



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Dole Enterprises Ltd.
and [tenant name suppressed to protect
privacy]

DECISION

Dispute Codes MNDL-S, FFL

Introduction

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

- a Monetary Order for damage, pursuant to section 67;
- authorization to retain the tenants' security deposit, pursuant to section 38; and
- authorization to recover the filing fee from the tenants, pursuant to section 72.

The landlord's agent and tenant Z.S. attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties agree that the tenants were served with the landlord's application for dispute resolution via registered mail. I find that the tenants were served in accordance with section 89 of the *Act*.

Preliminary Issue- Amendment

The landlord listed the landlord's address as the address of the subject rental property on the landlord's application for dispute resolution. Both parties agree on the correct address of the subject rental property. Pursuant to section 64 of the *Act*, I amend the landlord's application for dispute resolution to state the correct address of the subject rental property.

Issues to be Decided

1. Is the landlord entitled to a Monetary Order for damage, pursuant to section 67 of the *Act*?
2. Is the landlord entitled to retain the tenants' security deposit, pursuant to section 38 of the *Act*?
3. Is the landlord entitled to recover the filing fee from the tenants, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on August 1, 2018 and ended on October 31, 2019. Monthly rent in the amount of \$1,142.00 was payable on the first day of each month. A security deposit of \$557.50 was paid by the tenants to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The landlord filed its application for dispute resolution on November 12, 2019, 12 days after the tenancy ended.

Both parties agree that a move in condition inspection report was completed by the parties on July 25, 2018. The move in condition inspection report was entered into evidence.

The landlord testified that she posted a Notice of Final Opportunity to Schedule a Condition Inspection on the tenants' door on October 25, 2019. Tenant Z.S. testified that he received this but could not recall when. Tenant Z.S. testified that tenant S.M. was supposed to attend the final inspection on October 31, 2019 but at the last moment tenant S.M. informed him that she would not attend. Tenant Z.S. testified that he was stuck at work, so he asked a friend to attend on his behalf. The landlord confirmed that the tenant's friend attended the move out condition inspection; however, the friend refused to sign the report. The landlord testified that the tenants' friend provided the landlord with the tenants' forwarding address during the move out condition inspection.

report and this address was printed on the move out condition inspection report which was entered into evidence.

The landlord's agent testified that the following damages arose from this tenancy:

Item	Amount
Carpet cleaning	\$126.00
Painting	\$500.00
Repair vanity, replace stove drip trays, replace bifold doors	\$250.00
Cleaning	\$200.00
Drape cleaning	\$100.00
Filing fee	\$100.00
Total	\$1,276.00

Carpet cleaning

Both parties agree that the tenant owes the landlord \$126.00 for carpet cleaning. The landlord entered into evidence a receipt for carpet cleaning in the amount of \$126.00.

Painting

The landlord's agent testified that the subject rental property was painted approximately one year before the tenants move in. The landlord's agent testified that the subject rental property required repainting because the tenants spilt drinks all over the walls and they would not wash clean and because there were a lot of dings and nicked corners. The landlord's agent testified that the landlord company repainted the subject rental property and is seeking \$500.00 for labour and paint. A receipt issued by the landlord company for \$500.00 was entered into evidence.

The move in condition inspection report states that all of the walls in the subject rental property were in satisfactory condition when the tenants moved in. The move out condition inspection report states that the following rooms required painting and cleaning:

- Entry, halls, stairs;
- Living rooms, family rooms;
- Kitchen; and

- Dining areas

Tenant Z.S. testified that the entire property did not need to be repainted and that some touch ups would have sufficed.

Repair vanity, replace stove drip trays, replace bifold doors

The landlord's agent testified that the landlord company had to repair the bathroom vanity, replace stove drip trays and replace a bifold door and the landlord company is seeking \$250.00 for these repairs. The landlord's agent did not provide a break down of what the landlord is seeking for each repair/replacement. The landlord's agent entered into evidence a receipt to support the above claim as follows:

- New drip trays: \$36.78 plus 12% tax = \$41.19; and
- New faucet: \$38.21 plus 12% tax = \$42.79.

The landlord's agent testified that the metal drip trays under the stove elements were so badly burned that they had to be replaced. The landlord's agent testified that the drip trays were 1 year old when the tenants moved in. Tenant Z.S. did not dispute the above testimony.

The move in condition inspection report states that the stove was in satisfactory condition. The move out condition inspection report states that the stove requires cleaning and drip trays.

The landlord's agent testified that the facet was one year old when the tenants moved in and was in good condition as were the sink and countertop. The landlord's agent testified that the bathroom facet and taps of the subject rental property were discoloured, the sink was chipped and the arborite countertops had rust stains.

Tenant Z.S. testified that the sink, facet and countertops were already old and discoloured when he moved in and he should not have to pay for the landlord to update the property.

The move in condition inspection report states that the cabinets, counters, closets and cupboards in the bathroom were in satisfactory condition. The move out condition inspection report states that the sink is chipped and the counter has rust stains.

The landlord's agent testified that the bifold doors were from the mid-70s and were in good condition when the tenants moved in and had to be replaced when the tenants moved out. Tenant Z.S. testified that the doors were old and dingy at the beginning of the tenancy

Neither party provided testimony as to the location of the bifold doors. Neither the move in or move out condition inspection report mentions bifold doors.

The landlord's agent referred to photographs in her above testimony; however, no photographs were entered into evidence.

Cleaning

The landlord testified that the subject rental property was not cleaned when the tenants moved out. The landlord testified that the following areas were not cleaned:

- Stove;
- Cupboard;
- Windows;
- Floor;
- Screens;
- Light fixtures;
- Under the stove; and
- Under the fridge.

The landlord's agent testified that the stove and fridge are not on rollers but are easy to move out.

The move in condition inspection report states that every room in the subject rental property was in satisfactory condition on move in. The move out condition inspection report states that every room in the subject rental property requires cleaning.

The landlord's agent testified that it took 10 hours to clean the subject rental property and she is seeking \$20.00 per hour for a total of \$200.00. A receipt issued by the landlord company in the amount of \$200.00 was entered into evidence.

Tenant Z.S. testified that he cleaned inside the fridge and tried to clean as best he could. Tenant Z.S. testified that some cleaning needed to be done such as the light

fixtures and windows, but that 10 hours is excessive, and the property did not require that much cleaning.

Drape cleaning

The landlord testified that the drapes were not cleaned at the end of the tenancy. The landlord's agent testified that the landlord company charges \$25.00 per window and that 4 sets of drapes were removed, cleaned and re-hung. The landlord's agent entered into evidence a landlord issued receipt in the amount of \$100.00.

The tenant testified that the drapes were in good shape at the end of the tenancy, but he could not recall if he cleaned them.

The move in condition inspection report states that the blinds, curtains and drapes were in good condition in all rooms. The move out condition inspection report states that all drapes require cleaning.

Analysis

Monetary Claims

Section 67 of the *Act* states:

Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Policy Guideline 16 states that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To be successful in a monetary claim, the tenant must establish all four of the following points:

1. a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
2. loss or damage has resulted from this non-compliance;
3. the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
4. the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Failure to prove one of the above points means the claim fails.

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails.

Condition Inspection Reports

Section 37 of the *Act* states that when tenants vacate a rental unit, the tenants must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Sections 23, 24, 35 and 36 of the *Act* establish the rules whereby joint move-in and joint move-out condition inspections are to be conducted and reports of inspections are to be issued and provided to the tenants. When disputes arise as to the changes in condition between the start and end of a tenancy, joint move-in condition inspections and inspection reports are very helpful. These requirements are designed to clarify disputes regarding the condition of rental units at the beginning and end of a tenancy.

Section 21 of the Residential Tenancy Act Regulations states:

In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

I find that the parties agreed on a time and date to complete the move out inspection report as is evidenced by the tenant's friend's attendance. I find that it was the responsibility of the tenants to have either or both tenants attend the move out inspection or an agent who would sign on their behalf. I find that the tenant's friend attended on behalf of the tenant and had the tenants' friend disagreed with the contents of the report, the friend should have stated so on the move out condition inspection report. As this did not occur, and the landlord complied with the *Act*, where the landlord and tenant Z.S. disagree on the move in /out condition of the rental property and other evidence does not clarify the issue, I rely on the condition inspection reports.

Carpet Cleaning

As both parties agree that the tenant is responsible for the \$126.00 carpet cleaning fee, I award the landlord \$126.00.

Painting

Based on the move in and out condition inspection reports, I find that the subject rental property required re-painting at the end of the tenancy, contrary to section 37(2)(a) of the *Act*. I find that the landlord suffered loss or damage as a result. I accept the landlord's agent's evidence that it cost the landlord company \$500.00 in labour and supplies to complete the painting. No mitigation issues were raised.

Policy Guideline #40 states that the useful life for interior painting is four years (48 months). Therefore, at the time the tenant moved out, there was approximately 22 months of useful life that should have been left for the interior paint of this unit. I find that since the unit required repainting after only 26 months, the tenants are required to pay according to the following calculations:

$\$500.00 \text{ (cost of painting)} / 48 \text{ months (useful life of paint)} = \$10.42 \text{ (monthly cost)}$

$\$10.42 \text{ (monthly cost)} * 22 \text{ months (expected useful life of paint after tenant moved out)} = \229.24

Repair vanity, replace stove drip trays, replace bifold doors

Residential Policy Guideline #40 sets out the useful life of building elements to be used when calculating damages owed to a party. Different elements have different useful lives. A landlord who suffers a loss due to the actions of the tenant is not entitled to recover the entire cost of replacing an item as the landlord retained some benefit of the item up until it was damaged. The landlord is entitled to damages based on what useful life the item should have had left after the tenants vacated.

The landlord's receipt for repairing the vanity, replacing the stove drip trays, and replacing the bifold doors does not break down the cost of each item, but presents a comprehensive sum for all work listed. The landlord testified that the sink, faucet and counters and drip trays were one year old when the tenants moved in and the bifold

doors were approximately 50 years old when the tenants moved in. Since the receipt does not break down the cost of each item, I am not able to calculate what useful life they may have had left as that would require a specific sum for each item to be provided. I find that without knowing the cost of each item, I am not able to calculate useful life and so cannot calculate damages owed to the landlord, except for those items listed on the receipt entered into evidence. I find that the landlord has not met the burden of proof as to the quantification of damages for the bifold doors, labour, sink and counter damage; I therefore dismiss those claims.

Based on the move in and move out condition inspection reports, I find that the tenants damaged the stove drip trays, contrary to section 37(2)(a) of the *Act*, and the landlord suffered a loss as a result. I find that the landlord has quantified its loss for the cost of new drip trays in the amount of \$41.19.

Policy Guideline #40 states that the useful life for a stove is 15 years (180 months). Therefore, at the time the tenants moved out, there was approximately 158 months of useful life that should have been left for the drip trays of this unit. I find that since new drip trays were required after only 26 months, the tenants are required to pay according to the following calculations:

$\$41.19 \text{ (cost of new drip trays / 180 months (useful life of stove))} = \$0.23 \text{ (monthly cost)}$

$\$0.23 \text{ (monthly cost)} * 158 \text{ months (expected useful life of drip trays after tenants moved out)} = \36.34

The landlord's agent testified that the faucet was one year old when the tenants moved in. Tenant Z.S. disputed this and testified that the faucets were old when they moved in. I find that the landlord has not proved the age of the faucet and it is therefore not possible to complete a useful life calculation. However, I find that the landlord has proved that the tenant damaged the faucet contrary to section 37(2)(a) of the *Act* and suffered a loss as a result. I find that since the landlord is entitled to nominal damages for the faucet in the amount of \$20.00.

Cleaning

Based on the move out condition inspection report I find that the subject rental property was dirty when the tenant moved out, contrary to section 37(2)(a) of the *Act*, which resulted in a loss to the landlord.

Residential Tenancy Branch Policy Guideline #1 states:

1. 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.
2. If the refrigerator and stove are on rollers, the tenant is responsible for pulling them out and cleaning behind and underneath at the end of the tenancy. If the refrigerator and stove aren't on rollers, the tenant is only responsible for pulling them out and cleaning behind and underneath if the landlord tells them how to move the appliances without injuring themselves or damaging the floor. If the appliance is not on rollers and is difficult to move, the landlord is responsible for moving and cleaning behind and underneath it.

I find that the fridge and stove were not on rollers, so the tenant was not required to clean underneath them at the end of the tenancy. I find that the landlord is not entitled to compensation for cleaning under the stove and fridge. I therefore deduct one hour of cleaning time from the landlord's claim of 10 hours of cleaning time. I find that the landlord is entitled to recover 9 hours of cleaning at \$20.00 per hour for a total of \$180.00.

Drape cleaning

Residential Tenancy Branch Policy Guideline #1 states:

The tenant is expected to leave the internal window coverings clean when he or she vacates. The tenant should check with the landlord before cleaning in case there are any special cleaning instructions. The tenant is not responsible for water stains due to inadequate windows.

Based on the move out condition inspection report, I find that the drapes were dirty when the tenants moved out, contrary to section 37(2)(a) and Policy Guideline #1. I find that the landlord suffered a loss as a result. I find that the landlord's claim for \$25.00 per drape to be reasonable and established. Not mitigation issues were raised. I award the landlord \$100.00 for the cost of cleaning the drapes.

Filing Fee

As the landlord was successful in its application for dispute resolution, I find that it is entitled to recover the \$100.00 filing fee from the tenants, pursuant to section 72 of the *Act*.

Security Deposit

Section 38 of the *Act* states that within 15 days after the later of:

- (a) the date the tenancy ends, and
 - (b) the date the landlord receives the tenant's forwarding address in writing,
- the landlord must do one of the following:
- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
 - (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

I find that the landlord made an application for dispute resolution claiming against the security and pet damage deposits pursuant to section 38(a) and 38(b) of the *Act*.

Section 72(2) of the *Act* states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit or pet damage deposit due to the tenant. I find that the landlord is entitled to retain the tenants' entire security deposit in the amount of \$557.50 in part satisfaction of the monetary claim.

Conclusion

I issue a Monetary Order to the landlord under the following terms:

Item	Amount
Carpet cleaning	\$126.00
Painting	\$229.24
Repair vanity, replace stove drip trays, replace bifold doors	\$56.34
Cleaning	\$180.00

Drape cleaning	\$100.00
Filing fee	\$100.00
Less security deposit	-\$557.50
Total	\$234.08

The landlord is provided with this Order in the above terms and the tenants must be served with this Order as soon as possible. Should the tenants 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: May 22, 2020

Residential Tenancy Branch