



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNDL-S

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlords on May 16, 2018 (the “Application”). The Landlords applied for compensation for damage caused to the unit, to keep the security deposit and for reimbursement for the filing fee.

The Landlord appeared at the hearing for both Landlords. The Tenant appeared at the hearing. I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

Both parties had submitted evidence prior to the hearing. I addressed service of the hearing package and evidence. The Tenant confirmed he received the hearing package and Landlords’ evidence. The Landlord confirmed she received the Tenant’s evidence.

Both parties said they submitted evidence that was not uploaded to me. Neither party sought an adjournment to address this.

Both parties were given an opportunity to present relevant oral evidence, make relevant submissions and ask relevant questions. I have considered all documentary evidence and oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Are the Landlords entitled to compensation for damage caused to the unit?

2. Are the Landlords entitled to keep the security deposit?
3. Are the Landlords entitled to reimbursement for the filing fee?

Background and Evidence

The Landlords sought the following compensation:

1. \$41.62 for paint for the bathroom
2. \$50.00 for painting the bathroom
3. \$300.00 for cleaning the unit

I had not received a copy of the tenancy agreement. Both parties agreed on the following. There was a written tenancy agreement between the Landlords and Tenant regarding the rental unit. The tenancy started September 1, 2014 and was for a fixed term of one year ending August 31, 2015. The tenancy then continued as a month-to-month tenancy. Rent was \$850.00 per month. The Tenant paid a \$425.00 security deposit. The Landlords still hold the entire deposit. The Tenant vacated the rental unit March 31, 2018.

Both parties agreed on the following. The Tenant provided the Landlords with his forwarding address in writing on May 3, 2018. The Landlords did not have an outstanding Monetary Order against the Tenant at the end of the tenancy. The Tenant did not agree in writing at the end of the tenancy that the Landlords could keep some or all of the security deposit.

Both parties agreed a move-in inspection was not done at the start of the tenancy.

The Landlord testified as follows in relation to a move-out inspection. One was done March 31, 2018. The Tenant was present but did not participate. The unit was empty. The Landlords completed a Condition Inspection Report. The Landlords asked the Tenant to sign the report but he refused. The Tenant would not take a copy of the report.

The Tenant testified as follows. He was present at the start of the move-out inspection but the Landlords asked him to leave during the inspection. He did not participate in the

inspection. The unit was empty at the time. He was not present to see the Condition Inspection Report being done. The Landlords never presented him with a Condition Inspection Report to sign. The Landlords did not give him a copy of the Condition Inspection Report upon move-out but did as part of the evidence package for this hearing.

The parties testified as follows in relation to the compensation sought.

\$41.62 for paint for the bathroom and \$50.00 for painting the bathroom

The Landlord testified as follows. The Tenant painted one of the bathroom walls without permission. The Tenant used a different color from the other three walls. He did not paint the whole wall and left a patch unpainted. The Landlords had to purchase paint to repaint the bathroom.

The Landlord pointed to the Condition Inspection Report which shows that the bathroom walls and trim required painting. The Landlords had also submitted photos of the bathroom. The Landlords had submitted a receipt for the paint showing it cost \$41.62.

The Landlord testified that the Landlords are requesting \$50.00 for their time as they repainted the bathroom. She said they had to prepare and paint the wall and that it took two hours.

The Tenant testified that he thought he had permission to paint. He said he thought he was allowed to make improvements to the unit based on a verbal agreement with the Landlord. He testified that the only portion of the wall left unpainted was behind the toilet. He said the Landlords were going to paint the unit anyway.

In reply, the Landlord testified that there was no verbal agreement that the Tenant could make changes or repairs to the unit.

\$300.00 for cleaning the unit

The Landlord testified as follows in relation to cleaning the unit. Every surface of the unit was dirty and had to be cleaned. The floor had to be washed. Nothing had been cleaned. The Landlords had to clean the unit given the time of day. It took the two of them six hours to clean the unit. They are requesting \$30.00 per hour per person for

the cleaning. It would have cost more to hire a company to clean the unit in the circumstances.

The Landlord pointed to the Condition Inspection Report which states that numerous areas had to be cleaned and that the Tenant did not clean anything. The Landlords had submitted an invoice they issued stating they were requesting \$25.00 per hour for the cleaning. The Landlords had submitted photos showing the areas of the unit left unclean.

The Tenant testified as follows. He cleaned. He does not know how some of the dirt shown in the photos got there. He cleaned the floor. Mould on the windowsills is just common on the west coast. He is unsure of the accuracy of the photos.

The Tenant went through the photos submitted and agreed that some of the areas were unclean such as the cobwebs on the wall and dust on top of the laundry room door.

The Tenant submitted that 12 hours of cleaning was excessive and that perhaps two hours was required to touch up the cleaning he had done. He said the unit is not large and only around 475 or 550 square feet.

In reply, the Landlord said the unit is 600 square feet.

Analysis

Section 7 of the *Act* states:

(1) If a...tenant does not comply with this Act...or their tenancy agreement, the non-complying...tenant must compensate the [landlord] for damage or loss that results.

(2) A landlord...who claims compensation for damage or loss that results from the [tenant's] non-compliance...must do whatever is reasonable to minimize the damage or loss.

Section 37 of the *Act* sets out tenant's obligations upon vacating a rental unit and states:

(2) When a tenant vacates a rental unit, the tenant must

(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear...

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Under sections 24 and 36 of the *Act*, landlords and tenants can extinguish their rights in relation to the security deposit if they do not comply with the *Act* and *Regulations*. Further, section 38 of the *Act* sets out specific requirements for dealing with a security deposit at the end of a tenancy.

There is no issue that the Landlords did not do a move-in inspection. I find the Tenant did not extinguish his right to the return of the security deposit under section 24(1) of the *Act*. Further, I find the Landlords did extinguish their right to claim against the security deposit for damage to the unit under section 24(2) of the *Act*.

Pursuant to section 38(1) of the *Act*, the Landlords were required to repay the security deposit or apply for dispute resolution claiming against it within 15 days of receiving the Tenant's forwarding address in writing. However, here the Landlords had extinguished their right to claim against the security deposit for damage. I find that the only option for the Landlords under section 38(1) of the *Act* was to return the security deposit within 15 days of receiving the Tenant's forwarding address. Given the Landlords did not do so, I find section 38(6) of the *Act* applies and the Landlords cannot claim against the security deposit and must pay the Tenant double the amount of the deposit. The Landlords are therefore required to return \$850.00 to the Tenant.

I do find that the Landlords are still entitled to make a claim for the \$391.62 compensation and I consider that now.

There is no issue that the Tenant painted one of three walls in the bathroom and that he left a patch unpainted. The Tenant testified that he thought he was permitted to make improvements to the unit based on a verbal agreement with the Landlord. The Landlord said there was no such agreement. I do not accept that there was such an agreement without some evidence to support the Tenant's position. Even if there was such an agreement, I do not accept that painting one wall of a bathroom is an improvement. I find the Tenant breached section 37 of the *Act* by leaving one wall of the bathroom painted a different color than the rest.

I accept the submission of the Landlord that the Landlords had to repaint the bathroom and purchase paint to do so. I accept that the paint cost \$41.62 based on the receipt provided. I find this to be a reasonable amount and I award the Landlords reimbursement for the \$41.62.

I also accept the submission that the Landlords should be reimbursed for their time spent painting the bathroom. I accept it took two hours. I find \$25.00 per hour to be more than reasonable and I award the Landlords the \$50.00 requested.

I accept the submission of the Landlord that the Tenant did not leave the unit reasonably clean. I find the photos submitted support this position. In my view, the Tenant admitted this when he said it would have been reasonable for the Landlords to spend two hours touching up the cleaning he had done. I find the Tenant breached section 37 of the *Act* by not leaving the unit reasonably clean.

I accept the testimony of the Landlord that the Landlords had to clean the unit. I accept that they both spent six hours cleaning the unit. I am not satisfied that the unit required a total of 12 hours of cleaning to meet the standard of reasonably clean. I am satisfied that six hours of cleaning would have been reasonable based on the photos. I award the Landlords reimbursement for six hours of cleaning at \$25.00 per hour. I find this amount to be reasonable and note that the invoice submitted only requests \$25.00 per hour and not \$30.00 per hour as requested by the Landlord during the hearing. The Landlords are awarded \$150.00 for cleaning costs.

Given the Landlords were successful in this application, I grant them reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

In total, the Landlords are entitled to \$341.62. However, the Landlords must repay the Tenant \$850.00. Pursuant to section 72(2)(b) of the *Act*, the Landlords are authorized to keep \$341.62 of the security deposit. Therefore, the Landlords are only required to repay the Tenant \$508.38.

Conclusion

The Landlords are not entitled to keep the security deposit and must repay the Tenant double the deposit being \$850.00. The Landlords are entitled to \$341.62 for compensation for damage to the unit and reimbursement for the filing fee. Therefore, the Landlords are only required to repay the Tenant \$508.38.

The Tenant is granted a Monetary Order in the amount of \$508.38. This Order must be served on the Landlords and, if the Landlords do not comply with the Order, it may be filed in the Provincial Court (Small Claims) 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 *Act*.

Dated: July 31, 2018

Residential Tenancy Branch