



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for compensation for monetary loss or other money owed in the amount of \$3,536.55, and to recover the cost of her filing fee.

The Landlord appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Landlord and gave her an opportunity to ask questions about the hearing process. During the hearing the Landlord was given the opportunity to provide her evidence orally and to respond to my questions. 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.

As the Tenants did not attend the hearing, I considered service of the Notice of Dispute Resolution Hearing. Section 59 of the Act states that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Landlord said she served the Tenants with the Notice of Hearing documents by Canada Post registered mail, sent on October 20, 2020. The Landlord mailed the documents to the forwarding address the Tenants provided in their Notice to End Tenancy dated August 31, 2019. The Landlord provided Canada Post tracking numbers as evidence of service. I find that the Tenants were deemed served with the Hearing documents in accordance with the Act. I, therefore, admitted the Application and evidentiary documents, and I continued to hear from the Landlord in the absence of the Tenants.

Preliminary and Procedural Matters

The Landlord provided her email address in her Application and confirmed it in the hearing. She also confirmed her understanding that the Decision would be emailed to her, mailed to the Tenants' forwarding address, and any Orders would be 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 \$100.00 Application filing fee?

Background and Evidence

The Landlord said that the periodic tenancy began on June 9, 2011, with a monthly rent of \$850.00, due on the first day of each month. She said the rent rose to \$991.05 per month by the end of the tenancy. The Landlord said the Tenants paid her a security deposit of \$425.00, and no pet damage deposit. She said the rental unit is a townhouse with eight rooms, including three bedrooms, 1½ bathrooms, in addition to a semi-finished basement. The Landlord said that the Parties did not do a condition inspection at the start of the tenancy. She said she was too trusting of people at that point, and that it was her mistake. However, she said there was another, short-term tenancy prior to that of the Tenants, and the Landlord knew that the rental unit was in good shape then.

The Landlord said she sent the Tenants a cheque for the security deposit via registered mail to their forwarding address, but that the envelope was returned to the Landlord unclaimed. She said as a result, she still has the security deposit.

The Landlord submitted a monetary order worksheet setting out her claims, as follows:

	Receipt/Estimate From	For	Amount
1	[Local cleaning company]	Cleaning	\$918.75
2	[Local carpet cleaner]	Carpet cleaning	\$250
3	[Local flooring company]	Replace damaged bathroom floor	\$599.89
4	[Junk removal company]	Junk/Garbage Removal	\$63.00
5	[Grocery store chain]	Interim cleaning supplies, lightbulbs	\$40.53
6	[Local flooring company]	Entry, dining room, kitchen, half-bath floor replacement	\$1,664.38
		Total monetary order claim	\$3,536.55

#1 Cleaning → \$918.75

The Landlord said that she phoned several cleaning companies in town for the best price. She said the first one she chose said they would do it initially, but they withdrew, after all. The Landlord's second choice said they could not do the cleaning for months; therefore, the Landlord moved on to the third choice. She said the third company could do it and ended up being about \$550.00 cheaper than the other quotes (the "Cleaner").

The Landlord submitted an invoice from the Cleaner, which set out a billing rate of \$35.00 per hour for 25 hours for a pre-tax total of \$875.00.

#2 Carpet Cleaning → \$250.00

The Landlord said she telephoned different carpet cleaners until she found someone who would clean all of the carpets at a reasonable rate. She said the person who did it told her that he went over the carpets 5 or 6 times. She said he did a good job.

#3 Replace Damaged Bathroom Floor → \$599.89

The Landlord said she obtained an estimate for this claim; however, she said once the floor was cleaned properly, there did not appear to be as much damage as she had initially thought. As such, the Landlord withdrew this claim from her Application.

#4 Junk/Garbage Removal → \$63.00

The Landlord said that she had to remove a great deal of garbage and debris from the rental unit, before the Cleaner could do their work. She said she used gloves, because of the condition in which the Tenants had left the rental unit. The Landlord submitted 60 pages of photographs of the rental unit after the tenancy ended, which revealed garbage and debris throughout the residential property. There was dirt and debris on all the carpets, including hangers, garbage bags, rags, dryer sheets, dog feces, broken blinds, broken baseboards, dirty and gouged walls, stained carpets, uncleaned oven and burners, a broken oven door handle, dirty, sticky counters, a damaged wall where the towel rack detached from the wall, lightbulbs burned out – not replaced, and an assortment of other damage, dirt and debris throughout.

The Landlord said that the junk removal company took some garbage; however, the main items they removed included a metal shelving unit that the Tenants had left by the outside dumpster in the common area. The Landlord said that leaving garbage like this is against the Strata rules; therefore, she had to arrange to have it removed. The Landlord also said that the junk removal company also removed and disposed of the oven, which was too filthy to get clean and was falling apart. The Landlord said that the oven was probably 15 to 20 years old.

#5 Interim Cleaning Supplies, Lightbulbs → \$40.53

The Landlord said that the Cleaner did not do a very good job on the vinyl floors; therefore, she had to obtain some gloves and cleaning supplies to bring it up to a reasonable level of cleanliness.

The Landlord said that the walls also needed more cleaning; therefore, she said she bought sponges to clean the walls, although she did not charge for any of the work she did cleaning or removing garbage from the rental unit. The Landlord said that she ended up repainting a fair bit, but she said: "I didn't add the cost of the paint to my estimates, either." The Landlord also said that she had to replace 9 or 10 lightbulbs that the Tenants had left burned out. The Landlord submitted a receipt from a national grocery chain setting out the purchase of cleaning supplies and lightbulbs.

**#6 Floor Replacement → \$1,664.38
(entry, dining room, kitchen, half-bath flooring)**

The Landlord said the flooring needs replacing, because there were scratches and gouges on the vinyl flooring throughout the rental unit. The Landlord said she is going to sell the house, but that she decided it would be better to lower the sale price, given the needed renovations, so that the buyer could choose what they want in terms of the flooring and appliance replacement. The Landlord acknowledged that she has not incurred any cost in this regard, so far.

Analysis

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

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

Landlord and tenant obligations to repair and maintain

32 (1) A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

(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.

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....

Before the Landlord testified in the hearing, I advised her of how I would be analyzing her evidence. I explained 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.

“Test”

#1 Cleaning → \$918.75

Based on the evidence before me, overall, I find that the Landlord has established on a balance of probabilities that the dirt and debris evident in her post-tenancy photographs indicates that the Tenants violated section 32 and 37 of the Act, by leaving the rental unit in an unreasonably dirty and damaged condition. I accept that it would have taken considerable cost and effort to bring the rental unit to a reasonably clean condition; therefore, I find that the Landlord established the first and second steps of the Test for this claim.

I find that the Landlord mitigated her cleaning costs by removing as much garbage and debris from the rental unit, prior to the Cleaner doing their work; the Landlord did not bill the Tenants for her efforts in this regard. Further, I find that the Landlord put more effort into bringing the rental unit to a state of reasonable cleanliness herself, when she was not satisfied with the Cleaner's efforts. Again, the Landlord did not bill the Tenants for her efforts in this regard. I find that the Landlord has provided sufficient evidence to establish the value of the cleaning at **\$918.75**. I, therefore, award the Landlord with recovery of this cost.

#2 Carpet Cleaning → \$250.00

I find that the Landlord did what was reasonable in the circumstances to have the carpets cleaned. The Landlord provided photographs of the dirty condition of the carpets throughout the rental unit, thereby establishing that the Tenants violated section 32 and 37 of the Act in not leaving the rental unit reasonably clean.

I find that the Landlord's efforts in calling different companies demonstrates that she mitigated this cost in compliance with step four of the Test. I find that the Landlord has established the value of this loss and I, therefore, award the Landlord with recovery of **\$250.00**.

#3 Replace Damaged Bathroom Floor → \$599.89

As the Landlord has withdrawn this claim, I dismiss it without leave to reapply.

#4 Junk/Garbage Removal → \$63.00

Based on the undisputed evidence before me, I find that the Landlord has provided sufficient evidence to establish that the Tenants violated sections 32 and 37 by leaving their garbage and other debris throughout the rental unit. I find that the Landlord expended significant effort to remedy this by clearing out much of the garbage and debris, herself, without billing the Tenants for this work. I find that the Tenants left behind metal shelving that they should have removed, themselves, as well as not having cleaned the oven throughout their tenancy, it appears. I find on a balance of probabilities that the Landlord has provided sufficient evidence of this violation on the part of the Tenants, and that the cost incurred is reasonable in the circumstances. I, therefore, award the Landlord with recovery of this **\$63.00** claim from the Tenants.

#5 Interim Cleaning Supplies, Lightbulbs → \$40.53

I find on a balance of probabilities that the Landlord had to purchase supplies to do her portion of returning the rental unit to a state of reasonable cleanliness and repair. I find that the Landlord claimed for very little of her expenditures of time and resources in this matter and that she has established overall that her claim in this regard is reasonable in all of the circumstances.

Further, according to Policy Guideline #1, tenants are responsible for “replacing light bulbs in his or her premises during the tenancy”. Therefore, I find the Tenants were responsible for replacing lightbulbs as they burned out and making sure they were all working at the end of the tenancy. Accordingly, I award the Landlord with recovery of her claim for **\$40.53** of cleaning supplies and lightbulbs.

**#6 Floor Replacement → \$1,664.38
(entry, dining room, kitchen, half-bath flooring)**

The Landlord acknowledged that this claim is based on an estimate of the replacement cost of the flooring she said was scratched and gouged throughout the rental unit.

However, the Landlord said she does not have plans to replace the flooring, but that she anticipates selling the residential property without having done such repairs. The Landlord said that she anticipates having to drop the selling price of the property, as a result; however, the Landlord has not incurred this cost, as yet. Therefore, I find that the Landlord has not established the value of this loss to her, and has, therefore, not provided sufficient evidence to prove this claim on a balance of probabilities. I, therefore, dismiss this claim without leave to reapply.

Summary and Off Set

	Receipt/Estimate From	For	Amount awarded
1	[Local cleaning company]	Cleaning	\$918.75
2	[Local carpet cleaner]	Carpet cleaning	\$250.00
3	[Local flooring company]	Replace damaged bathroom floor	\$0.00
4	[Junk removal company]	Junk/Garbage Removal	\$63.00
5	[Grocery store chain]	Interim cleaning supplies, lightbulbs	\$40.53
6	[Local flooring company]	Entry, dining room, kitchen, half-bath floor replacement	\$0.00
		Total Amount Awarded	\$1,272.28

Given the Landlord's partial success in her claims, I also award her with recovery of the \$100.00 Application filing fee under section 72 of the Act for a total award of **\$1,372.28**.

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 \$425.00 in partial satisfaction of the Landlord's monetary award. I authorize the Landlord to retain the Tenants' \$425.00 security deposit. I award the Landlord a Monetary Order for the remainder owing by the Tenants in the amount of **\$947.28** pursuant to section 67 of the Act.

Conclusion

The Landlord's claim for compensation for damage or loss against the Tenants is partially successful. I found that the Tenants breached their responsibilities for cleaning and repair under sections 32 and 37 of the Act, given the condition in which they left the rental unit at the end of the tenancy. I also awarded the Landlord recovery of the \$100.00 Application filing fee, pursuant to section 72 of the Act.

The Landlord has established a monetary claim of \$1,372.28. I authorize the Landlord to retain the Tenants' full pet damage deposit of \$425.00 in partial satisfaction of the claim. The Landlord has been granted a monetary order under section 67 for the balance due by the Tenants to the Landlord in the amount of **\$947.28**.

This Order must be served on the Tenants by the Landlord and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

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: February 26, 2020

Residential Tenancy Branch