



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PTR DEVELOPMENT HOLDINGS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for damage or compensation pursuant to section 67 of the *Act*;
- authorization to retain all or a portion of the tenants' security deposit in satisfaction of the monetary order requested pursuant to section 67 of the *Act*; and
- recovery of the filing fee from the tenants pursuant to section 72 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. Landlord's agents E.D. and L.T. attended on behalf of the corporate landlord and are herein referred to as "the landlord".

As both parties were present, service of the Notice of this hearing was confirmed. The landlord testified that the tenants were each individually served with the Notice of this hearing on September 19, 2018 by Canada Post registered mail, which was confirmed received by the tenants. As such, I find that the tenant was served with the Notice of this hearing in accordance with section 89 of the *Act*.

The landlord testified that they did not serve their evidence to the tenants by registered mail until December 14, 2018, approximately three months after service of the Notice of the hearing. In response to being questioned as to the reason for the delay, the landlord explained that they were waiting for invoices, which had to be processed through their head office. Although I find the landlord's delay in serving their evidence to the tenants to be lengthy, I find that the tenants had sufficient time to respond as demonstrated by the 230-page evidence package submitted by the tenants. The tenants served their evidence on the landlord by registered mail which was confirmed received by the landlord. As such, I find that I may consider all the evidence submitted by both parties in this matter.

Preliminary Issue – Return of FOB Deposit

During the hearing, the tenants testified that they had returned their FOB access to the landlord at the end of the tenancy, but did not receive the return of the \$150.00 deposit original paid for the FOB. The landlord was able to confirm during the hearing that there was an accounting issue at their head office which caused the landlord to fail to return the \$150.00 deposit. The landlord confirmed during the hearing that a cheque would be printed and sent to the tenants forthwith and the tenants shall receive the return of their deposit within two weeks.

Issue(s) to be Decided

Is the landlord entitled to compensation due to damage or loss resulting from the tenants' failure to comply with the *Act*, regulation and/or tenancy agreement? And if so, is the landlord entitled to retain all or a portion of the security deposit in satisfaction of compensation owed?

Is the landlord entitled to recover the cost of the filing fee for this application from the tenants?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. Only the aspects of this matter relevant to my findings and the decision are set out below.

A written tenancy agreement was submitted into evidence. The parties confirmed the following details pertaining to this tenancy:

- This one-year fixed term tenancy began on August 25, 2017 and ended on August 31, 2018 when the tenants moved out and returned vacant possession of the rental unit to the landlord.
- Current monthly rent of \$1,495.00 was payable on the first of the month.
- The rental unit consisted of a one-bedroom, one-bathroom apartment 467 square feet in size, with a small balcony.
- At the beginning of the tenancy, the tenants paid a security deposit of \$747.50 and a pet damage deposit of \$747.50, which continue to be held by the landlord.

The landlord claimed that the tenants did not clean the rental unit sufficiently, resulting in the landlord paying for 12 hours of cleaning at a cost of \$45.00 per hour for a total of \$567.00 (including tax). The landlord also claimed that the tenants damaged the walls through the use of large wall anchors to support a TV mounted wall and, shelving, as well as other marks, scrapes and damage to the wall beyond reasonable wear and tear. The landlord claimed the cost of 17 hours of labour at a cost of \$25.00 per hour for a total of \$446.25 (including tax).

The landlord submitted two invoices into evidence in support of their above-noted claims. The landlord also submitted a condition inspection report documenting the move-in and move-out conditions of the rental unit and approximately 45 pictures documenting the condition of the rental unit.

The tenants acknowledged there are some cleaning deficiencies, however they feel that they were not given an opportunity to finish their cleaning, which they requested to do after the condition inspection was completed. They have also claimed that any damage to the walls was a result of reasonable wear and tear.

The tenants have submitted approximately 150 pages of photographic evidence of the condition of the rental unit at move out, as well as a quote from a cleaning service providing an estimate of \$90.00 to \$200.00 for a "moving clean" for a rental unit between 600 to 900 square feet.

I note that the landlord's Application for Dispute Resolution set out the landlord's claim as follows:

\$350.00 for suite damages. \$600 for professional blinds cleaning & suite cleaning.

Given that the landlord did not submit an Amendment to their original application, and failed to provide a monetary order worksheet with their Application and only served the tenants with their evidence three months after serving the tenants with their Application, I find that the landlord is limited to the amounts of their claims as set out in their Application, that being up to \$350.00 in damages and up to \$600 for professional blind cleaning and suite cleaning. However, I further note that the landlord has submitted a receipt for the suite cleaning, which includes the “damp wipe” of the blinds, for a total cost of \$567.00. The landlord did not have the blinds cleaning by a professional blind cleaning company. Therefore, the landlord’s claim for the cleaning of the blinds and suite cleaning will be based upon the invoice submitted into evidence and as such is limited to \$567.00.

Analysis

Section 37(2) of the *Act* sets out the requirements for a tenant to fulfill when vacating the rental unit, as follows, in part:

- 37(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,...

Based on the photographic evidence submitted by both parties, and the testimony of both parties, I find that the tenants failed to leave all parts of the rental unit reasonably cleaning as a result of a few cleaning deficiencies noted in the photographic evidence submitted by the tenants and their acknowledgement of some areas that they did not have time to clean.

I find that the tenants scheduled their move-out condition inspection for 10:30 a.m. and were not finished cleaning at that time. The tenants testified they did not request to reschedule their inspection to a later time, and also testified that they were scheduled to take a ferry later that afternoon. Therefore, I find their own testimony calls into question their claim that they would have provided a more thorough cleaning of the rental unit had the opportunity been provided to them.

Section 67 of the *Act* provides that, where an arbitrator has found that damages or loss results from a party not complying with the *Act*, regulations, or tenancy agreement, an arbitrator may determine the amount of that damage or loss and order compensation to the claimant.

The purpose of compensation is to put the claimant who suffered the damage or loss in the same position as if the damage or loss had not occurred. Therefore, the claimant bears the burden of proof to provide sufficient evidence to establish **all** of the following four points:

1. The existence of the damage or loss;
2. The damage or loss resulted directly from a violation – by the other party – of the *Act*, regulations, or tenancy agreement;
3. The actual monetary amount or value of the damage or loss; **and**
4. The claimant has done what is reasonable to mitigate or minimize the amount of the loss or damage claimed, pursuant to section 7(2) of the *Act*.

In this case, although I have found that the landlord has established the first three points, I find that the landlord has failed to establish the fourth point pertaining to the suite cleaning costs. The tenants provided evidence of a significantly lower quote for the cost of a “moving clean”. I note that this was for a cleaning service based in a different and larger city from where the rental unit is located, however, I also note that the quoted cost was for a larger-sized rental unit. I find that the landlord failed to provide any other evidence, such as other quotes for cleaning, to support their claim that the cost paid for cleaning was reasonable. I find that based on the limited cleaning deficiencies noted in the photographic evidence, and the significantly lower cleaning quote submitted into evidence by the tenants, the tenants have successfully challenged the reasonableness of the amount of the loss claimed by the landlord.

Therefore, I find the landlord has not met the burden of proof, on a balance of probabilities, that their claimed cost of cleaning was a mitigation of their loss.

Given the above, I find that the landlord has not satisfied **all** elements of the test for compensation in relation to the claim for cleaning costs. I find that the landlord’s monetary claim for cleaning costs has no merit due to insufficient evidentiary proof of mitigation of loss, and therefore, must be dismissed without leave to reapply.

Regarding the landlord’s claim for loss due to damage to the walls, I refer to Residential Tenancy Policy Guideline 1. Landlord & Tenant – Responsibility for Residential Premises, which provides explanation regarding the responsibility of the tenants at the end of a tenancy. The section relevant to this matter has been noted below, in part:

WALLS

...

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 some wall damage beyond reasonable wear and tear is visible in the photographic evidence submitted, including in the photographs submitted by the tenants.

As I found some damage to the rental unit walls is beyond reasonable wear and tear, in accordance with Policy Guideline 1. noted above, the tenants “must pay for repairing the walls”.

The landlord is limited to a claim of \$350.00 for the cost of the wall damage, as set out in their Application for Dispute Resolution. I note in the landlord’s invoice, that the landlord is only seeking the cost of labour, at a rate of \$25.00 per hour, to repair the walls, and not the cost of materials such as paint. Therefore, depreciation pertaining to a reduction based on useful life of building elements is not applicable as the cost to replace a building element, i.e. paint, is not being sought by the landlord in their claim. I find that the tenants have not submitted any evidence, such as a quote or estimate, to dispute the reasonableness

of the landlord's claim to a rate of \$25.00 for the repair cost for the walls. I find a rate of \$25.00 to be reasonable for this type of labour. I find the evidence of the damage to the walls, beyond reasonable wear and tear in some places of the rental unit, to have been proven by the photographic evidence submitted by both parties.

Therefore, based on the testimony and evidence before me, on a balance of probabilities, I find that the landlord has satisfied **all** four elements of the test for damages in relation to the claim for the wall repairs. As such, I find that the landlord is entitled to a monetary award for damages, limited to the amount of their requested claim provided on their Application, which is \$350.00.

Set-off of Landlord's Claim Against Security and Pet Damage Deposits

The landlord continues to retain the tenants' \$747.50 security deposit and \$747.50 pet damage deposit, for a total of \$1,495.00 in deposits, and has requested to retain a portion of these deposits in satisfaction of the claim for damages. No interest is payable on the deposit during the period of this tenancy.

In summary, I find that the landlord is entitled to a monetary award for compensation for damages in the amount of \$350.00.

Further to this, as the landlord was partially successful in retaining a portion of the deposits through this application, I find that the landlord is entitled to a partial recovery of the filing fee from the tenants, in the amount of \$50.00.

In accordance with the offsetting provisions of section 72 of the *Act*, I set-off the compensation owed by the tenants to the landlord, and the recovery of half the filing fee to be paid by the tenants to the landlord, against the tenants' deposits of \$1,495.00 held by the landlord.

As such, I issue a Monetary Order in the tenants' favour in the amount of \$1,095.00, as explained in the following breakdown:

Item	Amount
Return of security deposit to tenants (currently held by landlord)	\$1,495.00
LESS: Monetary Award to landlord for compensation due to damages	(\$350.00)
LESS: Recovery of half of filing fee awarded to landlord	(\$50.00)
Total Monetary Order in Favour of Tenant	\$1,095.00

Conclusion

I issue a Monetary Order in the tenants' favour against the landlord in the amount of \$1,095.00 for the return of the remaining amount of the security and pet damage deposits currently held by the landlord.

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: January 17, 2019

Residential Tenancy Branch