



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNDL-S, MNDCL-S

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on December 13, 2019 (the “Application”). The Landlord applied as follows:

- For compensation for damage to the rental unit;
- For compensation for monetary loss or other money owed;
- To keep the security deposit; and
- For reimbursement for the filing fee.

The Property Manager appeared at the hearing for the Landlord. The Tenants appeared at the hearing with their daughter for assistance, the Articled Student and the Supervising Lawyer. I explained the hearing process to the parties. The Property Manager and Tenants provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence.

The Articled Student confirmed receipt of the hearing package and Landlord’s evidence. The Articled Student noted that the fourth page of the hearing package was missing and so the Tenants obtained it on their own from the RTB on December 24, 2019.

The Property Manager testified that the Landlord received the Tenants’ evidence but that some of it was on a USB which the Landlord could not access because they do not have the equipment to do so.

I asked the Tenants if they followed up with the Landlord to ensure the Landlord could access the USB and the Tenants advised they did not know they had to do so.

Rule 3.10.5 of the Rules of Procedure (the “Rules”) states the following:

...Before the hearing, a party providing digital evidence to the other party must confirm that the other party has playback equipment or is otherwise able to gain access to the evidence.

If a party or the Residential Tenancy Branch is unable to access the digital evidence, the arbitrator may determine that the digital evidence will not be considered...

I found the Tenants did not comply with rule 3.10.5 of the Rules as they did not confirm that the Landlord had the necessary playback equipment or was otherwise able to access the USB.

I note that there was some questioning of the Property Manager’s position by the Tenants and Articled Student during the hearing. However, I do not find the comments or questioning relevant. The Tenants were required to comply with rule 3.10.5 of the Rules. If the Tenants had done so, there would be no issue because any issues could have been addressed prior to the hearing. It is the Tenants who were required to comply with rule 3.10.5 of the Rules and it was the Tenants who failed to comply with rule 3.10.5 of the Rules.

Given the Tenants failed to comply with the Rules in relation to the evidence on the USB, I heard the parties on whether the evidence should be admitted or excluded.

The Property Manager submitted that the evidence should be excluded because she cannot see what it is and cannot comment on it.

The Articled Student submitted that the evidence should be admitted and advised that the USB included video from the move-out inspection which is reflected in the report.

I exclude the evidence on the USB pursuant to rule 3.17 of the Rules. I find it would be unfair to the Landlord to consider evidence the Landlord has not seen in circumstances where the Tenants failed to comply with the Rules in relation to digital evidence.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all testimony provided and reviewed the admissible documentary evidence pointed to during the hearing. 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 compensation for monetary loss or other money owed?
3. Is the Landlord entitled to keep the security deposit?
4. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

The Landlord sought the following compensation:

Item	Description	Amount
1	Cleaning and disposal	\$630.00
		\$1,491.00
2	Unpaid hydro and gas bills	\$879.50
3	Filing fee	\$100.00
	TOTAL	\$3,100.50

A written tenancy agreement was submitted as evidence. Tenant S.F. testified that this was the second tenancy agreement between the parties. He agreed it was the most current tenancy agreement.

The tenancy started November 28, 2003 and was a month-to-month tenancy. Rent was \$1,700.00 per month due on the first day of each month. The Tenants paid a \$850.00 security deposit.

The parties agreed the tenancy ended December 01, 2019.

The parties agreed the Tenants provided the Landlord their forwarding address in writing on November 15, 2019.

The Property Manager testified that the Landlord did not have an outstanding monetary order against the Tenants at the end of the tenancy and the Tenants did not agree to the Landlord keeping some or all of the security deposit.

The parties agreed no move-in inspection was done.

The parties agreed on the following. A move-out inspection was done December 01, 2019. A staff member for the Landlord, Tenant S.F. and Tenant S.F.'s friend attended

the inspection. A Condition Inspection Report ("CIR") was completed and signed by the Tenant but not the Landlord. Tenant S.F. took a photocopy of the CIR the same day of the inspection.

Cleaning and disposal

The Property Manager testified as follows. The Landlord's son was moving into the rental unit once the Tenants vacated. She attended the rental unit after the move-out inspection and before the Landlord's son moved in. The Tenants had left garbage in the garage, kitchen and outside of the rental unit. Areas of the rental unit, such as cabinets, had not been cleaned. She took photos of the rental unit which are in evidence.

The Property Manager further testified as follows. The Tenants were told to clean the rental unit at the end of the tenancy. The Tenants were given an opportunity to return to the rental unit to clean it and pick up their garbage. The Tenants were advised of the cost associated with the Landlord cleaning the rental unit and removing the garbage. The Tenants did not want to return to the rental unit to clean it or pick up their garbage.

The Property Manager further testified as follows. The Landlord had to have the rental unit cleaned and the garbage removed. The invoices for this are in evidence. The Landlord's son was going to renovate the rental unit and therefore the cleaners did not clean areas that were going to be removed such as carpet. The cleaners did clean the walls and kitchen.

In relation to the move-out inspection and CIR, the Property Manager testified that the staff member was new, nervous and could not do anything without being shut down by Tenant S.F.

In response to a question from the Articled Student, the Property Manager testified that agents for the Landlord emailed and called the Tenants about returning to the rental unit to clean it and remove their garbage. The Property Manager testified that the Tenants did not reply to the emails or calls.

The Articled Student made the following submissions. The Tenants removed their items from the rental unit and left the unit in good condition which was referenced in the CIR. The Tenants did clean the rental unit and were not required to clean the walls, washroom or kitchen because the unit was going to be renovated. The CIR reflects this. The only items left in the rental unit by the Tenants were items to be donated and

furniture which belonged to the Landlord. The CIR notes that the Tenants would pay for the cost of moving the items for donation to the front of the rental unit. The items consisted of some bags and not truck loads of items. Tenant S.F. had arranged for these bags to be picked up.

The Articled Student made the following further submissions. The Tenants never received emails or calls from the Landlord or agents for the Landlord about returning to the rental unit to clean or pick up garbage. A move-out inspection was done. The staff member was present and the CIR was completed. The photos submitted by the Landlord are not accurate as to the state of the rental unit at the end of the tenancy. The photos may be of the downstairs rental unit. If the garage looked like it does in the photos, why was this not noted on the CIR.

Tenant S.F. testified as follows. The staff member who did the inspection for the Landlord did a room-by-room inspection and saw the downstairs of the rental unit. The invoices submitted by the Landlord are a “scam” as the company is charging GST and is not a registered company. The Property Manager lied in a previous hearing.

Tenant S.F. denied intimidating the Landlord’s staff member during the move-out inspection.

The Property Manager testified as follows in reply. The photos are not of the downstairs rental unit. The Tenants had sole use of the areas shown in the photos submitted. Most of the upstairs of the rental unit was clear of items at the end of the tenancy.

Unpaid hydro and gas bills

The Property Manager relied on a highlighted rent ledger as well as hydro and gas bills submitted to show that the Tenants owe for unpaid hydro and gas bills.

The parties agreed the Tenants are required to pay 45% of the utilities.

The Articled Student made the following submissions. The Tenants do not owe for October utility bills because they paid them. The Tenants do not owe for November utilities because they were never provided the bills which was required in a prior RTB decision. The Tenants do not owe for December utilities because they did not live in the rental unit for December. The Landlord charged twice for March and June on the rent ledger. The rent ledger is not accurate.

Tenant S.F. submitted that the amounts owing for bill #25 and #26 are wrong. I understood the issue to be that the payments were part of an equal payment plan. I understood Tenant S.F. to be arguing that the Tenants should only owe for a portion of the hydro and gas actually used versus 45% of the amount owed on the equal payment plan.

In reply, the Property Manager advised that the Landlord is not seeking unpaid utilities for November or December.

Given the position of the parties, and that neither was pointing to one issue or mistake in the evidence, I confirmed with the parties that I would look at the evidence of amounts owing and amounts paid and determine whether the Tenants owe for utilities. The parties confirmed I had all necessary evidence to make this decision including the rent ledger, bills and copies of cheques from the Tenants. The Articled Student confirmed copies of all cheques and payments had been submitted.

Evidence

I have reviewed the evidence submitted and in particular the evidence pointed to during the hearing by the parties. I find the following evidence most relevant.

The photos submitted by the Landlord which the Property Manager submits show the state of the rental unit at the end of the tenancy.

The move-out inspection report. It states, "Tenant was advised that the rental will be renovated so it's not necessary to clean". The only cost for deductions noted is the cost of moving donations to the front of the rental unit.

A statement from the staff member for the Landlord who did the inspection.

A rent ledger showing amounts owing and payments made for rent and utilities.

Copies of hydro and gas bills.

A witness statement from B.M. about attending the move-out inspection with Tenant S.F. It states that the staff member for the Landlord signed off on the documents indicating she found the rental unit to be left in a good clean condition, particularly given it was going to be extensively renovated. It states that the only items left in the rental unit were items that belonged to the owners and items to be donated.

Copies of cheques showing payments for utilities as well as an outline of the payments.

Analysis

Security deposit

Under sections 24 and 36 of the *Residential Tenancy Act* (the “*Act*”), landlords and tenants can extinguish their rights in relation to the security deposit if they do not comply with the *Act* and *Residential Tenancy Regulation* (the “*Regulations*”). Further, section 38 of the *Act* sets out specific requirements for dealing with a security deposit at the end of a tenancy.

However, section 100 of the *Act* states that sections 23 and 24 of the *Act* do not apply to a landlord or tenant for a tenancy that started before January 01, 2004. This tenancy started November 28, 2003 and therefore sections 23 and 24 of the *Act* do not apply to the parties.

I am satisfied Tenant S.F. participated in the move-out inspection as the parties agreed on this. Therefore, the Tenants did not extinguish their rights in relation to the security deposit under section 36 of the *Act*.

It is not necessary to determine whether the Landlord extinguished their rights in relation to the security deposit under section 36 of the *Act* as extinguishment only relates to claims for damage to the rental unit and the Landlord has claimed for unpaid utilities.

I am satisfied the tenancy ended December 01, 2019 as the parties agreed on this.

I am satisfied the Landlord received the Tenants’ forwarding address in writing November 15, 2019 as the parties agreed on this.

Pursuant to section 38(1) of the *Act*, the Landlord had 15 days from the later of the end of the tenancy or the date the Landlord received the Tenants’ forwarding address in writing to repay the security deposit or claim against it. Here, the Landlord had 15 days from December 01, 2019. The Application was filed December 13, 2019, within the 15-day time limit. I find the Landlord complied with section 38(1) of the *Act* and therefore the Tenants are not entitled to return of double the security deposit.

Compensation

Section 7 of the *Act* states:

7 (1) If a...tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying...tenant must compensate the [landlord] for damage or loss that results.

(2) A landlord...who claims compensation for damage or loss that results from the [tenant's] non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize 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.

Pursuant to rule 6.6 of the Rules, it is the Landlord as applicant who has the onus to prove the claim. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

Cleaning and disposal

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...

The parties disagreed about the state of the rental unit at the end of the tenancy. As stated, the Landlord has the onus to prove the claim.

I rely on the move-out CIR as showing the state of the rental unit at move-out. The very purpose of a move-out inspection is for the parties to get together, go through the rental unit and note down any issues or damage so that there is a record of these. The purpose of the parties doing a move-out inspection and CIR together is so the parties can discuss issues and obtain evidence of issues if necessary.

Section 21 of the *Regulations* states:

21 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.

There is no indication on the CIR that there was an issue with the cleanliness of the rental unit, or items left in the rental unit, other than the following two statements:

Tenant was advised that the rental will be renovated so it's not necessary to clean.

The Tenant hereby agrees to the deduction from the deposit:

...

Cost of moving donations to [organization] to the front.

There is no indication on the CIR that the Tenants would be liable for the cost of cleaning or removing items or garbage from the rental unit.

I do not find that there is a preponderance of evidence showing the CIR is not accurate.

The testimony of the Property Manager is not sufficient to show the CIR is not accurate. The Property Manager was not at the move-out inspection and therefore I am not satisfied the Property Manager is aware of what occurred during it. Further, the Tenants dispute the position of the Property Manager.

The Landlord submitted photos of the rental unit. The Property Manager testified that she took these after the move-out inspection and before the Landlord's son moved into the rental unit. The Tenants take the position that these photos are not accurate. The photos are not time or date stamped such that I can confirm when they were taken. The

photos were taken after the move-out inspection and not during. Given these issues, I am not satisfied the photos are sufficient to show the CIR is not accurate.

The Landlord submitted a statement from the staff member who conducted the move-out inspection. It states that the staff member was “shocked to see the suite was not cleaned and full of stuff”. It states that Tenant S.F. told the staff member that he was told he did not have to clean or remove items because the rental unit was being renovated. It states that the staff member later confirmed with their office that nobody told the Tenants they did not have to clean or remove items.

The staff member did not appear at the hearing to provide affirmed testimony or to be questioned about the move-out inspection, CIR, photos or their statement. In the absence of hearing from the staff member at the hearing, I am not satisfied the rental unit was not clean or full of items. If this was the case, I would expect the staff member to have noted this on the move-out CIR as this was the very purpose of completing the CIR.

Further, if it was not accurate that the Tenants were told they did not have to clean or remove items, I would expect the CIR to reflect this. Instead, the CIR supports that the Tenants were told they did not have to clean. I do not accept that Tenant S.F. did anything to force the staff member to note this as there is insufficient evidence to support this position.

The Tenants take the position that the photos are not accurate and the testimony of the Property Manager is not accurate. The Tenants rely on the CIR. The Tenants submitted the statement from B.M. which says the staff member signed off on the documents indicating she found the rental unit to be clean and in good condition, particularly given it was going to be renovated. It states that the only items left in the rental unit were items that belonged to the owners and items to be donated.

In the circumstances, I rely on the move-out CIR. I find it more likely than not that the move-out CIR is accurate. Based on the move-out CIR, I am satisfied there were no major issues with the rental unit at the end of the tenancy. I am satisfied the only issue noted at the end of the tenancy was items left for donation. I am satisfied the Tenants were told they did not have to clean the rental unit further because it was going to be renovated.

I am not satisfied the Tenants breached the *Act* in relation to cleaning or removing items from the rental unit. I do not accept that the Landlord can now claim for cleaning given

the notation on the move-out CIR as well as lack of evidence on the CIR that there was an issue with cleanliness. Although I would have found the Tenants responsible for the cost of moving items to the front of the rental unit for donation, the Landlord has not sought an amount for this and therefore I decline to award the Landlord compensation for this issue. The Landlord has failed to prove they are entitled to compensation for cleaning or disposal.

Unpaid hydro and gas bills

The parties disagreed about whether the Tenants owe for unpaid utilities.

I have reviewed the rent ledger, hydro bills, gas bills, copies of cheques submitted by the Tenants and the outline of payments provided by the Tenants. I find the following based on a review of these documents.

The bills match the amounts noted on the rent ledger.

All of the bills are from before September of 2019 and therefore the Landlord is not seeking unpaid utilities for October, November or December.

Bill #25 and #26 are not wrong. The parties agreed the Tenants owe 45% of the bills. The calculation done by the Landlord is 45% of what is owed on the bills. That is what the Tenants are required to pay. I do not agree that the presence of an equal payment plan changes that.

All of the Tenants' payments as set out in their evidence are reflected in the rent ledger. Both the cheque numbers and amounts match. The Tenants have not submitted a copy of a cheque that is not reflected in the rent ledger.

The Landlord did not charge double for March or June. A review of the bills shows the charges for March and June are for different bills with different billing dates for different billing periods. None of the bills are duplicates and the rent ledger only reflects the bills, nothing further.

The rent ledger, which I find accurate given the above, shows the Tenants owed \$3,396.02 for utilities in the relevant period. The Tenants' evidence shows they paid \$2,516.00 for utilities. I find the Tenants owe the Landlord \$880.02 for unpaid utilities; however, the Landlord has calculated the amount to be \$879.50 and I accept this amount. The Landlord is entitled to recover this amount for unpaid utilities.

Filing fee

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

Summary

In summary, the Landlord is entitled to the following:

Item	Description	Amount
1	Cleaning and disposal invoices	-
		-
2	Unpaid hydro and gas bills	\$879.50
3	Filing fee	\$100.00
	TOTAL	\$979.50

The Landlord submitted a calculation of interest owed on the security deposit which I accept. I accept that the Landlord holds a total of \$880.08 being the security deposit with interest. The Landlord can keep this pursuant to section 72(2) of the *Act*. The Landlord is issued a Monetary Order for the remaining \$99.42 pursuant to section 67 of the *Act*.

Conclusion

The Landlord is entitled to \$979.50. The Landlord can keep the security deposit. The Landlord is issued a Monetary Order for the remaining \$99.42. 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: June 04, 2020

 Residential Tenancy Branch