Landlord for repairs, and the recovery of half of the Landlord's filing fee for this application. The Tenants are 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: July 5, 2018

Residential Tenancy Branch