



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding TWENTY ONE HOLDINGS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR FFT MNDCT RR FFL MNDL-S MNRL-S OPRM-DR

Introduction

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

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the "Ten-Day Notice") pursuant to section 46;
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and,
- authorization to recover the filing fee for this application pursuant to section 72.

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

- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- an Order of Possession pursuant to section 55;
- a monetary order for unpaid rent and for damage to the unit pursuant to section 67; and,
- authorization to recover the filing fee for this application pursuant to section 72.

Both parties attended the hearing and had full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions. Neither party raised issues of service. I find the parties were served in accordance with the *Act*.

At the outset of the hearing the parties both agreed that the tenant has vacated the rental unit prior to the hearing. Accordingly, the landlord withdrew its request for an order of possession and the tenant withdrew her request for cancellation of the Ten-Day

Notice. The tenant's application and the landlord's cross-application were amended accordingly.

Preliminary Matter: Name Correction

Both parties agreed to amend the tenant's application to state the correct name of the landlord. I herein amend the tenant's application to state to the correct name of the landlord, which is stated on first page of this decision, pursuant to section 64(3)(c) of the Act.

Issue(s) to be Decided

Is the tenant entitled to an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65?

Is the tenant entitled to recover the filing fee for this application pursuant to section 72?

Is the landlord entitled to a monetary order for unpaid rent and for damage to the unit pursuant to section 67?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38?

Is the landlord entitled to recover the filing fee for this application pursuant to section 72?

Background and Evidence

The tenancy started in April 14, 2019. The monthly was \$825.00 and the tenant paid a \$825.00 security deposit.

The tenancy agreement stated that a dishwasher was included. The tenancy agreement also stated that cable television services were not included.

The tenant testified that she was notified on October 29, 2018 that the building was switching cable television service providers. She stated that she was later advised that the building was terminating cable television services and that rent would be reduced by \$60.00 per month to compensate the tenants.

The tenant testified that a replacement service cost \$77.00 per month. The landlords testified that there was a replacement service available at \$60.00 per month when the notice was issued but the tenant may have missed that promotion.

The tenant testified that the dishwasher was included in the tenancy. She testified that marketing material said there was a dishwasher. The landlord testified that there never was an intention to provide a dishwasher and the term on the tenancy agreement was a mistake. The landlord argued that the rental agreement did not include a dishwasher because it is a small studio apartment and the landlord provided the marketing material for the rental unit which stated that the dishwasher was not included.

In addition, the landlord testified that the tenant did not complain about the lack of a dishwasher until January 31, 2019. The tenant testified marketing material provided by the landlord is different than the marketing material the landlord used when the tenant moved in.

The landlord claims that the tenant has not paid rent of \$1,590.00 for May 2019. The tenant admits that she owes the landlord rent of \$1,590.00 for May but she testified that she sent the landlords a cheque in the amount of \$90.00 for May 2019 after the tenant unilaterally made deductions from the rent owed. The landlords testified that they have not deposited the \$90.00 cheque.

The landlord argued that the rental unit was left in a dirty condition and there was damage to the walls caused by hangers installed by the tenant. The tenant testified that she left the rental unit in a clean condition.

Analysis

The tenant and the landlord each presented claims for compensation. I will address each claim individually.

A. Tenant's Claims

The tenant has claimed compensation for loss of use of the dishwasher and loss of cable television services.

(i) *Loss of use of dishwasher*

The tenant claimed compensation for loss of use of a dishwasher. Section 65(1)(f) of the *Act* states that an arbitrator may order “that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement.”

In this matter, the tenancy agreement does explicitly state that the landlord will provide the tenant the use of a dishwasher. However, I find that this term is actually a mutual mistake.

The advertising material provided by the landlord specifically states that rental unit does not include a dishwasher. Furthermore, the first documented complaint from the tenant about the lack of a dishwasher was on January 31, 2019, over nine months after the tenant moved into the rental. If the parties had expected the rental unit to include a dishwasher, it is presumed that the tenant would have noticed the lack of a dishwasher and complained earlier.

In the totality of the circumstances, I find that the parties did not intend to include a dishwasher in the tenancy agreement and the term in the agreement regarding a dishwasher was mistakenly inserted. Accordingly, I dismiss the tenant’s application for compensation for loss of use of the dishwasher

(ii) *Loss of cable service*

The tenant also claimed compensation for loss of cable services. Section 27(2)(b) of the *Act* states that the landlord may terminate or restrict a service or facility if the landlord “...reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.”

I find that the landlord did reduce the rent by an amount equivalent to the reduction in value of the tenancy resulting from the termination of cable services. I find the landlord’s testimony credible that the media service provider offered a comparable television package for \$60.00 at the time the rent reduced by \$60.00. Further, I find that by reducing the rent by an equivalent amount, it does not matter if the cost of the television services later increased before the tenant accepted the alternative cable subscription.

For the forgoing reasons, the tenants request for compensation for loss of cable television services is dismissed.

Since the tenant has not been successful in her application, I dismiss the tenant's application for reimbursement of the filing fee pursuant to section 72.

B. Landlord's Claims

The landlord has claimed compensation for unpaid rent, cleaning costs and painting costs.

(i) *Unpaid rent*

Based upon the agreed testimony of both parties, I find that the tenant has not paid rent for May 2019 in the amount of \$1,590.00. Pursuant to section 71(1) of the *Act* which states, "If a tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying tenant must compensate the other for damage or loss that results." I find the landlord is entitled to a monetary award of \$1,590.00 for unpaid rent in May 2019.

The parties also agreed that the tenant has provided the landlords with a cheque in the amount of \$90.00 in May 2019 which the landlord has not deposited. I order the landlord to void this cheque and return the original copy of the cheque to the tenant undeposited and unnegotiated. If the landlord does deposit this cheque, the amount of the cheque shall be credited to the tenant in regards to any debt owed by the tenant to the landlord herein and any excess amount shall be returned to the tenant.

(ii) *Cleaning costs*

Section 67 of the *Act* establishes that if damage or loss results from a tenancy agreement or the *Act*, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. 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, the onus is on the landlord to prove entitlement to a claim for a monetary award. 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.

Section 37(2)(a) of the *Act* states that the tenant must “...leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.” It is important to note that “reasonably clean” is a standard that is less than perfectly clean or spotless. A tenant is not responsible for the landlord’s expenses in bringing a rental unit to a standard greater than “reasonably clean”

Based upon the photographs provided, I find that the tenant has left the rental unit in a reasonably clean condition. As such, I dismiss the landlord’s requests for compensation for cleaning expenses.

(iii) Painting costs

The landlord has also requested compensation for painting costs necessitated by the removal of wall hangers applied by the tenant. The landlord has provided photographs showing the wall hangers on the walls. However, the landlord has provided any photographs showing the alleged damage caused the removal of the wall hangers. As such, I am not satisfied that the landlord has provided sufficient evidence to prove the extent of losses caused by the tenant. I find that more likely than not, the landlord would have sustained damage to the walls from the tenant’s wall hangers, in the absence of specific evidence of damage, I will consider an award of nominal damages. *Residential Tenancy Policy Guideline* No. 16 defines nominal damages as:

“Nominal damages” are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

In this matter, an award of nominal damages is appropriate because the landlord has established evidence proving that the tenant left wall hangers on the walls which likely caused damage. However, the landlord has failed to prove the extent of its damage. In these circumstances, I award the landlord nominal damages of \$100.00 to repair the walls.

Since the landlord has been partially successful in its application, I grant the landlord reimbursement of its filing fee pursuant to section 72.

I find that the landlord holds a security deposit in the amount of \$825.00 which I find may be deducted from the damages owed to the landlord herein pursuant to 72(2)(b) of the *Act*.

Based on the forgoing, I order the tenant to pay the landlord the sum of \$965.00, as calculated below.

<u>Item</u>	<u>Amount</u>
Unpaid rent	\$1,590.00
Damages to walls	\$100.00
Deduct security deposit	-\$825.00
Filing fee	\$100.00
Balance of deposit to tenants	\$965.00

Conclusion

I grant the landlord a monetary order in the amount of **\$965.00**. If the tenant fails to comply with this order, the landlord may file the order in the Provincial Court to be 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: June 21, 2019

Residential Tenancy Branch