



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNDL

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on October 20, 2019 (the "Application"). The Landlord sought compensation for damage to the rental unit and reimbursement for the filing fee.

The Landlord appeared at the hearing with M.J. to assist. The Tenants appeared at the hearing. I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence. Tenant B.D. confirmed the Tenants received the hearing package and Landlord's evidence. The Landlord confirmed receipt of the Tenants' evidence.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all testimony provided and reviewed all documentary evidence submitted. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Landlord entitled to compensation for damage to the rental unit?
2. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

The Landlord sought \$900.00 for cleaning the rental unit upon the Tenants vacating and for disposing of furniture the Tenants left behind. The \$900.00 is comprised of the following:

- The Landlord gave the new tenants \$500.00 in compensation for their anguish and frustration (the new tenants cleaned for six hours);
- The Landlord gave the new tenants \$180.00 for their time spent cleaning (six hours at \$30.00 per hour);
- \$120.00 for the four hours the Landlord and M.J. spent cleaning (\$30.00 per hour); and
- \$100.00 to dispose of furniture.

The parties agreed on the following. There was a verbal tenancy agreement between them in relation to the rental unit. Rent was \$1,800.00 per month due on the first day of each month. The Tenants paid a \$900.00 security deposit and \$900.00 pet damage deposit, both of which have been returned.

The Landlord testified that the tenancy started August 01, 2018. The Tenants testified it started July 15, 2018. Both parties agreed the tenancy ended September 30, 2019.

The parties agreed there was no move-in inspection done.

The Landlord testified that a move-out inspection was done but not with the Tenants because they refused to accept his communications. The Landlord acknowledged the Tenants gave him one months notice of vacating September 30, 2019. The Landlord testified that he texted the Tenants October 05, 2019 about cleaning the rental unit. The Landlord acknowledged he did not provide the Tenants with a Notice of Final Opportunity to Schedule a Condition Inspection.

The Tenants testified that no move-out inspection was done and they were not provided two opportunities to do a move-out inspection leading up to the end of the tenancy.

The Landlord testified as follows. He attended the rental unit October 05, 2019. The rental unit was in a disgusting condition. He contacted the Tenants about the state of the rental unit; however, Tenant B.D. was abusive. He and M.J. cleaned the rental unit for four hours. He is seeking \$30.00 per hour in compensation. The next tenants also

cleaned the rental unit which is noted on their Condition Inspection Report (CIR) submitted.

The Landlord pointed to photos in evidence of the condition of the rental unit.

The Landlord testified that he had to get rid of a desk and chair that the Tenants left in the rental unit. He said he paid someone \$100.00 to do this but did not get documentation of this payment.

Tenant B.D. testified that the Tenants cleaned the rental unit upon vacating. Tenant B.D. pointed to photos submitted. Tenant B.D. submitted that the photos provided by the Landlord do not justify \$900.00 worth of cleaning. Tenant B.D. acknowledged the Tenants might have missed some dirt behind the couch. The Tenants denied that the stove and oven were left as shown in the Landlord's photos. Tenant B.D. acknowledged the Tenants might have missed the inside of the oven. In relation to the photo of under the sink, Tenant B.D. testified that the rental unit had a mold issue.

Tenant C.G. testified that the oven was old and damaged at the start of the tenancy. Tenant C.G. testified that some of the grime and marks on the oven could not be removed.

Tenant B.D. testified that the Landlord agreed the Tenants could leave the desk and chair in the rental unit.

In reply, the Landlord denied giving the Tenants permission to leave the desk and chair. The Landlord also denied that the oven could not be cleaned.

Analysis

Section 7(1) of the *Residential Tenancy Act* (the "*Act*") states that a party that does not comply with the *Act* must compensate the other party for damage or loss that results. Section 7(2) of the *Act* states that the other party must mitigate the damage or loss.

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- 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.

Section 37 of the *Act* states:

(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...

Pursuant to rule 6.6. of the Rules of Procedure, it is the Landlord as applicant who has the onus to prove the claim.

When one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

I do not have a Condition Inspection Report in relation to this tenancy before me.

I am not satisfied based on the photos provided by the Landlord that the Tenants left the rental unit so dirty that it required cleaning for the hours claimed. The Tenants disputed the accuracy of the photos. The Landlord did not provide photos that include a date and time such that I can determine when they were taken. The Tenants provided photos that seem to support that the rental unit was left reasonably clean. Even accepting the accuracy of the Landlord's photos, the photos do not support that the rental unit required 10 hours of cleaning to meet the standard of "reasonably clean".

I do not find the CIR submitted of assistance given it was completed in relation to a different tenancy.

However, I am satisfied the Tenants may have missed cleaning some dirt behind the couch and inside the oven as Tenant B.D. acknowledged this. I am satisfied the Tenants breached section 37 of the *Act* in relation to these two issues. I am satisfied the Landlord and M.J. had to clean these areas or pay the new tenants to clean them. I

am not satisfied based on the evidence as to how much time this took. I award the Landlord \$30.00 as I cannot be satisfied that it took more than an hour to address these two issues in the absence of further compelling evidence to support this.

I am not satisfied the Landlord is entitled to the \$680.00 sought in relation to the new tenants. I am not satisfied the new Tenants were compensated \$680.00 at the start of the tenancy for cleaning or the state of the rental unit as the CIR submitted states the new tenants were compensated \$200.00. I acknowledge that the new tenants may have spent six hours cleaning. However, the standard of "reasonably clean" in the *Act* is not necessarily the standard of the Landlord or the new tenants. The Landlord has not submitted sufficient evidence to support the position that the new tenants had to do further cleaning to bring the rental unit to the standard of "reasonably clean".

Further, the Landlord did not mitigate his loss if he gave the new tenants \$500.00 for their anguish and frustration over the state of the rental unit. This is over and above the amount the Landlord said he gave the new tenants for their time cleaning. Mitigating loss in these circumstances would have been to either clean the rental unit himself or hire a company to clean it which would have cost much less than \$500.00.

I am satisfied the Tenants left a desk and chair in the rental unit as the Tenants did not dispute this. I am not satisfied the Landlord agreed to this as the Tenants have not submitted any documentary evidence to support this. I would expect such an agreement to be in writing given the importance of Tenants removing their own belongings at the end of a tenancy. I am satisfied the Tenants breached section 37 of the *Act* by failing to remove their desk and chair. I am satisfied the Landlord had to remove these two items. I am not satisfied the Landlord paid someone \$100.00 to remove them as the Landlord has not submitted documentary evidence to support this. I would expect payments such as this to be documented. However, I do find \$100.00 for the time and expense involved in removing furniture from a rental unit reasonable. I do not find this to be an excessive amount. I award the Landlord the \$100.00.

Given the Landlord was partially successful, I award him reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

In total, the Landlord is awarded \$230.00 and is issued a Monetary Order pursuant to section 67 of the *Act* in this amount.

Conclusion

The Landlord is entitled to \$230.00 and is issued a Monetary Order in this amount. This Order must be served on the Tenants. If the Tenants fail to comply with this Order, it 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 *Act*.

Dated: March 17, 2020

Residential Tenancy Branch