



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 MNDL-S, MNRL-S, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for a monetary claim of \$2,750.00 for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the cost of their \$100.00 Application filing fee.

The Tenant and two agents for the Landlord, G.R. and A.M. ("Agents"), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenant and the Agents were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

The Agents testified that they served the Tenant with the Notice of Hearing documents and documentary submissions by Canada Post registered mail, sent on October 21, 2019. The Agents provided a Canada Post tracking number as evidence of service. The Tenant acknowledged receipt of these documents. The Tenant testified that she sent the Landlord her documentary evidence via email on February 18, 2019; however, the Agents said that they did not receive this evidence. As a result, based on administrative fairness to the Landlord, I will not consider the documents that the Tenant submitted to the RTB, but did not properly serve on the Landlord, pursuant to section 88 of the Act.

Preliminary and Procedural Matters

The Parties provided their email addresses at the outset of the hearing and confirmed

their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

Issue(s) to be Decided

- Is the Landlord entitled to a monetary order, and if so, in what amount?
- Is the Landlord entitled to recovery of the Application filing fee?

Background and Evidence

The Parties agreed that the fixed term tenancy began on July 1, 2017, running to June 30, 2018, and on a month-to-month basis thereafter. They agreed that the tenancy had a monthly rent of \$1,950.00 plus \$20.00 for storage, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$975.00, and no pet damage deposit for the one bedroom, one-bathroom apartment. The Tenant said that she ended the tenancy for personal reasons and vacated the rental unit on September 30, 2019. She said she gave the Landlord her written forwarding address that day, too, on the condition inspection report ("CIR").

The Agent set out the Landlord's claims in a monetary order worksheet, as follows:

	Receipt/Estimate From	For	Amount
1	Rent	October	\$1,950.00
2	[Cleaner]	Cleaning	\$200.00
3	[Painting company]	Painting	\$600.00
		Total monetary order claim	\$2,750.00

#1 October Rent → \$1,950.00

The Agents said that the Tenant gave them notice of the end of the tenancy on September 10, 2019, with an effective vacancy date of September 30, 2019. They said they posted advertisements to re-rent the suite that day, but because they did not have proper notice under the Act from the Tenant, they were unable to rent the unit again until November 1, 2019, even though they reduced the monthly rent by \$100.00 a month.

The Tenant acknowledged that her notice to end the tenancy was late in violation of the Act; however, she said:

It was not my intention to be late. I contacted the RTB to ask whether a landlord is automatically entitled to a full month's rent in this situation. They said, no, only if they couldn't rent it and show that every reasonable attempt was made to do so.

My apartment was gorgeous, bright, new, and reduced in price. Just from the advertisements and text messages, I do not believe that every reasonable attempt had been made. There is no list of how many people applied. . . I can't figure out why it was so difficult to rent that unit in this market. I believe what's happening is I'm being asked to give money for convenience.

I don't know how many showings were done. From living in the apartment, units were being rented. . . I had offered to stay on for a month at the end, because I was concerned. I was told, 'no, it's easier to rent an empty unit.' I offered to sublet... these offers would have been considered, if they really wanted to rent it. How many applied? How many were rejected? I think this should be taken into account.

The Agents submitted copies of the advertisements they used to find a new tenant for October 1, 2019.

#2 Cleaning → \$200.00

The Agents submitted photographs of the rental unit at end of the tenancy. They testified that the baseboards needed to be cleaned, that doors were dirty, door handles, and the bathroom was dirty. They pointed to a photograph of behind the toilet, noting that it was very dirty. The Agents pointed to photographs of the bedroom floor, which they said showed dirt and dust. They said the refrigerator and stove were not cleaned, either. They said there is a photograph of a door with a big spot, and that there was something splashed on the wall. The Agents pointed to garbage inside a cabinet in the bedroom. They said there were lots of marks on the walls, and they reiterated that the baseboards, the refrigerator, the dishwasher, and the stove were all dirty. The Agents said the balcony had not been cleaned, either. The Agents said that as a result, they had to have the unit cleaned by a professional.

The Tenant said:

Once you go through the pictures, they are making an enormous exaggeration. I lived there 1½ years, and I am a very clean person. This is apart from the stove, which I omitted to clean and the fridge too – they were an honest oversight. What has been said is very much an overstatement. I cleaned diligently for a full day with two people helping me. I forgot to move the stove. A \$200.00 cleaning fee shouldn't be covered by the damage deposit. It's up to a landlord to ensure that unit is cleaned before the next tenant moves in.

The Agents said:

When we did the inspection with her, I pointed out a lot of things that weren't clean. She said she didn't have time. We didn't charge anything for wear and tear, just because it was excessively dirty. When she signed the CIR, I explained that cleaning had to be done and she agreed. Even after I talked to her, I sent her a text; she said she agreed with the cleaning but not with painting. We did the best we could to make it as fair as possible. She agreed back then. The cleaner gave us details of what he charged.

The Tenant said:

I never agreed that it was excessively dirty. I agreed that it should be cleaned after a tenant moves out. During the move out inspection both Agents were present. I have anxiety – I would have signed anything just to leave, as it was a very stressful situation.

The Agents submitted an invoice from a cleaner, M.G. ("Cleaner"), who detailed the cleaning he did at the rental unit, as follows:

Doors/Handles, Baseboards/Floors, Windows, Kitchen Cabinets, Fridge, Stove, Dishwasher, Counter, Bathtub, Sinks, Toilet, Vanity, Switches/Plugs, Washer/Dryer.

The Cleaner billed the Landlord \$200.00 for doing this cleaning. The Agents said that they have three different people they regularly use to clean rental units. The Cleaner in this case was selected because of their experience with him and his availability.

#3 Painting → \$600.00

The Agents said to look at the photographs labelled "damage" numbers 1 – 6. The first photograph shows a hole in a wall that they said resulted from the front door opening too far and/or too forcefully into the wall. The Agents said there was a door stopper at

the baseboard level, and that they are not sure how the door handle hit the wall with the stopper there.

The Tenant said she cannot be responsible for the quality of the door stopper.

The Agents noted more damage on the wall in the bedroom. They said they are not sure what happened, but there is a very large gash in the wall – 6 inches long and about $\frac{3}{4}$ of an inch across.

The Tenant said that she was sorry for this damage. “It’s shown again on picture 5, so you can see it’s not massive at all. What happened, it’s my son’s bedroom, and he may have been using his lacrosse stick inside, which he is not allowed to do. It was accidental.”

The Agents said to go through the rest to see marks on the wall that warranted fixing and painting. “We had the entire suite painted. The painter had to wash walls, fill in imperfections, do sanding. We accounted for wear and tear, in that we didn’t charge the full amount, only \$600.00. But it was beyond normal wear and tear.” The painter’s invoice states:

1 Painting Prep	\$ 250.00
(wash all walls, fill imperfections, sanding, clean-up)	
507 [square feet] Painting (by square foot) \$2.50	\$1,267.50
1 Trip fee.....	<u>\$ 75.00</u>
Subtotal.....	\$1,592.50
Tax	<u>\$ 79.63</u>
Total.....	<u>\$1,672.13</u>

The Agents said that the rental unit was last painted at the beginning of the tenancy.

They said: “Summarizing, we went through, did an inspection, the damage was beyond reasonable wear and tear, and we deducted accordingly. That’s it.”

The Tenant said this is the first apartment she has rented, and that she was very careful. She said:

After 1½ years, this is not beyond wear and tear. Pictures 1 and 2 show clear marks on walls. I’m not arguing the existence of these damages, but I’m arguing that the security deposit should be withheld to cover them. The covering of those

two dents could be done for far less. I would also like to say after 1½ years, the painting would need to be done for any tenancy. The drywall did not have to be replaced. I offered my security deposit as a sign of good faith. I've never had a problem with the Landlord. I thought it would be more than enough to offset anything. I was courteous and accommodating to offer other solutions, stay longer.

[The Landlord] is supposed to [return the security deposit or file an Application for dispute resolution] within 15 days to keep the security deposit. Their Application was filed 18 days after the end of the tenancy. If it rests on being a tiny bit late, I believe, because they didn't file on time, I have the right to file for double that, because I can't afford to pay \$2,000.00. I think it is unreasonable and unjust to expect this.

The Agents said: "The suite should not need to be repainted after 2½ years – that should be a 4 or 5 years tenancy. Just touch ups should be needed after 2½ years."

The Agents said that they did not file the Application late; rather, they submitted their Application on October 11, 2019, which corresponds to the RTB records. "We didn't receive it back [from the RTB] until the 18th. That's why it didn't go out until then."

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Prior to them testifying, I let the Parties know how I would be analyzing the evidence presented to me. I advised that a party who applies for compensation against another party has the burden of proving their claim on a balance of probabilities. Policy Guideline 16 sets out a four-part test that an applicant must prove in establishing a monetary claim. In this case, the Landlord must prove:

1. That the Tenant violated the Act, regulations, or tenancy agreement;
2. That the violation caused the Landlord to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the Landlord did what was reasonable to minimize the damage or loss.

Section 45 of the Act sets out that a tenant must give a landlord one month's notice to end a periodic tenancy.

Tenant's notice

45 (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

. . .

(4) A notice to end a tenancy given under this section must comply with section 52 *[form and content of notice to end tenancy]*.

Section 26 of the Act states: "A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent." There is no evidence before me that the Tenant had a right to deduct any portion of the rent from the monthly rent due to the Landlord.

#1 October Rent → \$1,950.00

I find that the Tenant failed to provide the Landlord with sufficient notice to end the tenancy, pursuant to section 45 of the Act. The Tenant's notice on September 10, 2019, should have had an effective vacancy date of October 31, 2019, pursuant to section 45. As such, the Landlord was entitled to rent until the legal notice period had expired – until October 31, 2019, unless they were able to re-rent it sooner.

I find that the Landlord provided sufficient evidence that they made reasonable efforts to find a new tenant for the rental unit, as soon as they received the Tenant's notice. I find that the Tenant's breach of the Act resulted in the rental unit being left vacant without rental income in October 2019; I find the Landlord did what was reasonable to minimize or mitigate their loss in this regard. I, therefore, find that the Tenant owes the Landlord **\$1,950.00** in unpaid rent for October 2019, and I award the Landlord recovery of this amount from the Tenant.

#2 Cleaning → \$200.00

Landlords' and tenants' rights and obligations for cleaning and repairs are set out in sections 32 and 37 of the Act. Section 32 states:

Landlord and tenant obligations to repair and maintain

32 (2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(4) A tenant is not required to make repairs for reasonable wear and tear.

(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

[emphasis added]

Section 37 of the Act 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

...

[emphasis added]

I find that the Landlord provided sufficient evidence to prove that the Tenant did not leave the rental unit "reasonably clean" when she moved out of the suite. Based on sections 32 and 37 of the Act, I find that the Tenant breached her obligation in this regard and that the Landlord is entitled to recover the value of their resulting costs for this breach. I, therefore, award the Landlord recovery of **\$200.00** for cleaning the rental unit when the tenancy ended.

#3 Painting → \$600.00

Pursuant to sections 32 and 37 of the Act, I find that the Tenant did not comply with her obligation to leave the rental unit “undamaged except for reasonable wear and tear.” I find that the damage to the walls was more than reasonable wear and tear. I note that the Landlord did not charge the Tenant the whole amount of the painter’s bill. Rather, they claimed 36% of the total invoice from the Tenant. I find the Landlord provided sufficient evidence to support their claim in this matter, and I award the Landlord recovery of **\$600.00** for repair and painting needed in the rental unit.

Summary and Off Set

I have awarded the Landlord with recovery of the following:

October Rent -	\$1,950.00
Cleaning	\$ 200.00
Painting	<u>\$ 600.00</u>
TOTAL	<u>\$2,750.00</u>

Given their success in this Application, I also award the Landlord recovery of the \$100.00 Application filing fee for a total monetary award of **\$2,850.00** pursuant to section 67 of the Act.

I find that this claim meets the criteria under section 72(2)(b) of the Act to be offset against the Tenant’s security deposit of \$975.00 in partial satisfaction of the Landlord’s monetary award. I authorize the Landlord to retain the Tenant’s \$975.00 security deposit. The Landlord is granted a Monetary Order of **\$1,875.00** from the Tenant pursuant to section 67 of the Act.

Conclusion

The Landlord is successful in their Application, as the Tenant breached section 45 of the Act in not giving proper notice to end the tenancy. Further, the Agents provided sufficient evidence of their reasonable effort to re-rent the suite.

The Tenant was also found to have breached her obligation to leave the rental unit reasonably clean and undamaged, pursuant to sections 32 and 37 of the Act. The Landlord is awarded recovery of the cost to have the unit cleaned, repaired and painted. The Landlord is also awarded recovery of the \$100.00 Application filing fee pursuant to

section 72 of the Act.

The Landlord is authorized to retain the Tenant's security deposit of \$975.00 in partial satisfaction of the monetary award, and is granted a Monetary Order for the remainder owing to the Landlord by the Tenant in the amount of **\$1,875.00**.

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: February 27, 2020

Residential Tenancy Branch