



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL

Introduction

This hearing was convened as a result of the landlords' Application for Dispute Resolution ("application") seeking remedy under the *Residential Tenancy Act* ("Act"). The landlords applied for a monetary order for damage to the unit, site or property, for authorization to keep all or part of the security deposit, and to recover the cost of the filing fee.

The landlords and tenant PH ("tenant") attended the teleconference hearing and gave affirmed testimony. The parties were advised of the hearing process and were given the opportunity to ask questions about the hearing process during the hearing. A summary of the testimony and evidence is provided below and includes only that which is relevant to the hearing.

The tenant confirmed that they received the landlords' documentary evidence and had the opportunity to review that evidence prior to the hearing. The tenant also confirmed that the tenants did not serve any documentary evidence on the landlords in response to the landlords' application.

Preliminary and Procedural Matter

The parties confirmed their email addresses at the outset of the hearing. The parties confirmed their understanding that the decision would be emailed to both parties and that any applicable orders would be emailed to the appropriate party.

Issues to be Decided

- Are the landlords entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenants' security deposit under the *Act*?
- Are the landlords entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A month to month tenancy began on April 26, 2015 and ended on July 3, 2018 when the tenants vacated the rental unit. Monthly rent during the tenancy was \$1,250.00 per month and was due on the first day of each month and was not increased during the tenancy. The tenants paid a security deposit of \$600.00 at the start of the tenancy, which the landlords continue to hold and has accrued \$0.00 in interest to date.

The landlords' monetary claim of \$600.00 is comprised as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Cleaning of house (invoice paid)	\$223.13
2. Cleaning of basement stairs (invoice paid)	\$99.75
3. Load of trash left by tenants	\$9.20
4. Screen door handle, paint for scrapes/marks	\$34.77
5. Paint, Paint products (fix pink room)	\$164.15
6. Replaced 3 roller shades that were damaged	\$239.63
7. Replaced 2 heat registers that were damaged	\$13.38
TOTAL	\$784.01* (*although only claiming \$600.00 before filing fee)

Regarding item 1, the landlords have claimed \$223.13 for costs related to cleaning of the home that the landlords testified was left in a very dirty condition when the tenants vacated the rental unit. The landlords referred to an incoming condition inspection report dated April 25, 2015 ("CIR") and confirmed that they did not complete the outgoing

portion of the CIR. Instead, the landlords submitted many colour photographs in evidence which include both before and after photographs. The landlords write in their application that:

“The house was not cleaned properly before tenants left - Animals caused damage in many places in the house (scratching mouldings and drywall, urine/feces/vomit on carpet, in basement and shower) –Stolen/missing property: Living room curtain rod, couches, chairs, bed, desk, bathroom sink drain pipe – Drywall and paint damage – Water damage to cabinets in kitchen/bathroom (outside and under sinks) –Outside: damaged lawn, damaged pond & equipment, warped siding”.

[Reproduced as written]

The landlords stated that they hired a cleaner whom they paid \$223.13 to properly clean the rental unit to a reasonable condition which was comprised of 8.5 hours at \$25.00 per hour. An invoice was submitted in evidence which the landlords stated they paid and includes GST and matches the total claimed for this portion of the landlords' claim. The invoice indicates that cleaning included kitchen cupboards inside and out, bathrooms, light fixtures, walls throughout, vacuuming throughout, and mopping of all hard surface flooring.

The landlords stated that nobody went through the home except for the landlords until July 16, 2018 when they had cleaners attend to provide quotes for cleaning. Several colour photographs were presented by the landlords in support of the need for cleaning at the end of the tenancy. The tenant claims that the before photographs did not look like that at the start of the tenancy and the tenant confirmed again that the tenants did not submit any documentary evidence in support of her testimony.

The landlords referred to colour photographs showing cat feces and the landlords argued that the tenant could not have shampooed the carpets with her own shampooer as claimed by the tenant during the hearing if there was still cat feces, cat vomit, hair and other debris on the carpets. The landlords confirmed that they were not claiming for costs related to the carpets as the carpets were older. The landlords did testify; however, that the carpets smelled like urine and that the carpets were stained throughout the rental unit. One of the photographs presented showed over 20 separate pet feces in a small area and many other photographs showed pet feces in various areas of the rental unit.

Regarding item 2, the landlords have claimed \$99.75 to clean the basement stairs. The CIR indicates “unfinished basement” and that the stairs and stairwell were “No railing/VERY marked”. The landlords referred to a photograph that they state was taken after the tenants vacated the rental unit which shows very soiled carpets on the stairs. The tenant claims that those carpets were cleaned however the photographs show hair and other debris still on the carpets. The landlords referred to an invoice dated July 26, 2018 which supports the amount claimed of \$99.75 and which includes GST and is from a cleaning and restoration services company. The tenant failed to provide any supporting evidence such as a photo or receipt that she owns a carpet shampooer as claimed during the hearing.

Regarding item 3, the landlords have claimed \$9.20 to dispose of a load of trash left behind by the tenants. The tenant did not deny that a cat scratching post was left in the yard of the rental unit at the end of the tenancy. The landlords submitted a receipt in the amount of \$9.20 which the landlords explained was the cost associated to dispose of the tenants’ trash left behind at the rental unit.

Regarding item 4, the landlords have claimed \$34.77 to repair a broken screen handle and paint required to repair scrapes and marks caused by the tenants. The invoice submitted in evidence is dated July 31, 2018 and is from a popular home building centre and includes taxes. The landlords referred to several colour photographs showing damage to the interior walls that were indicated as “good” on the incoming CIR.

Regarding item 5, the landlords have claimed \$164.15 to repaint a room that the tenants painted pink. While the tenant claims they were given permission to paint the room pink, the landlords deny that permission was granted to the tenants to paint a room pink. The tenant confirmed that she did not have written permission to paint the room pink and did not submit any documentary evidence in response to the landlords’ claim. An invoice in the total amount of \$569.40 was submitted from the same popular home building centre indicated in item 4 above, and includes in that amount paint, paint supplies and taxes. The landlords are not claiming for the entire \$569.40, just \$164.15 of that amount and the invoice is dated July 26, 2018. The landlords stated that the rental unit was re-rented effective August 1, 2018.

Regarding item 6, the landlords have claimed \$239.63 to replace what they describe were three damaged roller shades. The landlords referred to colour photographs of the roller shades taken after the tenants vacated the rental unit and are clearly damaged. The incoming CIR indicates that all but one window coverings were in “good” condition

with the master bedroom window covering indicating a “few small tears”. There appears to be many large tears in the photographs taken after the tenants vacated the rental unit. The landlords suggested that the damage was caused by the claws of the tenants’ cat.

Regarding item 7, the landlords have claimed \$13.38 to replace two broken heat registers that were working before the tenants moved into the rental unit. The tenant did not agree with any of the costs being claimed by the landlords.

Analysis

Based on the documentary and digital evidence, the testimony of the parties and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what was reasonable to minimize the damage or loss.

In the matter before me, the landlords bear the burden of proof to prove all four parts of the above-noted test for damages or loss.

Item 1 – Section 37 of the *Act* applies and states in part:

Leaving the rental unit at the end of a tenancy

- 37** (1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.
- (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,**

[My emphasis added]

I have carefully considered the testimony of both parties and find that the tenant's testimony was inconsistent with the photographic evidence before me. Specifically, the tenant claims to have shampooed the carpets of the rental unit yet the photographic evidence shows pet feces in multiple areas with what I find to be significant feces in an unfinished area and consistent pet feces left behind throughout the rental unit. In addition, I find that there was pet feces and debris showing on several photographs which should not have been there at all if the carpets were properly vacuumed and shampooed as claimed by the tenant. Therefore, I prefer the testimony of the landlords over that of the tenant as a result. In reaching this finding I have considered that the tenant affirmed that the rental unit was cleaned before they vacated which I disagree with. I find the tenants breached section 37 of the *Act* as the rental unit was not left in a reasonably clean condition less reasonable wear and tear as required by section 37 of the *Act*.

In addition to the above, I find the landlords complied with section 7 of the *Act* which requires that an applicant seeking monetary compensation under the *Act* do what is reasonable to minimize the damage or loss. I find the amount claimed for cleaning is reasonable and is supported by the photographic evidence before me. I also note that the landlords applied for dispute resolution on July 16, 2018 which is within the 15 day timeline provided for under section 38 of the *Act* when claiming against the tenants' security deposit. Therefore, I grant the landlords **\$223.13** as claimed for this portion of the landlords' claim.

Item 2 – Consistent with my finding for item 1 above, I find the tenants have provided insufficient evidence and inconsistent testimony that is not supported by the photographic evidence presented by the landlords to support that the tenant shampooed the carpets of the rental unit. Residential Tenancy Branch ("RTB") Policy Guideline 1 states as follows:

3. The tenant is responsible for periodic cleaning of the carpets to maintain reasonable standards of cleanliness. Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year. Where the tenant has deliberately or carelessly

stained the carpet he or she will be held responsible for cleaning the carpet at the end of the tenancy regardless of the length of tenancy.

4. The tenant may be expected to steam clean or shampoo the carpets at the end of a tenancy, regardless of the length of tenancy, if he or she, or another occupant, has had pets which were not caged or if he or she smoked in the premises.

[My emphasis added]

Based on the above and the photographic evidence which I find showed heavily soiled carpets with pet feces and debris on the carpets, I find the tenants breached section 37 of the *Act* and are liable for the \$99.75 amount claimed for this portion of the landlords' claim. Therefore, I find the landlords have met the burden of proof and I award the landlords the full amount of **\$99.75** as claimed for this portion of their claim.

Item 3 – There is no dispute that the tenants left at least a cat scratching post in the yard when they vacated the rental unit and therefore, I find the tenants are responsible for the **\$9.20** amount to dispute of the garbage they left behind. I award the landlords that amount as claimed and find the landlords have met the burden of proof for this item.

Item 4 - The landlords have claimed \$34.77 to repair a broken screen handle and paint required to repair scrapes and marks caused by the tenants. I have reviewed the photographic evidence and the invoice and I am satisfied that the tenants damaged the screen door handle as the incoming CIR does not indicate any screen door handle damage and the photographic evidence supports the items listed on the receipt for \$34.77. Therefore, I find the tenants breached section 37 of the *Act* and I find the amount claimed to be reasonable by the landlords and accordingly, I grant the landlords the full amount of **\$34.77** as claimed for this item.

Item 5 - The landlords have claimed \$164.15 to repaint a room that the tenants painted pink. While the tenant claims they were given permission to paint the room pink, the landlords deny that permission was granted to the tenants to paint a room pink. The tenant confirmed that she did not have written permission to paint the room pink and did not submit any documentary evidence in response to the landlords' claim. Policy Guideline 1 states in part:

RENOVATIONS AND CHANGES TO RENTAL UNIT

1. Any changes to the rental unit and/or residential property not explicitly consented to by the landlord must be returned to the original condition.

[My emphasis added]

I find the tenants have provided insufficient evidence to support that they had permission to paint a room pink which I find is a difficult colour to repaint as it would more likely than not take several coats of paint to satisfactorily repaint a pink-coloured room. Therefore, I find the tenants were responsible to return the pink room to the original colour and that the tenants failed to do so. I also don't accept the tenant's testimony that there was permission to paint the room pink as the landlords denied that permission was granted during the hearing. Therefore, I find the amount claimed of **\$164.15** to be reasonable and I grant the landlords that amount in full as I find the landlords have met the burden of proof.

Item 6 – The landlords have claimed \$239.63 to replace what they describe were three damaged roller shades. I have reviewed the colour photographs of the roller shades taken after the tenants vacated the rental unit and are clearly damaged. I have also considered the incoming CIR which indicates that all but one window coverings were in “good” condition with the master bedroom window covering indicating a “few small tears”. I find there to be many large tears in the roller shade photographs and that the damage is consistent with pet damage. Therefore, I find the amount claimed to be reasonable and I find the landlords have met the burden of proof and are granted **\$239.63** as claimed for this item.

Item 7 – As items 1 to 6 already add up to more than the \$600.00 claimed by the landlords I dismiss item 7 as this item would exceed the landlords' monetary claim.

As the landlords' application was successful, I grant the landlords **\$100.00** in full recovery of the cost of the filing fee pursuant to section 72 of the *Act*.

Monetary Order – I find that the landlords have established a total monetary claim of **\$700.00** comprised of \$600.00 for items 1 to 6 described above plus the \$100.00 filing fee. I authorize the landlords to retain the tenants' full security deposit of **\$600.00** which has accrued no interest to date, in partial satisfaction of the landlords' monetary claim. I grant the landlords a monetary order pursuant to section 67 of the *Act* for the balance owing by the tenants to the landlords in the amount of **\$100.00**.

I caution the tenants not to breach section 37 of the *Act* in the future.

I caution the landlords to complete the outgoing portion of the CIR in accordance with section 35 of the *Act* in the future.

Conclusion

The landlords' claim is successful.

The landlords have established a total monetary claim of \$700.00. The landlords have been authorized to retain the tenants' full \$600.00 security deposit in partial satisfaction of the landlords' monetary claim. The landlords have been granted a monetary order pursuant to section 67 of the *Act* for the balance owing by the tenants to the landlords in the amount of \$100.00. This order must be served on the tenants and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

Both parties have been cautioned as noted above.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: December 5, 2018

Residential Tenancy Branch