



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MAINSTREET EQUITY CORP.
and [tenant name suppressed to protect privacy]

DECISION

<u>Dispute Codes</u>	For the Landlord:	FFL MNDL-S
	For the Tenant:	MNDCT MNRT MNSD

Introduction

This decision is in respect of the landlord's and tenant's applications for dispute resolution under the *Residential Tenancy Act* (the "Act") made on July 10, 2018 and July 31, 2018, respectively.

The landlord sought compensation in the amount of \$415.00 for "cleaning and maintenance after tenant move out," later amended to \$603.60 for cleaning, supply and installation of blinds, garbage removal, a light bulb, and broken lobby doors, pursuant to section 67 of the Act, and additional compensation in the amount of \$100.00 for recovery of the filing fee, pursuant to section 72 of the Act.

The tenant seeks compensation in the amount of \$4,287.00 for the disposal of a couch and mattress and box spring due to a bedbug infestation, for repairs made to the bathroom floor of the rental unit, and to kitchen counters, and for the return of the security deposit, all pursuant to sections 33 and 67 of the Act.

A dispute resolution hearing was convened on December 11, 2018 and the landlord's two agents, and the tenant, attended. The parties were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses. No issues of service were raised by the parties.

While I have reviewed all oral and documentary evidence submitted that met the requirements of the *Rules of Procedure* and to which I was referred, only evidence relevant to the issues of these applications are considered in my decision.

Issues to be Decided

1. Is the landlord entitled to compensation, as set out in the Introduction?
2. Is the tenant entitled to compensation, as set out in the Introduction?

Background and Evidence

The landlord's agent (referred to as the "landlord") testified that the tenancy commenced in December 2015 and ended on June 30, 2018. Monthly rent was \$997.59, and the tenant paid a security deposit of \$462.50, which the landlord currently retains. There was no pet damage deposit.

The landlord's claim for \$603.60 is for the following items: \$70.00 for cleaning of the rental unit, \$217.35 for the supply and installation of blinds, \$75.00 for garbage removal, \$5.00 for the replacement of a broken light bulb, and \$236.25 for replacement and repair of a broken entrance lobby door.

The landlord testified that their cleaner went into the rental unit after the tenant vacated and cleaned the rental unit, and the landlord testified to various areas of the rental unit requiring cleaning, including hard-to-remove stickers on the refrigerator. In addition, the heater registers were dirty, and the floor needed mopping. The landlord charges a fixed rate of \$70.00 to clean a two-bedroom suite. In support of its claim the landlord submitted several photographs of the rental unit depicting the condition.

Regarding the claim for garbage removal, this was to dismantle and remove a table—the disassembly and removal took the work of two men—which cost \$25.00 in labour and \$50.00 for the dumping fee.

Regarding the claim for blinds, the landlord had to install new blinds, which were both missing and broken, and this cost them \$217.35, for which they submitted a receipt. There was also a burnt out light bulb, the replacement cost for which the landlord charges tenants \$5.00; this includes the part replacement cost and labour.

There was some testimony regarding move-out charges and the landlord referred to an earlier arbitration decision involving an order of possession. However, as this is not material to the applications in front of me, I will not consider or refer to them further.

Finally, the landlord claims that the front entrance lobby door, a glass door, was purportedly damaged by the tenant forcing the door open with her foot. The replacement cost for the glass, for which they submitted an invoice, was \$236.25.

There was a Condition Inspection Report (the "Report") completed at the start of the tenancy, on December 1, 2015 and again at the end of the tenancy on June 31, 2018. A copy of the report was submitted into evidence. The Report was signed by the landlord's agent at the start and at the end of the tenancy, and it was signed by the tenant at the start of the tenancy but not by the tenant at the end of the tenancy. In addition to the Report, the landlord submitted a document titled "Move In / Move Out / Charge Analysis" which mirrored the damages claimed for, and which is dated July 1, 2018. This document references the \$5.00 charge for the burned out light bulb.

In addition to the submitted photographs, the landlord also submitted into evidence a work order invoice for the \$70.00 cleaning expenditure, an invoice for the blinds for \$217.35, a work order for the table removal for \$70.00, an invoice for the cost of supply and installation of the lobby glass door in the amount of \$236.25. Included in the landlord's evidence is a letter to the tenant regarding her being observed on surveillance footage kicking the lobby door.

In regard to the final inspection, the landlord testified that they waited a full day, on June 30, 2018, for the tenant to arrive and accompany the landlord's employee "J.F." to conduct a move-out inspection. The tenant did not attend. Unable to contact the tenant, the landlord's employee conducted the move-out inspection on July 1, 2018. On July 2, 2018, the tenant "showed up and threw the keys at the table" in the landlord's office, after which the tenant walked away.

The tenant testified that there was no inspection at the start of the tenancy but that she was simply called by the landlord, and then she, the tenant, went into the landlord's office and signed the Report. The tenant's signature is on the Report for the move-in inspection but does not appear in the move-out Report. She disputes that she threw the key at the table, but did not dispute that she did not attend to conduct a move-out inspection.

Regarding the glass lobby door, she testified that "I never broke the glass of the lobby door" and that the door was already in a fragile ("a weakened") condition from other tenants. She pointed out that the landlord did not provide any evidence of her breaking the lobby door.

As to the tenant's claim for compensation, she testified that she was unable to procure

receipts or proof of purchase documents that might establish the value of the couch, mattress and box spring that she explained had to be discarded due to a bedbug infestation. Regarding the claim for repairs, she commented that she had made several requests over three years to repair tiles in the bathroom and in the kitchen and cabinets, that the landlord failed to attend to these requests for repairs, and that she ultimately took care of the repair work herself. Finally, she submitted that she mopped and cleaned the rental unit at the end of her tenancy.

The tenant submitted into evidence several photographs of the rental unit and its condition at the end of the tenancy, with many of the photographs including notations regarding repairs made and the cleaning of the rental unit that the tenant undertook.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 7 of the Act states that if a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Second, section 67 of the Act states that if damage or loss results from a party not complying with the Act, the regulations or a tenancy agreement, an arbitrator may determine the amount of, and order that party to pay, compensation to the other party.

In order for me to award compensation under the Act, the applicant must prove on a balance of probabilities the following four criteria:

1. Has the respondent party to a tenancy agreement failed to comply with the Act, the regulations, or the tenancy agreement?
2. If yes, did loss or damage result from that non-compliance?
3. Has the party who suffered loss or damage proven the amount or value of that damage or loss?
4. Has the party who suffered the loss or damage that resulted from the other's non-compliance done whatever is reasonable to minimize the damage or loss?

Landlord's Application for Compensation

Subsection 37(2) of the Act states that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

In this case, the landlord claims compensation for various items, including blind repairs, cleaning (including sticker removal), garbage disposal, a light bulb, and for a broken lobby door. The landlord's testimony, in conjunction with the Condition Inspection Report, and colour photographs, establish that the tenant left the rental unit with broken and missing blinds, an unclean stove and range and refrigerator, an abandoned table requiring removal, and a non-working light bulb.

The tenant disputes that she left the rental unit in this condition (although I note that she did not dispute or address the specific issues involving the blinds or the light bulb) and testified that she cleaned the rental unit. In support of her argument she submitted into evidence several photographs. However, the photographs are of such poor quality that I cannot make a finding as to whether any cleaning occurred. Regarding the Condition Inspection Report, the tenant explained that no move-in inspection was ever conducted, and that she simply signed the Report. However, it is the tenant who made the decision to sign the Report, and at that point accepted that the Report accurately depicted the condition of the rental unit at the start of the tenancy.

Based on the evidence submitted and the testimony of the parties, I find that the landlord has met the onus of proving that the tenant breached section 37(2) of the Act, and that but for her breach of the Act the landlord would not have incurred the costs claimed.

The landlord submitted documentary evidence which establishes the cost and value of the amounts claimed regarding the blind repairs, the cleaning, the table removal, and the light bulb. Finally, the landlord appears to have undertaken the cleaning, repairs, and table removal in a manner that is a reasonable expenditure, and I do not find any evidence that they undertook these repairs or cleaning in a manner that was not reasonable.

For the reasons set out above, and taking into consideration the evidence of the parties, I find that the landlord has met the onus of proving on a balance of probabilities that they are entitled to compensation in the amount of \$367.35.

In respect of the landlord's claim for compensation for the broken lobby door, while the landlord references a surveillance video purportedly showing the tenant break the door,

the landlord submitted no evidence proving that this occurred. The landlord argues that the tenant broke the door, while the tenant submits that she did not break the door.

When two parties to a dispute provide equally reasonable accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. In this case, I find that the landlord has failed to provide any evidence that the tenant broke the lobby door.

Given the above, I do not find that the landlord has met the onus of proving on a balance of probabilities that the tenant broke the door. As such, I dismiss that aspect of the landlord's claim without leave to reapply.

In summary, I grant the landlord compensation by way of a monetary award of \$367.35. As the landlord was mostly successful in its application, I grant an additional monetary award of \$60.00 for partial recovery of the filing fee for a total monetary award of \$427.35. I order that the landlord may retain \$427.35 of the tenant's security deposit in full satisfaction of this award, and that the landlord must return the balance of the security deposit of \$35.15 to the tenant.

Tenant's Application for Compensation

The tenant sought compensation from the landlord for the cost of the tenant disposing of a couch, mattress and box spring. As noted above, the tenant did not submit into evidence any documentary evidence, such as receipts, that may have established the dollar value of the couch, mattress and box spring, that she explained she had to discard due to the landlord's negligence in dealing with a bed bug issue. As such, I did not consider whether there was a breach of the Act, regulation, or the tenancy agreement, as there was no evidence to establish the value of any such monetary loss that may have arisen from such a breach by the landlord.

Regarding the other component of the tenant's claims, namely, compensation for repairs, the tenant's application indicated that she sought compensation under section 33(5) of the Act for the cost of emergency repairs, which is defined in section 33(1) of the Act. This section defines "emergency repairs" to mean repairs that are (a) urgent, (b) necessary for the health or safety of anyone or for the preservation or use of residential property, and (c) made for the purpose of repairing major leaks in pipes or the roof, damaged or blocked water or sewer pipes or plumbing fixtures, the primary heating system, damaged or defective locks that give access to a rental unit, the

electrical systems, or other prescribed circumstances.

None of the repairs for which the tenant seeks compensation meet the definition of an emergency repair. I cannot find, notwithstanding that tile work and cabinets do not fall into the types of repairs that are emergency repairs, that any of the repairs could be said to be urgent when the tenant waited almost 3 years for the landlord to make repairs.

Therefore, based on the testimony and submissions of the tenant, and applying the law to the facts, I find on a balance of probabilities that the tenant has not met the onus of proving her claim that the landlord breached the Act and that the tenant is due compensation for the repairs as described. As such, dismiss the tenant's claim for compensation without leave to reapply.

Conclusion

I hereby award the landlord a monetary award of \$427.35 and order that they may retain this amount from the tenant's security deposit. The landlord must forthwith return the balance of \$35.15 of the security deposit to the tenant. A monetary order for the tenant is issued with this decision.

The tenant's application is dismissed without leave to reapply.

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: December 12, 2018

Residential Tenancy Branch