



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNRL-S, FFL

Introduction

This hearing was reconvened after an adjournment from the original hearing convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for damages to the unit - Section 67;
2. A Monetary Order for unpaid rent - Section 67;
3. An Order to retain the security deposit - Section 38; and
4. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity under oath at the original hearing. The Tenant did not appear at the reconvened hearing. The Landlord was given full opportunity at the reconvened hearing to be heard, to present evidence and to make submissions

Preliminary Matter

No monetary order worksheet was included with the Landlord’s submissions and no detailed calculations for the monetary amounts claimed were set out in the application. It was also noted that none of the documentary items were uploaded to the Residential Tenancy Branch (the “RTB”) dispute site with descriptors. The Landlord states that it did complete a monetary order worksheet and provided it to both the RTB and the Tenant. The Tenant states that no monetary order worksheet could be located in the evidence sent over numerous dates by email to the Tenant. The Tenant states that none of the Landlord’s evidence was identified by other than “evidence” and that

locating specific pieces of evidence is difficult. The Tenant states that it has not reviewed all of the emails with the Landlord's evidence. The Tenant states that it thinks it is aware of the breakdown of costs being claimed. The Landlord states that because its evidence was too large it had to send it in portions to the Tenant. The Landlord states that because of covid the Landlord had difficulties organizing and collecting its evidence. The Landlord states that it does not wish to delay the dispute and wishes to proceed. The Landlord was given opportunity at the hearing to provide the breakdown of the monetary claims for damages to the unit. The Landlord claims as follows:

- \$1,165.00 for the costs to replace a damaged living room carpet;
- \$720.00 for cleaning the unit;
- \$250.00 for fridge replacement;
- \$155.00 for a cupboard replacement;
- \$198.00 for paint supplies; and
- \$105.00 for the costs to replace curtains.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

Original hearing evidence:

The following are agreed facts: the tenancy under written agreement started on November 1, 2018 and ended on March 31, 2020. Rent of \$950.00 was payable on the last day of each month. At the outset of the tenancy the Landlord collected \$475.00 as a security deposit and \$475.00 as a pet deposit. The Tenant provided its forwarding address to the Landlord when it gave its notice to end the tenancy on February 28, 2020.

The Landlord states that the Parties mutually conducted a move-in inspection with a report completed and copied to the Tenant. The Landlord states that the Landlord and an agent for the Tenant mutually conducted a move-out inspection with a report

completed and copied to the Tenant. The Landlord states that the move-out inspection report was not signed by the Tenant's agent due to covid restrictions.

The Tenant states that it does not recall any move-in inspection. The Tenant agrees that a move-out condition inspection was conducted and states that no copy of the report was given to the Tenant.

The Landlord states that the Tenant left the living room carpet with a hole, several snags and several stains. The Landlord states that the carpet requires replacement but that due to limited finances the Landlord has been unable to purchase new carpet. The Landlord claims the replacement and installation cost of the carpet of \$1,165.00 and provides an estimate for this cost. The Landlord states that the unit was rented again as of July 1, 2020 for monthly rent of \$1,000.00. The Landlord states that the new tenants were not given a rental discount for the damaged carpet. The Tenant agrees that it left a hole in the carpet and that it did not clean the carpet at move-out. The Tenant states that the amount claimed by the Landlord seems excessive.

The Landlord states that the Tenant left the unit unclean and claims \$720.00 as the costs. The Landlord states that it did the cleaning itself that took 22 hours. The Landlord states that the unit is 900 square feet with 2 bedrooms and one bath. The Landlord states that it claims its cleaning costs at \$60.00 per hour as that is the usual rate. The Landlord provides an estimate from a cleaning company for the amount claimed and the Tenant notes that the company's estimate only sets out a total 12 hours required for cleaning the unit. The Tenant states that while it did some cleaning, some was missed.

The Landlord states that the Tenant left scratches on the vinyl finished fridge which had been purchased used for \$250.00 prior to the tenancy. the Landlord states that the fridge has not been replaced and is currently being used by the new tenants. The

Landlord claims \$250.00. the Tenant states that there were no damages to the finish and that the fridge only needed a wipe down to remove the marks.

Reconvened hearing evidence:

The Landlord states that in February 2020 while conducting an inspection of the unit the Landlord discovered that the bottom of the kitchen cupboard under the sink had water on it. The Landlord states that they determined that the water was coming from a drain problem but that the Tenant had not informed the Landlord of this problem. The Landlord states that the cupboard was repaired by the Landlord themselves as the unit was listed for sale. The Landlord claims \$155.00 for the cost of materials. The Landlord states that it provided the invoice as supporting evidence for this claim. It is noted that no such invoice could be found in the Landlord's evidence materials provided to the RTB.

The Landlord states that the Tenant left the wall behind its bed damaged and requiring paint. The Landlord claims the cost of paint supplies of \$198.00. The Landlord states that it provided a receipt to the RTB as supporting evidence of this cost. It is noted that no such invoice could be found in the Landlord's evidence materials provided to the RTB.

The Landlord states that the Tenant wanted drapes for the balcony and so the Landlord provided new drapes to the Tenant. The Landlord states that the Tenant left the year-old drapes damaged and stained. The Landlord states that it did not replace the drapes. The Landlord claims \$105.00 as costs to replace the curtains.

The Landlord clarifies that the carpet was one year old at the onset of the tenancy having purchased the carpet on November 1, 2018. The Landlord clarifies that the

listing of the unit was removed around June 25, 2020 and that the unit was then rented as of July 1, 2020.

The Landlord states that on November 1, 2019 the rent was increased to \$1,000.00. The Landlord states that it did not give the Tenant a notice of rent increase on an approved form as the Landlord does not have to do that. The Landlord states that it gave a written notice of rent increase to the Tenant sometime in October 2019. The Landlord states that the Tenant verbally agreed to the increase and paid the increased rent for the months November 2019 to February 2020 inclusive. The Landlord states that the Tenant then refused to pay the rent increase and deducted \$250.00 for the rent increases paid resulting in the Landlord only receiving \$750.00 for March 2020 rent. The Landlord argues that by virtue of the Tenant paying the increase the Landlord is not stopped from collecting the increase. The Landlord claims \$250.00.

Analysis

Section 37 of the Act provides that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that costs for the damage or loss have been incurred or established. There is no evidence to support that the Landlord will in fact replace the carpet and I note that the new tenancy has accepted the carpet with a higher monthly rent than that paid by the Tenant. As there is no way to determine a possible future event, as the Landlord did not replace the carpet or suffer any rental loss as a result of the damage to the carpet, I find that the Landlord has not substantiated the costs claimed for the replacement of the

carpet. However, as the Tenant did not dispute that it caused the damage, I find that the Landlord has substantiated a nominal amount of **\$50.00** for this damage.

Based on the Landlord's evidence of the unclean state of the house at the end of the tenancy somewhat supported by the Tenant's evidence that only some cleaning was done I find on a balance of probabilities that the Landlord has substantiated that the Tenant left the unit unclean. However, as the estimate provided by the Landlord indicates 12 hours of cleaning and considering the photos of the unit, I find that this amount of time to clean the unit is supported. I take the Landlord's evidence of having spent 22 hours in cleaning the unit to be an exaggeration. This tends to reduce the overall reliability and credibility of the Landlord in relation to the cleaning costs claimed. While the Landlord claims the same hourly rate as the cleaning company, I note that this is a professional cleaning rate and the Landlord did not provide any evidence of attempts to reduce the costs by obtaining better hourly rates other than by completing the work itself. I take this to be evidence of the Landlord's mitigation efforts and evidence to support a lower hourly rate than what would have been otherwise incurred. As the Landlord did not provide evidence of its hourly cleaning cost and no invoice setting out details of its cleaning and no evidence of any other cleaning rates, I find that the Landlord has only substantiated a reasonable hourly rate of \$30.00 for the cleaning costs for a total of **\$330.00**.

As there is no evidence of the age of the used fridge and as the photos depict an aged fridge, I find that the Landlord has not provided sufficient evidence of any remaining useful life of the fridge. Further given the Landlord's evidence of not replacing the fridge for the next tenancy with a higher amount of rent than that paid by the Tenant I find that the Landlord has not substantiated any loss in relation to the fridge. Any repairs or dealing with the fridge remains the Landlord's responsibility and I dismiss the claim for the replacement of the fridge.

As the Landlord did not provide any supporting evidence for the material costs incurred for repairing the cupboard, I find that the Landlord has not substantiated the costs claimed. However, as the Tenant did not dispute that it caused the damage to the cupboard, I find that the Landlord has substantiated a nominal amount of **\$50.00** for the damage to the cupboard.

Given the lack of an invoice to support the paint costs to the unit I find that the Landlord has not substantiated the costs claimed. However, as the Tenant has not disputed the damage to the bedroom wall, I find that the Landlord is entitled to a nominal amount of **\$50.00** for this damage.

Given the Landlord's evidence that no costs were incurred to replace the curtains I find that the Landlord has not substantiated any replacement costs. However, as the Tenant has not disputed the damage to the curtains that were only a year old, I find that the Landlord has substantiated a nominal amount of **\$50.00** for this damage.

Section 42(2) and 42(3) of the Act provides that a landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase and that a notice of a rent increase must be in the approved form. Section 43(5) of the Act provides that if a landlord collects a rent increase that does not comply with this Part, the tenant may deduct the increase from rent or otherwise recover the increase. Based on the Landlords evidence that no notice of rent increase on the approved form was given to the Tenant to obtain a rent increase I find that the Landlord did not comply with the rent provisions of the Act. I also find that the Tenant was entitled to deduct the rent increase paid for the months of November to February 2020 inclusive in the amount of \$200.00. As the Landlord did not comply with the rent provisions of the Act the Landlord is only entitled to rent of \$950.00 for March 2020. Based on the Landlord's evidence that the Tenant paid \$750.00 for March 202 I find that the Landlord is not entitled to the rent claim of \$250.00 and I dismiss that claim.

As the Landlord's claims have met with only minimal success and noting that in relation to its claim for unpaid rent the Landlord acted contrary to the Act in increasing the rent during the tenancy I decline to award recovery of the filing fee leaving the Landlord with a total entitlement of **\$530.00**. Deducting this amount from the combined pet and security deposit plus zero interest of **\$950.00** leaves **\$420.00** to be returned to the Tenant forthwith.

Conclusion

I Order the Landlord to retain the amount of \$530.00 from the security deposit plus interest in the amount of \$900.00 in full satisfaction of the claim.

I grant the Tenant an order under Section 67 of the Act for **\$420.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the RTB under Section 9.1(1) of the Act.

Dated: October 2, 2020

Residential Tenancy Branch