



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CENTURY CLUB SUITES and
[tenant name suppressed to protect privacy]

REVIEW HEARING DECISION

Dispute Codes MNDCT, MNSD, FFT
 MNDCL-S, FFL

Introduction

This review hearing was scheduled based on the Tenant's application for Review Consideration made on June 25, 2019 and a decision dated July 7, 2019 which granted a review hearing on the Landlord's application only.

In the original applications made by both parties under the Residential Tenancy Act (the "Act"), the Tenant applied for monetary compensation, for the return of the security deposit and for the recovery of the filing fee paid for the Application for Dispute Resolution. The Landlord applied for monetary compensation, to retain the security deposit towards compensation owed, and for the recovery of the filing fee paid for the Application for Dispute Resolution.

In the original decision the Landlord was allowed to retain the security deposit and was granted a monetary order for a balance due of \$643.34.

The review hearing I conducted was solely on the review consideration decision regarding the decision made on the Landlord's application. The parties were reminded that the review was granted for the Landlord's application only and therefore the decision regarding the Tenant's application dated June 10, 2019 stands and remains in force.

The Tenant and three agents for the Landlord (the "Landlord") were present for the review hearing. The Landlord confirmed receipt of a copy of the review consideration decision and the Tenant's new evidence. The Tenant confirmed receipt of the Landlord's new evidence. Neither party brought up any issues regarding service during the hearing.

All parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

Issues to be Decided

Is the Landlord entitled to monetary compensation?

Should the Landlord be authorized to retain the security deposit towards compensation owed?

Should the Landlord be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

While I have considered the relevant documentary evidence and testimony of both parties, not all details of the submissions are reproduced here.

The Landlord testified that the tenancy started on July 1, 2016 and ended on December 15, 2018. Monthly rent was \$1,345.00 and a security deposit of \$625.00 was paid at the start of the tenancy. The Landlord confirmed that they are still in possession of the full security deposit amount.

The Tenant was in agreement with the tenancy details as stated by the Landlord except that she stated that she moved in on July 3, 2016 and not July 1, 2016. The Tenant confirmed that she did not receive any amount of her security deposit back.

The Landlord has applied for compensation in the amount of \$1,168.34. This includes a claim for cleaning the rental unit in the amount of \$250.00. They testified that this is their flat rate for cleaning as they discussed with the Tenant on December 9, 2018. They noted that the Tenant left many items behind including furniture and garbage, so the cleaning took place after those items had been removed.

The Landlord submitted an invoice that states that a full clean was conducted on February 2, 2019 in the amount of \$250.00. The Landlord also submitted a copy of the 'move-out cleaning schedule' that outlines the areas of the rental unit to be cleaned when a tenant is moving out. The Landlord stated that the Tenant was provided with a copy of this on December 9, 2019 and was aware that \$250.00 would be charged if the cleaning was not completed by the Tenant. They stated that the Tenant advised them that she would not have time to clean and therefore would pay the cleaning charge.

The Landlord noted that the rental unit was not re-rented until later in February 2019 although they are not claiming rent from the Tenant. They also stated that although the invoice was dated in February 2019 they are not sure when the actual cleaning was done, but it was after the unit was empty and ready to be cleaned prior to a new tenant moving in.

The Tenant stated that she was sent a cleaning checklist on November 28, 2018 by email and not on December 9, 2018 as stated by the Landlord. The Tenant testified that she had the rental unit professionally cleaned on December 15, 2019 and referenced an affidavit submitted in her evidence. The affidavit dated March 26, 2019 states that the person signing the affidavit was hired beginning on April 15, 2018 for bi-weekly cleaning of the rental unit. It also notes that the unit was in good condition and that the blinds, walls, carpets, countertops and flooring were undamaged. In the affidavit, it is noted that the rental unit was cleaned on December 15, 2019 and that the Landlord did not attend the unit by 11:45 am when the cleaner left.

The Tenant also submitted an invoice dated December 15, 2018 for 3 hours of cleaning for a total amount of \$150.00.

The Landlord stated that on December 9, 2018 the Tenant agreed to pay for cleaning and carpet cleaning in accordance with the Landlord's fee schedule for move-out cleaning. The Landlord stated that they attended the rental unit on December 9, 2018 which is when the move-out inspection report was scheduled at the Tenant's request. However, as the Tenant was not done moving on this date, the move-out inspection was not completed at the time. The Landlord noted that multiple attempts to contact the Tenant following this date were unsuccessful and therefore they were not able to reschedule the move-out inspection with the Tenant.

A copy of the Condition Inspection Report was submitted into evidence and was signed by the Tenant and Landlord at move-in on July 3, 2016 and by the Landlord only at move-out on December 20, 2019. The Landlord submitted email correspondence with the Tenant in which they discuss times for the move-out inspection. On December 6, 2018 the Tenant states that she will be moving on December 9, 2018 but will not be fully moved, will just have most of her belongings out.

On December 12, 2018 the Landlord asks for confirmation of a time to do the move-out inspection on Friday. On December 17, 2018 the Tenant emailed the Landlord stating that she was prepared to do the move-out inspection on December 15, 2018. The Landlord responded that a time was not arranged and that the email was sent afterhours and therefore was not received until the following Monday.

The Tenant stated that an inspection was never arranged for December 9, 2018 and instead that this date was discussed as she would be moving larger items and therefore the Landlord would attend to open the gate. The Tenant referenced an email submitted

in her evidence dated December 7, 2019 in which the Landlord agreed to be there on December 9, 2018 to open the gate to help the Tenant move the larger items out of her rental unit.

The Tenant stated that she had agreed to move out at 1:00 pm on December 15, 2019 and therefore waited for the Landlord at this time for the inspection. However, she stated that she called the Landlord when the cleaning was done around 11:45 with no response and that the Landlord never showed up on this date. The Tenant confirmed that she participated in the move-in inspection.

The parties both confirmed that the Tenant did not agree to any deductions from her security deposit in writing, although there was some dispute about what the Tenant agreed to verbally. They were in agreement that the Tenant provided her forwarding address in writing on December 15, 2018 when the keys were left under the office door and the Landlord confirmed receipt of this letter on December 17, 2018.

The Landlord has also claimed \$225.00 for carpet cleaning. They stated that there is a clause on their tenancy agreement regarding carpet cleaning and that this is the standard charge. The tenancy agreement was submitted into evidence and notes that if the carpets are professionally cleaned at the start of the tenancy, the tenant is required to have them professionally cleaned at the end.

The Landlord submitted an invoice dated February 1, 2019 which was for a total of \$304.50 for carpet cleaning in two rental units. The invoice breaks down the cost for each unit and the charge for the Tenant's unit is \$173.25 including tax. The Landlord noted that the date of the invoice is not necessarily the date the cleaning was completed.

The Tenant stated that she is in agreement that she is to pay for carpet cleaning but is not in agreement as to the amount claimed. The Tenant stated that her carpet was not heavily soiled. She also questioned why the invoice was dated in February 2019 when she moved out in December 2018 and noted that she found it unlikely that the Landlord would not rent out the unit for two months.

The Landlord is also seeking \$225.00 for packing and garbage removal. They stated that they found the keys to the rental unit under the door of their office on December 17, 2018 and entered the unit on that same day. The Landlord referenced photos that they stated were taken on December 17, 2018 upon first entering the rental unit. The photos include a photo of the bathroom with garbage left in it, items in the kitchen drawers, a fridge full of food, a dirty oven, mattresses left behind, items left on the patio, a desk left behind, as well as various other areas of the rental unit.

The Landlord stated that they are claiming for the amount paid to pack up the items, remove the garbage and place the furniture and belongings into storage. They

submitted an invoice from the worker who completed the work dated January 1, 2019 in the amount of \$225.00.

The Tenant questioned the invoice submitted by the Landlord in that it was not signed and was dated January 1, 2019, which is a statutory holiday. The Tenant also stated that none of the items in the photos belong to her and that the Landlord had 3 days between her moving out and entering the unit to fill it with items that were not hers. She submitted that nothing was left behind in the rental unit and that she had the rubbish removed on December 14, 2018 and the rental unit cleaned on December 15, 2018.

The Tenant submitted a letter dated January 24, 2019. The writer of the letter states that they operate a "unsophisticated rubbish and trash removal business". The writer of the letter further states that they were contacted by the Tenant to remove garbage and old furniture from the rental unit which was completed on December 14, 2018.

The Tenant also noted that she noticed lights left on in her rental unit after moving the majority of her belongings out which would indicate that someone was in the rental unit. She also questioned the items shown in the photos. She stated that she does not own a round table, the desk was not hers, and that she did not leave any mattresses behind.

The Landlord has also claimed \$420.00 for removal of the furniture that they stated was left behind in the Tenant's rental unit. They stated that this was the cost for removing the items from storage following the previous hearing when the Tenant denied that the items were hers. The Landlord submitted a quote which was included in evidence for the initial hearing and for this hearing submitted an invoice which was issued after completion of the work from a different company. Both the quote and invoice were for the amount of \$420.00. The invoice dated June 24, 2019 states that furniture and household items were removed from storage for the amount of \$345.00 and three mattresses were disposed of for a fee of \$25.00 each for a total of \$420.00.

The Tenant questioned why the Landlord did not have a thrift store come to pick up the items. She also questioned why the quote and invoice were the exact same amount, despite being from different companies, and noted that the items changed from the quote to the invoice. The Tenant stated that the quote included removal of 2 mattresses and a fridge, while the invoice notes removal of 3 mattresses and did not remove a fridge as that belonged to the Landlord.

Lastly, the Landlord has claimed \$100.09 for replacement of two blinds that they stated were damaged during the tenancy. They submitted a receipt dated January 21, 2019 in the total amount of \$387.87. However, they noted that the portion for the Tenant's unit

totalled \$100.09. The Landlord stated that the blinds were in good condition at the start of the tenancy as indicated on the move-in Condition Inspection Report but were unsure as to the age of the blinds. The Landlord submitted photos of the damaged blinds.

The Tenant stated that the blinds were not new at the start of the tenancy and were also not damaged during the tenancy. The Tenant stated that she would have had them replaced had they been damaged. She stated that the blinds in the Landlord's photos are not her blinds.

Analysis

As the Landlord has applied for compensation, I refer to Section 7 of the *Act* which states the following:

- 7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- (2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Residential Tenancy Policy Guideline 16: Compensation for Damage or Loss provides further clarification on determining if compensation is due through a four-part test as follows:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

I also note that in accordance with rule 6.6 of the *Residential Tenancy Branch Rules of Procedure*, the onus to prove a claim, on a balance of probabilities, is on the party making the claim. Therefore, in this matter the Landlord has the burden of proof to

establish their claim and to submit sufficient evidence over and above their testimony when the two parties present conflicting testimony.

Regarding the Landlord's claim for cleaning, I accept the affidavit and invoice submitted by the Tenant that states that the rental unit was professionally cleaned on December 15, 2019. While the Landlord also submitted an invoice for cleaning in February 2019, I find that further cleaning may have been needed in the rental unit following painting or other work that may have been done or prior to a new tenant moving in. While I agree with the Landlord that an invoice date does not necessarily mean that is the date the work was completed. I find the cleaning invoice appears to indicate that the Tenant's rental unit was cleaned on February 2, 2019 and another rental unit cleaned on February 5, 2019 as both dates are included on the invoice.

As such, I find that the evidence before me establishes that the Tenant had the rental unit cleaned on December 15, 2018, the date she moved out and therefore I do not find that the Tenant is responsible for additional cleaning that occurred on or around February 2, 2019. I do not find sufficient evidence before me to establish that additional cleaning was needed in the rental unit beyond what the Tenant had done on December 15, 2019. I decline to award any compensation for cleaning.

As for the carpet cleaning, the Tenant agreed that she was to pay for carpet cleaning but disputed the amount charged. I accept that the tenancy agreement required the carpets to be cleaned at the end of the tenancy and find it reasonable that this would occur in a tenancy of this length. However, although the Landlord is seeking \$225.00 for carpet cleaning which they stated was their standard rate, I find that the invoice outlines that the actual cost for the Tenant's unit was \$173.50, as noted on the invoice by the Landlord. As I find this amount to be reasonable and representative of the actual loss of the Landlord, I award the Landlord an amount of \$173.50, not the full \$225.00 as claimed.

Regarding the claim for packing/garbage removal, and the claim for furniture disposal, I decline to award any compensation to the Landlord for either of these claims. While the Landlord submitted photos of items left behind, the Tenant disputed that these photos were of her rental unit or her belongings. I find the photos submitted by the Landlord to be in conflict with the invoice from the Tenant's cleaner as I do not find that 3 hours of cleaning could have taken place with that much garbage or furniture left behind. I also agree with the Tenant that there seems to be a conflict between items noted on the quote and on the actual invoice.

In the absence of further evidence that would establish that the Tenant left garbage and belongings behind, I am not satisfied that these were the Tenant's items and that she is responsible for the cost of removal/disposal. I decline to award any compensation for the packing/garbage removal or furniture removal as claimed.

I also note that although the Condition Inspection Report was submitted into evidence, I do not find it to be reliable evidence as to the condition of the rental unit at the end of the tenancy. As stated in Section 35 of the *Act*, a landlord must offer the tenant at least two opportunities for the inspection. While the Landlord stated that an inspection was scheduled for December 9, 2018, upon review of the emails submitted into evidence by both parties, I do not find that the emails establish that a time was determined for an inspection on December 9, 2018.

I also do not find the emails to establish that an inspection time was arranged on December 15, 2019. Therefore, in the absence of further information as to what occurred with the scheduling of the move-out inspection, I find that the move-out report cannot be used as reliable evidence as I am not satisfied as to whether or not the Tenant was provided a full opportunity to participate as required by the *Act*.

Regarding the claim for the blinds, the Tenant denied that these were her blinds in the photos and also submitted a statement from her cleaner that the blinds were in good condition. As such, and without a move-out inspection to rely upon, I am not satisfied that the Tenant damaged the blinds during the tenancy. I decline to award any compensation for the replacement of the blinds.

As for the security deposit, the parties agreed that the tenancy ended on December 15, 2018 and that the forwarding address was provided through a letter this same date. The Landlord stated that the letter was received on December 17, 2018.

As stated in Section 38(1) of the *Act*, a landlord has 15 days from the later date of the day the tenancy ends or the day the forwarding address is provided to return the deposit or file a claim against it. As the Landlord filed the application on December 20, 2018, I find that they applied within the time allowable and therefore were in compliance with Section 38(1) of the *Act*. As such, I do not find that the Tenant is entitled to double the deposit in accordance with Section 38(6).

As I find that the Landlord's application had merit regarding the carpet cleaning, pursuant to Section 72 of the *Act*, I award the recover of the filing fee in the amount of \$100.00. The Landlord is awarded a total of \$273.50 which may be retained from the security deposit. Therefore, the Tenant is awarded a Monetary Order for the return of the remainder of the security deposit in the amount of \$351.50.

The decision regarding the Tenant's application, dated June 10, 2019 stands as was written. The decision and Monetary Order dated June 10, 2019 regarding the Landlord's application is set aside and instead the parties must abide by the Monetary Order of this review hearing decision.

Conclusion

Pursuant to Sections 38, 67 and 72 of the *Act*, I grant the Tenant a **Monetary Order** in the amount of **\$351.50** for the return of the remainder of the security deposit, after deductions as outlined above. The Tenant is 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: September 05, 2019

Residential Tenancy Branch