Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding TITAN SERVICES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S, FFL

Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution ("application") seeking remedy under the *Residential Tenancy Act* (*"Act*"). The landlord applied for a monetary order in the amount of $1,500.00 for damages to the unit, site or property, to retain the tenants' security deposit for any amount owing, and to recover the cost of the filing fee.

The tenants and agents for the landlord ("agents") attended the teleconference hearing and gave affirmed testimony. The hearing commenced on April 11, 2019 and was adjourned after 61 minutes. An Interim Decision was issued dated April 12, 2019, which should be read in conjunction with this decision.

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.

Both parties confirmed having been served with documentary evidence from the other party and that they had the opportunity to review that evidence prior to the hearing. I find that both parties were sufficiently served under the *Act.*

Preliminary and Procedural Matters

At the outset of the hearing, the landlord's name was amended to remove the name "None" from the landlord's corporate name. This amendment was made pursuant to section 64(3) of the *Act.*

In addition, 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 for service on the other party.

Issues to be Decided

- Is the landlord 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?*
- Is the landlord 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 fixed-term tenancy began on November 1, 2016 and reverted to a month to month tenancy after October 31, 2017. Monthly rent during the tenancy was $850.00 per month at the start of the tenancy and was due on the first day of each month. By the end of the tenancy, monthly rent had increased to $875.00 per month.

The landlord's monetary claim of $1,500.00 is comprised as follows:

ITEM DESCRIPTION	**AMOUNT CLAIMED**
1. Lock re-keying	$30.21
2. Light bulbs	$31.27
3. Garbage	$10.00
4. Door	$102.43
5. Bedroom flooring	$360.19
6. Repair/Painting	$515.05
7. Cleaning	$80.00
8. **TOTAL**	**$1,500.00**

Firstly, the parties agreed that the tenancy ended by way of the tenant's providing proper written notice to end the tenancy.

Regarding item 1, the landlord has claimed $30.21 for the cost to re-key the rental unit as the agents stated that the tenants failed to return the return unit keys. The tenants confirmed that they were unable to locate the keys to the rental unit. The landlord

submitted a receipt in the amount of $30.21 from a locksmith in support of this portion of their claim.

Regarding item 2, the agents requested to withdraw item 2, during the hearing and as a result, I will not consider item 2 further in this decision.

There is no dispute that an incoming Condition Inspection Report ("CIR") was not completed by the landlord at the start of the tenancy. The landlord did not submit before photos of the rental unit taken at the start of the tenancy; however, did supply photos that the landlord stated were taken at the end of the tenancy. The landlord also submitted a copy of the outgoing CIR in evidence, which the landlord explained the tenant refused to sign.

Regarding item 3, the landlord has claimed $10.00 to dispose of garbage left behind by the tenants at the end of the tenancy. The agents referred to several photos showing dirt, grease and garbage behind the stove, and dirt and garbage behind the fridge. In support of the amount being claimed, the landlord submitted a receipt for $10.00 for a transfer station that the agents stated they were not charging his time to dispose of the garbage, just the cost of disposal. The tenants stated that they were not shown behind the stove and fridge at the start of the tenancy so don't know that it was their garbage left behind and noted that an incoming CIR was not completed by the landlord.

Regarding item 4, the landlord has claimed $102.43 for the cost of a door. The parties reached a mutually settled agreement under section 63 of the *Act*, on the amount of $102.43 for this portion of the landlord's claim. As a result, this item will be accounted for later in this decision.

Regarding item 5, the landlord has claimed $360.19 for the cost to repair bedroom flooring. The agents explained that the amount of $360.19 was calculated by taking the receipt total for flooring of $417.71 and deducting the excess amount of flooring returned for a refund of $57.62, for a net amount claimed of $360.19. The agents stated that the flooring replaced was 100 square feet ("SF") of carpet that was 7 years old and did not charge the tenants for their labour as a compromise for the age of the carpets. The agents testified that they received a very low cost estimate for laminate flooring which was less than the cost of carpet so the price was as low as possible for the flooring repair. The agents referred to only a few photos of the carpets and the tenants' response was that the photos show normal wear and tear. The tenants testified that they cleaned the carpets three times and that they were thoroughly clean at the end of

the tenancy. The tenants also stated that there was no incoming CIR to support the condition of the carpets at the start of the tenancy.

Regarding item 6, the landlord has claimed $515.05 for the cost of repairs and repainting. The agents testified that the interior paint was 2 years old at the start of the tenancy in November 2016, and that the tenancy ended in December 2018. The agents stated that they are not charging the tenant to refresh the paint, only for the costs to repair the walls and repaint those areas only. The agents referred to several photos of what the agents described as an insufficient repair of wall damage by the tenants, a poor drywall mudding job by the tenants, and according to the agents, to fix the mess created by the tenants' poor attempt at repairing wall damage. The agents also stated that it would have been better for the tenants not to attempt any repairs as it cost more to fix what they did then just to repair the damage to the walls before it was made worse by the tenants' poor repair job. The tenants disputed a photo by stating it was an exterior door and not an interior door as claimed by the landlord. The parties disagreed on the size of the some of the holes in the walls of the rental unit. The agents stated that it didn't matter if the holes were large or small; they still needed to be repaired.

Regarding item 7, the landlord has claimed $80.00 for the cost of cleaning the rental unit. The agents testified that the tenants performed minimal cleaning and failed to leave the rental unit in a reasonably clean condition. The agents referred to at least 10 colour photos in evidence in support of this portion of their claim. The agents described in the photos dust and debris behind the stove, dust on the top of the cabinets, dirty living room wall, a bathroom fan plugged with dust, some grease on the stove hood, the top of the fridge not wiped clean, dirty kitchen backsplash, and a freezer shelf that was not wiped clean. In addition, the range hood was still greasy when the tenants vacated the rental unit and the side of the stove appeared to have grease dripping down the side. The agents testified that a total of between 10 and 15 hours of their own time was not being claimed to clean the rental unit, and that the only costs for cleaning being claimed was the $80.00 paid to a cleaner for their cleaning work.

In response to this item, the tenants stated that the landlord did not complete an incoming CIR, and did not show the tenants the back of the stove or fridge so it could have been that way. The tenants stated that they did not see grease spots in the kitchen in the photos presented by the landlord and stated that they cleaned thoroughly before vacating the rental unit. The tenants stated that they were not left any instructions on cleaning and that they were barely home and were always on vacation and that they ate out most of the time. The female tenant did confirm there was dust on the cabinets and grease in the range hood.

The agents responded by stating that they were advised by text to clean behind the appliances and the tenants did confirm that they were advise to clean behind appliances in an email. The landlord submitted a receipt for $80.00 from a cleaning company in support of this portion of their claim.

Analysis

Based on the documentary evidence presented, 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 landlord bears the burden of proof to prove all four parts of the above-noted test for damages or loss.

Item 1- The landlord has claimed $30.21 for the cost to re-key the rental unit. Section 37(2) of the *Act* applies and states:

Leaving the rental unit at the end of a tenancy

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, and

(b) **give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.**

[Emphasis added]

As the tenants confirmed that they were unable to locate the keys to the rental unit and based on the receipt for $30.21 from the landlord, I find the tenants breached section 37(2) of the *Act* by failing to return the rental unit keys to the landlord. Therefore, I find the landlord has met the burden of proof and I grant the landlord **$30.21** as claimed.

Item 2 – As noted above, this item was withdrawn by the landlords during the hearing so will not be considered further.

Item 3 - The landlord has claimed $10.00 to dispose of garbage left behind by the tenants at the end of the tenancy. Residential Tenancy Branch ("RTB") Policy Guideline 1 – Responsibility for Residential Premises applies and states:

> **MAJOR APPLIANCES**
> 1. At the end of the tenancy the tenant must clean the stove top, elements and oven, defrost and clean the refrigerator, wipe out the inside of the dishwasher.
>
> 2. If the refrigerator and stove are on rollers, the tenant is responsible for pulling them out and cleaning behind and underneath at the end of the tenancy…

Based on the photo evidence and without any evidence from the tenants to confirm there were no rollers on the stove or fridge which are common on appliances, I find the tenants failed to dispose of the garbage left behind the appliances. Therefore, I find the landlord has met the burden of proof by providing the transfer station receipt of $10.00 and I grant the landlord **$10.00** as claimed for this portion of their claim.

Item 4 – As indicated above, the parties reached a mutually settled agreement under section 63 of the *Act*, on the amount of $102.43 for this portion of the landlord's claim. Therefore, I find the landlord is entitled to **$102.43** from the tenants pursuant to section 63 of the *Act.*

Item 5 – The landlord has claimed $360.19 for the cost to repair bedroom flooring. The agents stated that the flooring replaced was 100 square feet ("SF") of carpet that was 7 years old and did not charge the tenants for their labour as a compromise for the age of the carpets. The agents testified that they received a very low cost estimate for laminate flooring which was less than the cost of carpet so the price was as low as possible for the flooring repair. The agents referred to only a few photos of the carpets and the tenants' response was that the photos show normal wear and tear. The tenant testified

that they cleaned the carpets three times and that they were thoroughly clean at the end of the tenancy. Section 23 of the *Act* applies and states:

> **Condition inspection: start of tenancy or new pet**
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> **23** (1) The landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.
>
> (2) The landlord and tenant together must inspect the condition of the rental unit on or before the day the tenant starts keeping a pet or on another mutually agreed day, if
>
> (a) the landlord permits the tenant to keep a pet on the residential property after the start of a tenancy, and
>
> (b) a previous inspection was not completed under subsection (1).
>
> (3) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.
>
> (4) **The landlord must complete a condition inspection report in accordance with the regulations.**
>
> (5) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.
>
> (6) The landlord must make the inspection and complete and sign the report without the tenant if
>
> (a) the landlord has complied with subsection (3), and
>
> (b) the tenant does not participate on either occasion.
>
> [Emphasis added]

Based on the above, I find the landlord failed to comply with section 23 of the *Act* by failing to complete an incoming CIR. Therefore, I find that this portion of the landlord's claim must fail for two reasons. Firstly, I find that the landlord has provided insufficient evidence to support what the condition of the carpets was at the start of the tenancy. Secondly, I find the photographic evidence does not support that the carpets were in need of replacement. Therefore, I dismiss item 5 without leave to reapply, due to insufficient evidence.

Item 6 - The landlord has claimed $515.05 for the cost of repairs and repainting. The agents testified that the interior paint was 2 years old at the start of the tenancy in November 2016 and that the tenancy ended in December 2018. The agents stated that they are not charging the tenant to refresh the paint, only for the costs to repair the walls and repaint those areas only. Based on the photographic evidence, I agree with the landlord and find the repairs completed by the tenants would have been better left untouched due to the substandard repairs completed by the tenants. RTB Policy Guideline 40 – Useful Life of Building Elements indicates that the useful life of interior paint is 4 years. Therefore, as the interior paint was two years old, I will apply a depreciated value of 50% to the amount claimed of $515.05. Accordingly, while I find the landlord has met the burden of proof and I find the tenants breached section 37 of the *Act* for the substandard repairs to the wall paint, I find the landlord is only entitled to **$257.53** for this portion of their claim.

Item 7 - The landlord has claimed $80.00 for the cost of cleaning the rental unit. I have reviewed the photographic evidence and I find that the landlord has provided sufficient evidence that the rental unit required $80.00 to clean it based on the receipt submitted in evidence. I find the bathroom fan was completely plugged with dust and dirt, that the female tenant agreed that the stove hood still had grease on it, and that the top of the fridge and cabinets were not cleaned. I also find that $80.00 is a reasonable amount and therefore, I grant the landlord **$80.00** as claimed for this portion of the landlord's claim. I also note that while an incoming CIR was not completed, the tenants are still required to comply with section 37 of the *Act* and leave the rental unit in a reasonably clean condition, which I find the tenants failed to do.

As the landlord's application had merit, I grant the landlord **$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 landlord has established a total monetary claim of **$580.17** comprised of $30.21 for item 1, $10.00 for item 3, $102.43 for item 4, $257.53 for item 6, $80.00 for item 7, plus the $100.00 filing fee. I authorize the landlord to retain the full security deposit including $0.00 in interest of $425.00 in partial satisfaction of the landlord's monetary claim. I grant the landlord a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenants to the landlord in the amount of **$155.17**.

Conclusion

The landlord's claim is partially successful.

The landlord has established a total monetary claim of $580.17. The landlord has been authorized to retain the tenants' full security deposit including $0.00 in interest of $425.00 in partial satisfaction of the landlord's monetary claim pursuant to section 38 and 67 of the *Act*.

The landlord is granted a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenants to the landlord in the amount of $155.17. 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.

This decision will be emailed to both parties. The monetary order will be emailed to the landlord only for service on the tenants.

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: June 11, 2019

Residential Tenancy Branch