



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFL, MNDL-S**

Introduction

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

- Authorization to recover the filing fees from the tenant pursuant to section 72; and
- A monetary order for damages to the rental unit and authorization to retain a security deposit pursuant to sections 67 and 38.

Both the landlord and the tenants attended the hearing. The landlord's spouse was originally in attendance, however was asked to leave as he was a potential witness. The landlord chose not to call him as a witness after she had testified.

As both parties were present, service of documents was confirmed. The tenants acknowledged receipt of the landlord's Application for Dispute Resolution Proceedings Package and mutual evidence and both parties stated there were no concerns with timely service of documents and were prepared to deal with the matter of the application.

Preliminary Issues

The landlord's monetary order worksheet included additional items not included in her original claim. The landlord had not amended her claim to include these items in accordance with Rule 4.1 of the Residential Tenancy Branch Rules of Procedure and I advised the parties that the hearing would be limited to matters claimed on the application in accordance with Rule 6.2.

Preliminary Matters

Section 63 of the *Act* allows an Arbitrator to assist the parties settle their dispute and record the settlement in the form of a decision and order if the parties settle their dispute

during the dispute resolution proceeding. Accordingly, I attempted to assist the parties to resolve this dispute by helping them negotiate terms of a settlement. The parties could not reach consensus on the terms of a settlement; therefore, I heard testimony, considered the evidence, and issued a decision to resolve this dispute.

Issue(s) to be Decided

Is the landlord entitled to:

- Authorization to recover the filing fees from the tenant pursuant to section 72; and
- A monetary order for damages to the rental unit and authorization to retain a security deposit pursuant to sections 67 and 38.

Background and Evidence

At the commencement of the hearing, pursuant to rules 3.6 and 7.4, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony. While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The landlord provided the following testimony. The rental unit is an entire home built in 1978. It was last renovated in 2018 with a new bath installed. The appliances in the kitchen were replaced in 2018, however the fridge is 6 years old. Floors were replaced 8 years ago and the upstairs was painted 1 year ago.

The landlord provided a copy of the tenancy agreement. The tenancy began on October 1, 2018 for a fixed one year term. Rent was set at \$1,850.00 per month payable on the first day of the month. A security deposit of \$935.00 was collected which the landlord continues to hold. A condition inspection report was done at the commencement of the tenancy.

In accordance with the terms of the tenancy agreement, the tenancy ended on September 30, 2019. The landlord testified that the original condition inspection report was brought with them when they performed a move-out condition inspection with the tenants. They walked through the house while the tenants remained seated in the living room. When the landlord tried to point out the cleanliness issues with the tenants, the tenants became agitated and angry. The tenants refused to sign the condition

inspection report or provide a forwarding address on September 30th. The parties agree that the tenant provided the forwarding address by email on October 17, 2019.

The landlord testified that when the tenants moved in, the house was in 'excellent condition'. When they left, it was unclean and it took several hours if not days to clean it. Although the landlord believes it took her and her spouse more than 10 hours to clean it, the landlord asserts that her cleaning of the rental unit for \$75.00 per hour is reasonable. She seeks \$750.00 for cleaning the rental unit and has provided photographs of the uncleaned stove, grease in the sink, dirty dryer vent, and black marks on the floors as evidence. Photos of an unswept deck, dirty urine stained floors and grime in and all around the bathroom was also provided.

The landlord testified that during the tenancy, the tenant had taken their expensive wool rug out of the rental unit and put it on the dirty deck, causing damage. The landlord hired a professional carpet care company to professionally clean the rug at a cost of \$423.14, however she seeks an additional \$75.00 to inspect the rug, pick up and deliver it for a total of \$498.00.

The landlord testified that the one year old shower tap had broken during the tenancy. She had to bring in a plumber to repair it and provided the plumber's \$63.00 (incl. GST) invoice as evidence. According to the invoice, the plumber went to the site and left a wrench for the 'tenants' and ordered parts. No description of work other than leaving a wrench was provided on the invoice.

Lastly, the landlord seeks an additional \$65.00 for what she describes as 'emergency dryer repair'. According to the landlord, it cost this amount to fix and reset the dryer due to lint build-up because the tenant never emptied the dryer screen. No invoice was provided for the work.

The tenant commenced her testimony at approximately 2:00 p.m. during the hearing. Here, I must note that I warned the tenant that I could distinctly hear another voice providing her with testimonial evidence which she then provided to me. I advised her that she had the right to call witnesses, and that witness could provide his own testimony, however she chose not to call this person. The tenant advised that the person providing her with testimony was her son. I advised the tenant that her testimony must be her own, not another person's, and the tenant told me that she understood. Despite this, at 2:10 p.m., during the hearing, I had to interrupt the tenant's testimony because her son continued to tell the tenant what to say. I excused the

tenant's son from the room with the tenant to ensure the tenant provided her own testimony.

The tenant provided the following testimony. She cleaned the house every day during the tenancy. It was always clean and tidy. Rent was always paid on time.

The landlord's carpet was dirty when she moved in and the tenant wanted it to be clean. She communicated to the landlord that she wanted it cleaned however the landlord told her not to do it. She states she sent an email to tell the landlord, however no email was provided. The tenant acknowledges she cleaned the landlord's carpet herself and did so on the outdoor deck. She did not use any soap to clean the carpet. After she cleaned it, the tenant testified the landlord alleges it was damaged. Later in her testimony, the tenant testified that she was never told not to wash the carpet.

Regarding the plumbing, the shower was broken. According to the tenant, the landlord told her to have it repaired and she responded it was not her responsibility. Something was broken inside the shower, she doesn't know what. She was left without a shower facility.

With respect to the dryer, the tenant testified that everything was good in the house. The landlord never said anything to her; she cleaned everything fine. During her testimony, the tenant didn't specifically acknowledge whether she cleaned the dryer for lint.

During the condition inspection report on September 30, 2019, the landlord made it clear to her that there were no problems with the house. On the day of the inspection, she was willing to do any additional cleaning to the unit that may be required, however the landlord refused to allow her to do so. The landlord told her to leave the house, have a good time in another house saying this is my house now, it will be my time to clean it. She does not understand why the landlord said she got upset. The landlord never showed her the condition inspection report or gave it to her to sign. The landlord told her she would send it in an email and the security deposit would be sent by e-transfer to her.

Analysis

Section 7 of the *Act* states: 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.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

Rule 6.6 of the Residential Tenancy Rules of Procedure indicate the onus to prove their case is on the person making the claim. The standard of proof is on a balance of probabilities. If the applicant is successful in proving it is more likely than not the facts occurred as claimed, the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; and
4. Steps taken, if any, to mitigate the damage or loss.

Each item in the landlord's monetary order worksheet will be addressed in turn.

- Carpet Repair

The tenant acknowledged she tried to clean the landlord's carpet using ordinary water and did so on the outdoor deck. The tenant provided contradictory testimony regarding whether she was specifically told not to clean the carpet or didn't know she was not allowed to wash it. In either situation, the tenant made a choice to clean the carpets without the landlord's expressed permission. It is especially troubling that the tenant brought it out to an unclean outdoor deck to perform the cleaning which could potentially make the carpet even dirtier. I find the landlord is entitled to the full amount she paid to the carpet restoration company to professionally clean the carpets and pursuant to section 67 of the *Act*, I award the landlord **\$423.14**. I decline to award the additional \$75.00 for the landlord to inspect, pick up and deliver the carpet.

- Temporary Showertap Repair

The landlord has provided an invoice from a plumbing service that indicates he arrived onsite and left a wrench for the tenants on September 25th at a cost of \$63.00 including GST. The landlord did not provide substantive testimony or photographic proof as to the nature of the plumber's visit or what was done, other than leaving a wrench. Based on the evidence provided, I am not satisfied there was any breach to the tenancy agreement, regulations or tenancy agreement that would allow me to award compensation. I find the landlord has failed to prove this portion of her claim and I dismiss it.

- Landlord cleaning

Section 37(2) of the *Act* states that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

This notion is further elaborated in Residential Tenancy Branch Policy Guideline PG-1 which states:

the tenant must maintain "reasonable health, cleanliness and sanitary standards" throughout the rental unit or site, and property or park. ***The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard.*** The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. ***The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises), or for cleaning to bring the premises to a higher standard than that set out in the Residential Tenancy Act or Manufactured Home Park Tenancy Act (the Legislation). (emphasis added)***

PG-1 also provides the following:

MAJOR APPLIANCES

At the end of the tenancy the tenant must clean the stove top, elements and oven, defrost and clean the refrigerator, wipe out the inside of the dishwasher.

WALLS

Cleaning: The tenant is responsible for washing scuff marks, finger prints, etc. off the walls unless the texture of the wall prohibited wiping.

BASEBOARDS AND BASEBOARD HEATERS

The tenant must wipe or vacuum baseboards and baseboard heaters to remove dust and dirt.

I have reviewed the photographs provided by the landlord to corroborate the claim for cleaning. The tenant's legal obligation is "reasonably clean" and this standard is less than "perfectly clean" or "impeccably clean" or "thoroughly clean" or "move-in ready". Oftentimes a landlord wishes to take over the rental unit at this higher level of cleanliness; however, it is not the outgoing tenant's responsibility to leave it that clean. If a landlord wants to take over the rental unit at a very high level of cleanliness that cost is the responsibility of the landlord.

Despite this, PG-1 provides that the tenant is obligated to clean the major appliances, walls, and baseboards. The photographs seem to indicate that was not done. As such I find the landlord is entitled to nominal damages for cleaning the items specifically listed in PG-1. I find the hourly rate of \$75.00 per hour is excessive and I award the landlord five hours at \$20.00 per hour for this work, for a total of **\$100.00**.

- Emergency Dryer Repair

Turning once again to PG-1:

FIREPLACE, CHIMNEY, VENTS AND FANS

The landlord is required to clean out the dryer exhaust pipe and outside vent at reasonable intervals.

The landlord has not provided any invoices to show she hired any service to perform the service of dryer vent cleaning. Nor has the landlord provided any photographs of excessive dryer lint buildup. Lastly, Policy Guideline 1 indicates it is the landlord's responsibility to ensure the dryer exhaust pipes remain clean. I find the landlord has failed to provide sufficient evidence to establish the existence of the damage (point 1 of the 4 point test) that the tenant has violated the *Act*, tenancy agreement or regulations (point 2) or the value of the damage or loss (point 3). For these reasons, this portion of the landlord's claim is dismissed.

- Filing fee

As the landlord's was successful in her claim, she is entitled to recover the filing fee of \$100.00.

- Security deposit

The landlord continues to hold the tenant's security deposit in the amount of \$925.00. The tenancy ended on September 30, 2019, the landlord received the tenant's forwarding address on October 17, 2019 and the landlord filed an application to retain the deposit on October 25, 2019. In accordance with section 72 of the *Act*, the landlord is to deduct the monetary award from the tenant's security deposit and return the remainder to the tenant.

Item	Amount
Professional carpet cleaning	\$423.14
Cleaning	\$100.00
Filing fee	\$100.00
Less security deposit	(\$925.00)
Return to tenant	(\$301.86)

Conclusion

I issue a monetary order in favour of the tenant in the amount of \$301.86.

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: March 16, 2020

Residential Tenancy Branch