



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GREEN TEAM REALTY INC
and [tenant name suppressed to protect privacy]

DECISION

Code MND, MNSD, FF

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 damages to the unit, for an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The landlord's agent confirmed they received the tenant's evidence. The owner stated they did not get a copy of the tenant's evidence.

In this case, the landlord's agent is named in the application. If their agent did not provide the owner with a copy of the tenant's evidence, that is an issue between the owner and their agent. I find the landlord was served with the tenant's evidence in accordance with the Act.

The tenant confirmed they received the landlord's evidence.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

It should be noted that the evidence of CM, was provided through PT (the "landlord")

Issues to be Decided

Is the landlord entitled to monetary compensation for damages?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The parties agreed that the tenancy began on July 16, 2016. Rent in the amount of \$1,850.00 was payable on the first of each month. The tenant paid a security deposit of \$925.00 and a fob deposit of \$100.00. The tenancy ended on October 31, 2018.

The parties agreed a move-in inspection report. The landlord did not complete a proper move-out inspection report in accordance with the Act, as it was not signed by either party.

The landlord claims as follows:

a.	Overholding movers 3hr x\$100.00 per hour	\$ 300.00
b.	Estimate to replace cabinet and pocket door	\$ 600.00
c.	Mould report	\$ 420.00
d.	Painting	\$ 662.50
e.	Cleaning	\$ 442.50
f.	Filing fee	\$ 100.00
	Total claimed	\$2,525.00

Overholding movers 3hr x\$100.00 per hour

The landlord testified that the tenant was required to vacate the premises by 1:00pm on October 31, 2018. The landlord testified that the tenant did not vacate the property until 4:00 PM. The landlord submits that they were moving into the premises and due to the tenant's delay they were charged \$100.00 per hour for the three hours the tenant was overholding the property. The landlord seeks to recover the additional moving costs in the amount of \$300.00. Filed in evidence is a receipt.

The tenant testified that they informed the landlord's agent on the 29 and 30 of October that they needed additional time to vacate the premises on October 31, 2018 and they were told it would not be a problem.

The tenant testified that they telephoned the moving company and they told them that they charge \$80.00 per hour, not \$100.00. The tenant submits that the receipt the landlord has filed in evidence does not breakdown the actual moving cost and additional cost for staying later.

The landlord's agent testified that they did not give the tenant permission to be late vacating the premise.

Estimate to replace cabinet and pocket door

The landlord testified that the tenant caused damage to the bathroom cabinet as there was a slight expansion of the wood. The landlord testified that the pocket door was also damaged and has to be repaired. The landlord seeks to recover the amount of \$600.00. Filed in evidence are photographs.

The tenant testified that there was a moisture problem in the bathroom and they informed the landlord's agent during their tenancy. Filed in evidence are emails to the landlord's agent.

Mould report

The landlord seeks to recover the cost of a mould report that they obtained at the end of the tenancy. That mould report shows that mould sample results are normal.

Painting

The owner stated they were not given a copy of the move-in inspection from their agent. The landlord withdraws this portion of their claim.

Cleaning

The landlord testified that the tenant did not leave the rental unit reasonable clean at the end of the tenancy. The landlord stated the blinds were dirty, and there was a thick layer of dust on the kitchen exhaust fan. The landlord stated that they did the cleaning. The landlord seeks to recover the estimate for cleaning in the amount of \$422.50.

The tenant testified that they left the clean. The tenant stated that when they received the unit it was dirty. The tenant stated that they are not responsible for any cleaning costs. Filed in evidence is a video of the rental unit at the end of the tenancy.

Analysis

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

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the landlord has the burden of proof to prove their claim.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

How to leave the rental unit at the end of the tenancy is defined in Part 2 of the Act.

Leaving the rental unit at the end of a tenancy

37 (2) When a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Normal wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

Overholding movers 3hr x\$100.00 per hour

In this case, even if I accept the landlord was charged an additional fee for their movers, I find the landlord has not provided sufficient evidence of the actual cost. The invoice the landlord has submitted does not provide a breakdown for the additional cost. Therefore, I dismiss this portion of the landlord claim.

Estimate to replace cabinet and pocket door

In this case, I do not accept the landlord's evidence that the cabinet or the pocket door were in such a condition that they required to be replaced. The picture the landlord has provided of the cabinet indicates there is some swelling on the insider of the draw; however, that cannot be seen in the photograph.

Further, while I accept the pocket door is peeling at the lower portion, the invoice the landlord has submitted for painting show that the door can be painted.

In addition, the landlord has not filed any documents to support the cost.

Based on the above, I find the landlord has failed to prove this portion of their claim. Therefore, I dismiss this portion of the landlord's claim.

Mould report

In this case, I did not require the tenant to provide any evidence. I find that it was the landlord's personal choice to obtain a mould report. Therefore, I dismiss this portion of the landlord's claim.

Painting

This portion of the landlord's claim was withdrawn. Therefore, I dismiss this portion of the landlord's claim.

Cleaning

I do not accept the landlord incurred any cost for cleaning. The landlord is claiming for an estimate, which they did not pay. The landlord provided no photographs of the rental to prove the rental unit was left unreasonable clean.

Further, I have reviewed the tenant's evidence, the video recording; I find the rental unit was left reasonable clean as required by the Act. I find the landlord has not met the burden of proof. Therefore, I dismiss this portion of the landlord's claim.

As the landlord has failed to establish any portion of their claim, I decline to award the landlord the cost of the filing fee.

Since the landlord has no legal rights to retain any portion of the security deposit or fob deposit, **I Order the landlord** to immediately return to the tenant their deposits. Should the landlord fail to comply with my Order, I grant the tenant a monetary order for the return of the security deposit \$925.00 and the fob deposit of \$100.00 for a total amount of **\$1,025.00**.

The landlord is directed to return the tenant's deposit to the tenant in the care of the tenant's legal counsel. The address has been noted on the covering page of this decision.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The landlord **is cautioned** that costs of such enforcement are recoverable from the landlord.

Conclusion

The landlord's application is dismissed. The tenant is granted a monetary order for the return of their security deposit and fob deposit.

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: March 04, 2019

Residential Tenancy Branch