



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL, FFL

Introduction

On February 14, 2019, the Landlord made an Application for Dispute Resolution seeking monetary compensation pursuant to Section 67 of the *Residential Tenancy Act* (the “*Act*”) and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

This Application was set down for a hearing on July 16, 2019 and the hearing was subsequently adjourned to be heard on September 20, 2019 as there was not enough time to complete the hearing initially.

The Landlord attended the hearing with E.D. The Tenant attended the hearing as well. All in attendance provided a solemn affirmation.

As per my Interim Decision dated July 16, 2019, I have accepted and considered both parties’ evidence when rendering this decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to a Monetary Order for unpaid rent?
- Is the Landlord entitled to a Monetary Order for compensation?
- Is the Landlord entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on October 15, 2017 and ended when the Tenant gave up vacant possession of the rental unit on or around January 29, 2019. Rent was established at \$1,150.00 per month, due on the first day of each month. A security deposit of \$550.00 was also paid. The Landlord submitted into evidence a tenancy agreement that was signed by both parties on October 1, 2017.

All parties agreed that a move-in inspection report was conducted at the beginning of the tenancy with the Tenant, on October 15, 2017. A move-out inspection was never conducted with the Tenant as the Tenant abandoned the rental unit on or around January 29, 2019. The Landlord attempted to contact the Tenant, but the Tenant blocked communication. A move-out inspection was conducted by the Landlord on February 3, 2019. A copy of the move-in and move-out inspection reports were submitted as documentary evidence.

The Tenant provided written authorization for the Landlord to keep the entire security deposit.

The Landlord advised she was seeking compensation in the amount of **\$161.91** for the cost to patch, repair, and paint relatively large holes in the bedroom walls. E.D. stated that the Tenant asked if she should patch the holes and he told her not to bother; however, when he arrived at the rental unit, he discovered large holes in the wall that were approximately two inches wide. He stated that these holes required a lot of plaster to fix. He also stated that he had to remove wall anchors, sand, patch, and then paint the walls. He referenced pictures submitted as documentary evidence and an invoice for the work completed to corroborate the cost of the repairs.

The Tenant advised that she used drywall plugs in the wall and started to fill in one hole, but the Landlord told her not to bother. She referenced her video recording that was submitted as documentary evidence to refute the alleged condition of the walls. She stated that the person she had help her move was not there at the end of the tenancy but confirms that he did not see any holes in the wall.

The Landlord stated that she was seeking compensation in the amount of **\$269.65** for the cost to clean appliances that were left dirty at the end of the tenancy. She submitted that she had to take apart the fridge to clean it as there was fish stuck in a grill and that there was a fish smell emanating from the fridge. She stated that while the self-cleaning function was used in the oven, the residue was not cleaned afterwards. She advised that the dishwasher gasket needed to be soaked and cleaned as there was a tremendous amount of food residue coating it. She stated that the washer gasket was not cleaned, that the dryer lint tray was full, and that these had to be soaked to be cleaned. She advised that all of these appliances were under two years old. She referred to pictures submitted and to the invoice of the cleaning costs of 6 hours, at \$40.00 per hour, to corroborate these claims.

The Tenant stated that when she vacated the rental unit, she “believed it was clean” and “felt it was clean.” She had her daughter help her clean as well. She suggested that the dirty dishwasher gasket was due to a natural build-up. She also stated that she could not clean the toilet properly due to a lift system that she had installed on the toilet. As well, she did not know that there were traps on the washer/dryer that needed to be emptied. However, she stated that she cleaned, with the help of her daughter, the inside and outside of the cupboards, and she left the rental unit clean “in her mind.”

E.D. advised that an instruction manual was left with the Tenant for the washing machine, so she should have been aware of the areas that needed cleaning.

The Landlord stated that she was seeking compensation in the amount of **\$252.00** for the cost to clean the rental unit at the end of the tenancy. She advised that the window sills, ceiling fan, counters, backsplash, walls, light fixtures, floors, and bathroom all needed to be wiped down. She stated that there was a lot of dust and hair left by the Tenant, that cracker crumbs were left, that the windows were not washed, and that there was Krazy Glue on the countertop. She referenced the submitted pictures and the invoice to substantiate this claim.

The Tenant reiterated that she cleaned the rental unit with her daughter’s assistance, that the floors were washed, that the windows were cleaned often, and that she does not agree with the Landlord’s testimony.

The Landlord stated that she was seeking compensation in the amount of **\$136.50** for the cost to remove garbage left by the Tenant. She cited the pictures submitted as evidence to support this claim and noted that the Tenant’s video does not show the

inside of the cupboards. She provided an invoice for the cost of this claim, which included time, travel, gas, and dump fees.

The Tenant advised that the Landlord left “rubble”, flowerpots, wood, and shingles bedside the house prior to the tenancy commencing and she should not be responsible for this. She stated that on the day she vacated the rental, she left at 2:00 PM and left a rug outside for her brother to pick up; however, she “remembered” that he returned to the rental unit at 5:00 PM but the rug was moved inside, so he could not access it. She conceded that she may have left her bra behind the washing machine though.

The Landlord advised that she was alerted of the Tenant’s departure by the upstairs tenant. When she arrived at the rental unit, she noticed that the key was outside on the ground, that the rental unit was not secure, that she conducted an emergency inspection, and that there were still belongings in the rental unit.

The Landlord advised that she was seeking rent arrears in the amount of **\$1,150.00** for February 2019 rental loss as the Tenant gave written notice to end her tenancy on January 7, 2019 to vacate the rental unit by February 14, 2019. As the Tenant’s rent was due on the first day of each month, the Tenant would have been responsible for February 2019 rent in full. The Tenant provided written authorization for the Landlord to keep the security deposit to cover a portion of February 2019 rent arrears.

The Tenant confirmed that these details were accurate.

The Landlord advised that she was seeking compensation in the amount of **\$557.72** for the cost to replace the dishwasher. She stated that the Tenant broke the upper rack assembly and due to the age of the washing machine, she could not find a replacement part. The cost that she is claiming for is the cost of a replacement dishwasher. She stated that the dishwasher is approximately 8 years old, that it is in good condition, that it still works well, and that it is being used by the current tenant; however, she is concerned that the amount of debris left in the gasket seal will detract from the lifespan of the appliance. Alternately, she is seeking \$200.00 - \$300.00 for the cost of a comparable used dishwasher.

The Tenant stated that the rack was broken when she moved in, so she put it aside because it was in the way. She reiterated that the dishwasher is currently being used by the current tenant and that the food debris left behind is from normal use.

Finally, the Landlord advised that she was seeking compensation in the amount of **\$33.53** for the cost to replace the mail keys as the Tenant did not return them. She stated that she emailed the Tenant on February 17, 2019 for the keys and the Tenant stated that she would return them when she was back in town. The Landlord needed to cut new keys for the current tenant and she submitted an invoice for the cost to replace them.

The Tenant stated that she “forgot” the details of what happened and she “vaguely recalls” that she forgot to return these keys when she vacated the rental unit. She advised that there was a heavy snowfall and both her and her son were unable to drive to return the keys. She stated that she mailed the keys back on or around February 16 or 17, 2019.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

Section 23 of the *Act* states that the Landlord and Tenant must inspect the condition of the rental unit together on the day the Tenant is entitled to possession of the rental unit or on another mutually agreed day.

Section 35 of the *Act* states that the Landlord and Tenant must inspect the condition of the rental unit together before a new tenant begins to occupy the rental unit, after the day the Tenant ceases to occupy the rental unit, or on another mutually agreed day. As well, the Landlord must offer at least two opportunities for the Tenant to attend the move-out inspection report.

Section 38(1) of the *Act* requires the Landlord, within 15 days of the end of the tenancy or the date on which the Landlord receives the Tenant’s forwarding address in writing, to either return the deposit in full or file an Application for Dispute Resolution seeking an Order allowing the Landlord to retain the deposit. However, as the Tenant provided the Landlord with written authorization to keep the deposit, this Section of the *Act* does not apply.

With respect to the Landlord’s claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, “It is up to the party who is claiming

compensation to provide evidence to establish that compensation is due”, that “the party who suffered the damage or loss can prove the amount of or value of the damage or loss”, and that “the value of the damage or loss is established by the evidence provided.”

Regarding the Landlord’s claim for the cost to repair holes in the wall, Policy Guideline # 1 states that “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, and the tenant is responsible for all deliberate or negligent damage to the walls.” When comparing the Landlord’s pictures of large holes in the walls to the Tenant’s video of the rental unit, I find that the evidence of large nail holes is entirely contradictory. As the onus is on the Landlord to substantiate the basis of her claim, I am not persuaded of the existence of large holes in the walls. However, when viewing the video evidence, I do note many holes in the walls that required filling and painting. As such, based on the totality of the evidence before me, I am satisfied that the Landlord has corroborated a nominal monetary award in the amount of **\$50.00** only for repair of the damage to the walls.

Regarding the Landlord’s claim for compensation in the amount of \$269.65 for the cost to clean appliances, the Tenant acknowledged that she was negligent in cleaning the toilet and oven properly, and she was ignorant about the traps in the washer and/or dryer. Furthermore, in viewing the Tenant’s video, she does not film the inside of the fridge, dishwasher, or cupboards. Based on the evidence before me, in conjunction with acknowledgement that other areas of the rental unit were left dirty, I do not find that the Tenant’s “belief” that she “felt” the rental unit was clean is very persuasive or compelling when weighed against the Landlord’s evidence. Consequently, I prefer the Landlord’s evidence on this point and I am satisfied that she has substantiated a claim for cleaning. As such, I grant the Landlord a monetary award in the amount of **\$269.65** to satisfy this claim.

With respect to the Landlord’s claim for compensation in the amount of \$252.00 for the cost of general cleaning around the rental unit, I find it important to note that the Tenant provided a video contradicting the Landlord’s submissions. While this video depicts a fairly clean appearance, I do not find that the video gives close up footage of many areas in dispute. Based on my above doubts of the Tenant’s efforts to leave the rental unit in a re-rentable condition, I find it more likely than not that the rental unit still needed some cleaning. As such, I am satisfied that the Landlord has substantiated a claim for general cleaning in the amount of **\$126.00** only.

Regarding the Landlord's claims for compensation in the amount of \$136.50 for the cost to remove garbage left by the Tenant, I have before me the Landlord's evidence of refuse that does not appear to match what the Tenant has described as what the Landlord left behind before the tenancy started. As such, I am satisfied, on a balance of probabilities, that the Tenant left behind refuse that the Landlord dealt with. Consequently, I am satisfied that the Landlord has provided enough evidence to corroborate a monetary award in the amount of **\$136.50** for this claim only.

With respect to the Landlord's claim of rental loss in the amount of \$1,150.00 for February 2019, as all parties acknowledged that rent was due on the first of each month and that the Tenant served notice to end her tenancy on January 7, 2019, all parties understood at the hearing that the effective end date of the tenancy based on her notice would be February 28, 2019 and that the Tenant would be responsible for the entire month of February rent. As such, I am satisfied that the Landlord should be granted a monetary award in the amount of **\$1,150.00** for this loss.

Regarding the Landlord's claim for compensation in the amount of \$557.72 for the cost to replace the dishwasher, while there was conflicting testimony with respect to whether the Tenant caused this damage or whether it was broken prior to the tenancy commencing, I find it important to note that the Landlord is seeking compensation for a replacement dishwasher entirely. As the Landlord acknowledged that this issue, at most, minimally impacted the functionality of the dishwasher and that the current tenant was currently using the dishwasher, I find that this is a gratuitous and excessive claim and I dismiss it in its entirety.

Finally, with respect to the Landlord's claim for compensation in the amount of \$33.53 for the cost to replace the mail keys, as the undisputed evidence is that the Tenant failed to return them at the end of tenancy and the Landlord was forced to pay for a new set to be cut, I am satisfied that the Landlord has established this claim and will be granted a monetary award in the amount of **\$33.53** for this claim .

As the Landlord was partially successful in her claims, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this application. As the Landlord had written authorization to retain the security deposit, this amount will be deducted, in partial satisfaction of the debts outstanding, from the total amount owing outlined below. Pursuant to Sections 67 and 72 of the Act, I grant the Landlord a Monetary Order as follows:

Calculation of Monetary Award Payable by the Tenant to the Landlord

Patching, priming, and painting	\$50.00
Appliance cleaning	\$269.65
General cleaning	\$126.00
Refuse disposal	\$136.50
Rent for February 2019	\$1,150.00
Mail keys	\$33.53
Security deposit	- \$550.00
Filing fee	\$100.00
TOTAL MONETARY AWARD	\$1,315.68

Conclusion

The Landlord is provided with a Monetary Order in the amount of **\$1,315.68** in the above terms, and the Tenant must be served with **this Order** as soon as possible. Should the Tenant 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: October 2, 2019

Residential Tenancy Branch