



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:

- a monetary order for money owed or compensation monetary loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The tenant confirmed receipt of the landlord's dispute resolution application ('Application'). In accordance with section 89 of the *Act*, I find that the tenant was duly served with the Application. All parties confirmed receipt of each other's evidentiary materials.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation for losses?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or

arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This fixed term tenancy began on December 1, 2018 and was to end on November 30, 2019. Monthly rent was set at \$1,100.00, payable on the first of every month. The tenant paid a security deposit in the amount of \$550.00, which the landlord still holds.

The tenant testified that he had legal possession of the rental unit until November 30, 2019, but the landlord had locked him out on November 1, 2019. Both parties confirmed that a move-out inspection had taken place on November 1, 2019, but an argument took place where the tenant had left, and returned later. The landlord testified that he had called the police to attend, and he had changed the locks due to fear for his personal safety. The tenant does not dispute that an argument took place, but that he was not the sole participant in this argument. The tenant testified that despite signing the move-out inspection report, the landlord did not provide him with a signed copy. The landlord testified that the move-out inspection could not be completed due to the argument and tenant walking out.

The landlord is seeking a Monetary Order in the amount of \$680.00 for damages and losses as outlined in the table below and in the landlord's Application:

Item	Amount
Cleaning of Stove – 1hour	\$30.00
Cleaning of Refrigerator - 1 hour	30.00
Cleaning of Floors – 1hour	30.00
Cleaning of Cabinets - 1 hour	30.00
Cleaning of Window – 1 hour	30.00
Cleaning of Tub – 30 minutes	30.00
Cleaning of Carpet – 1 hour	30.00
Cost of changing locks	120.00
Damage to fireplace, toilet holder, dresser, desk	250.00
Filing Fee	100.00
Total Monetary Order Requested	\$680.00

The landlord is seeking \$210.00 in reimbursement for his time cleaning the rental unit. The landlord testified that despite the tenant's claims that the rental unit was cleaned, he was not aware of anyone attending to clean the rental unit. The landlord submitted photos to support the condition of the rental unit on November 1, 2020. The landlord

testified that he cleaned the rental unit himself with the assistance of a friend, which took several hours. The tenant disputes the landlord's claims, stating that he had a professional cleaning company attend to clean the rental unit. The tenant provided a receipt dated October 30, 2019, in the amount of \$317.52 for cleaning. The tenant testified that the cleaning was not completed as the landlord had locked him out of the rental unit. The landlord responded that he never saw anyone cleaning.

The landlord is also seeking reimbursement for the changing of the locks. The landlord submitted a receipt in the amount of \$120.75 from a locksmith who attended on November 1, 2019.

The landlord testified the tenant also caused damage to several items, which were brand new at the beginning of the tenancy such as the dresser and fireplace. The landlord is seeking \$250.00 in compensation for the damage of the above listed items. The landlord submitted photos in support of his claim of the damaged items.

Analysis

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. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove, on a balance of probabilities, that the tenant had caused damage and the losses in the amounts claimed by the landlord.

Section 37(2)(a) of the *Act* stipulates that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean, and undamaged condition except for reasonable wear and tear. Sections 23 and 35 of the *Act* require the landlord to perform both move-in and move-out inspections, and fill out condition inspection reports for both occasions. The consequence of not abiding by these sections of the *Act* is that "the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished", as noted in sections 24(2) and 36(2) of the *Act*. I find that both parties did attend a move-out inspection on November 1, 2019, but due to an argument that took place the landlord was unable to complete the move-out inspection with the tenant present. I find that although the landlord did not provide a copy of a completed and signed move-out inspection report to the tenant, the

landlord provided a reasonable explanation for why he was unable to fulfill his obligations. On this basis, I will consider the monetary claim by the landlord for retention of the tenant's security deposit in satisfaction of the losses and damages resulting from this tenancy.

I have considered the evidence and testimony presented by both parties. Despite the receipt for cleaning provided by the tenant, I find that the landlord provided evidence to support that the rental unit was not left in reasonably clean condition. The tenant testified that he did not have the opportunity to complete the cleaning by the landlord, but based on the evidence submitted by the tenant himself, the cleaning receipt confirms that the professional cleaning took place the day before on October 31, 2019. Furthermore, both parties had agreed to a move-out inspection on November 1, 2019. As per Residential Tenancy Regulation as set out below, a rental unit is to be empty when the condition inspection takes place, unless parties agree on a different time.

Rental unit to be empty

14 The landlord and tenant must complete a condition inspection described in section 23 or 35 of the Act [*condition inspections*] when the rental unit is empty of the tenant's possessions, unless the parties agree on a different time

I find that both parties had attended a move-out inspection on November 1, 2019, and the reasonable expectation is that an inspection would take place at a time when the tenant had vacated the rental unit and was prepared to return it in reasonably clean and undamaged condition. I find that the tenant provided documentary evidence to support that professional cleaning took place on October 31, 2019, the day before the inspection took place. I find the tenant's own evidence that he had hired professional cleaners, who had attended on October 31, 2019, contradicts his own testimony that he did not have sufficient time to complete the cleaning by the move-out inspection which took place the next day

I find that the landlord has met their evidentiary burden on a balance of probabilities to show that the rental unit was not in reasonably clean condition at the time of the move-out inspection. The landlord is claiming 6.5 hours of cleaning, at a rate of \$30.00 per hour, which I find to be reasonable. I note that the landlord had claimed \$30 for 30 minutes of cleaning of the tub, and I have adjusted the landlord's claim to reflect 30 minutes of cleaning at a rate of \$30.00 per hour. Accordingly, I allow the landlord \$195.00 in satisfaction of his monetary claim for cleaning.

Although the landlord claimed \$250.00 for damage to his belongings, I find the landlord failed to provide sufficient evidence in support of this monetary loss associated with the damage. As the burden of proof is on the landlord to support the actual value of the losses claimed, I dismiss this portion of the landlord's application without leave to reapply.

Section 25(1) of the *Act* addresses the issue of new locks.

Rekeying locks for new tenants

25 (1) At the request of a tenant at the start of a new tenancy, the landlord must

- (a) rekey or otherwise alter the locks so that keys or other means of access given to the previous tenant do not give access to the rental unit, and
- (b) pay all costs associated with the changes under paragraph (a).

(2) If the landlord already complied with subsection (1) (a) and (b) at the end of the previous tenancy, the landlord need not do so again.

The landlord applied for the cost of changing the locks, as he was concerned about his personal safety. As stated in section 25(1) of the *Act*, the responsibility of providing a new lock at the start of the new tenancy falls on the landlord, and therefore the cost of rekeying is the obligation of the landlord, and not the previous tenant. Furthermore, I find that the landlord had made the decision to change the locks. I am not satisfied that this monetary loss is due to the tenant's failure to comply with the *Act* or tenancy agreement. On this basis, I dismiss this portion of the landlord's application without leave to reapply.

The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. As the landlord was only partially successful in their application, I find that the landlord is entitled to recover half of the \$100.00 filing fee paid for this application.

The landlord continues to hold the tenant's security deposit of \$550.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain a portion of the tenant's security deposit in satisfaction of the monetary claim. The rest shall be returned to the tenant.

Conclusion

I find that the landlord is entitled to recover \$195.00 for cleaning, as well as \$50.00 of the filing fee.

The remaining portion of the landlord's application is dismissed without leave to reapply.

In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain \$245.00 of the tenant's security deposit in satisfaction of the monetary claim.

The tenant is provided with a Monetary Order in the amount of \$305.00 for the return of the remaining portion of their security deposit, and the landlord(s) must be served with **this Order** as soon as possible.

Should the landlord(s) 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: March 26, 2020

Residential Tenancy Branch