



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding AFFORDABLE HOUSING NON PROFIT RENTAL
ASSOCIATION and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S, MNRL-S, FFL

Introduction

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

- a monetary order for unpaid rent and for damage to the unit pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover its filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed the landlord served the tenant with the notice of hearing package and the submitted documentary evidence package via Canada Post Registered Mail on March 25, 2020 and May 25, 2020. Both parties also confirmed the tenant served the landlord with her submitted documentary evidence packages. Neither party raised any service issues. I accept the undisputed affirmed evidence of both parties and find that both parties have been properly served as per sections 88 and 89 of the Act.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for damage, for unpaid rent and recovery of the filing fee?

Is the landlord entitled to retain all or part of the security deposit?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on October 12, 2016 on a month-to-month basis as per the submitted copy of the signed tenancy agreement dated October 3, 2016. The monthly rent was \$960.00 and a security deposit of \$450.00 was paid.

The landlord seeks a monetary claim of \$1,231.75 which consists of:

\$279.75	Cleaning, 6 hours	\$180.00
	Carpet Cleaning	\$99.75
\$852.00	Unpaid Rent, February 2020	
\$100.00	Filing Fee	

The landlord claims that the tenant vacated the rental unit leaving it dirty and overhauled the rental until February 24, 2020. Both parties confirmed the tenant vacated the rental unit at the end of January 2020 but failed to remove some personal belongings from the rental unit and returned the keys to the landlord on February 24, 2020. The landlord seeks compensation of a pro-rated amount for the period February 1 – 24, 2020 of \$852.00. The tenant disputes the landlord's claim arguing that the landlord had told her to wait for a free removal service for removal of her personal belongings. Both parties confirmed that the landlord arranged for a free removal service provided by the municipality. The landlord argued that the tenant was notified to remove her belongings to the underground and that the landlord would arrange for the removal of those items from the underground. The tenant disputed this arguing that she was not told to place her belongings in the underground only that she would have to remove them for the removal service truck. The tenant stated that she retained the rental unit key to wait for the landlord to arrange the removal service and on February 24, 2020 she moved the items to the removal service truck.

The landlord also seeks compensation for recovery of cleaning and carpet cleaning costs totalling, \$279.75. The landlord stated that the tenant vacated the rental unit leaving it dirty requiring cleaning. Both parties confirmed that a condition inspection report for the move-in was completed, but that a move-out inspection was not. The landlord stated that the tenant failed to attend the move-out inspection and that it was completed in the absence of the tenant. The tenant argued that at no time did the landlord contact her to schedule the inspection. The landlord confirmed that a notice of final opportunity for a condition inspection report for the move-out was not issued by the

landlord. The landlord has submitted 20 photographs of the rental unit which the landlord claims shows that the rental unit required cleaning. The photographs show close-ups of the stove heating elements, the oven door and heating element, the exhaust fan and light, above the refrigerator, cabinets, bathroom sink and vanity, bathroom fan and toilet and window sills. The tenant disputes this claim arguing that the rental unit was left clean. The tenant in contrast provided 12 photographs of the living room, stove, bathroom, carpet, bathroom countertop, bathtub and toilet. The landlord also submitted internal staff "time sheets" which shows that 6 hours of cleaning was performed by two staff for a total cost for \$180.00 for cleaning. However, during the hearing the landlord clarified that the "time sheets" only detail 6 hours of cleaning at \$19/hour for a total of \$114.00. The landlord stated that the tenant was charged at \$30/hour and the difference of \$66.00 is used for administrative costs and cleaning supplies for arranging the clean-up. The landlord did not provide any further details on these administrative costs and cleaning supplies.

The landlord also seeks \$99.75 for carpet cleaning costs. The landlord claims that the carpet was left dirty requiring cleaning and that the signed tenancy agreement provides for the tenant to have the carpets professionally cleaned at the end of tenancy. The landlord has submitted an invoice dated April 14, 2020 from a contractor for carpet cleaning. The tenant disputes this claim arguing that the carpet was cleaned prior to vacating the premises. The landlord stated that she did not have any further evidence on the condition of the carpets.

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/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 the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

I find on a balance of probabilities that I prefer the evidence of the landlord over that of the tenant. In this case both parties confirmed that the tenant vacated the rental unit leaving behind personal items that were not removed by the tenant until February 24,

2020. Both parties also confirmed that the tenant did not return the rental unit key until the same date. On this basis, I find that the tenant did overhold the rental unit. The landlord has provided sufficient evidence to establish a claim for \$852.00.

On the landlord's claim for cleaning costs of \$180.00, I find that the landlord has been successful, however the landlord's monetary amount sought of \$180.00 has not been justified. Although the tenant has provided 12 photographs in contrast to the 20 photographs submitted by the landlord, I find that the tenant's photographs in general to be slightly out of focus and not of any assistance for comparison. The photographs submitted by the tenant provide for only a general view of the rental unit whereas the landlord's submitted photographs are of more detail and of specific areas. On this basis, I find that the landlord's photographs provide sufficient evidence of the rental unit being left dirty requiring cleaning. I also note that out of two of the tenant's "stove" photographs one does provide a slightly out of focus view of a dirty heating element. The landlord's "time sheets" detail only \$114.00 for 6 hours at \$19/hour. The landlord clarified that \$30/hour was charged to the tenant and the difference of \$66.00 was due to "Administrative costs" and cleaning supplies. I find that the landlord failed to provide sufficient evidence of these "Administrative costs" and cleaning supplies. On this basis, I find that the landlord has only provided sufficient evidence of cleaning costs totalling, \$114.00. The remaining \$66.00 portion is dismissed.

On the landlord's claim for carpet cleaning of \$99.75, I find that the landlord has failed to establish a claim. The tenant has disputed the landlord's claim and the landlord did not provide any supporting evidence of the carpet being dirty requiring cleaning. A review of the submitted copy of the signed tenancy agreement by the landlord does not provide for a clause in which the tenant is required to have the carpets professionally cleaned. In any event, with no evidence that the carpets were dirty requiring cleaning and if such a clause was part of a tenancy agreement, such a clause would be found to have been oppressive in nature and would be considered unconscionable and unenforceable. On this basis, this portion of the landlord's claim is dismissed.

The landlord has established a total monetary claim of \$966.00. The landlord is also entitled to recovery of the \$100.00 filing fee. I authorize the landlord to retain the \$450.00 security deposit in partial satisfaction of this claim.

Conclusion

The landlord is granted a monetary order for \$516.00.

This order must be served upon the tenant. Should the tenant fail to comply with this order, the 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: July 24, 2020

Residential Tenancy Branch