



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Trident Communications Inc
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCL-S, FFL

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the *Act*), I was designated to hear an application regarding the above-noted tenancy. The landlord applied for:

- a monetary order for loss under the Act, the regulation or tenancy agreement, pursuant to section 67 of the Act;
- an authorization to retain the tenant's security deposit under section 38 of the Act;
- an authorization to recover the filing fee for this application, pursuant to section 72 of the Act.

Both parties attended the hearing. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. Witness ST for the tenant also attended.

As both parties were present service was confirmed. The parties each confirmed receipt of the application and evidence (the materials). Based on the testimonies I find that each party was served with the respective materials in accordance with sections 88 and 89 of the *Act*.

Issues to be Decided

Is the landlord entitled to:

1. a monetary award for compensation for damages caused by the tenant?
2. an authorization to retain the tenant's security and pet damage deposit?
3. an authorization to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending parties, not all details of the submissions and arguments are reproduced here. The relevant and important aspects of the claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is their obligation to present the evidence to substantiate the application.

Both parties agreed the tenancy started on September 02, 2019 and ended on April 30, 2020. Monthly rent was \$2,500.00, due on the first day of the month. At the outset of the tenancy the landlord collected a security deposit of \$1,250.00 and still holds it in trust. A tenancy agreement was submitted into evidence.

Both parties also agreed the forwarding address was provided in writing to the landlord on May 22, 2020. The landlord applied for dispute resolution on May 21, 2020.

The landlord affirmed the rental unit was professionally cleaned before the tenancy started and was in great condition. A move in inspection signed by the tenant and the landlord was submitted into evidence. It states the carpet was cleaned on August 31, 2019 and all rooms of the rental unit were clean and in good condition. The tenant stated the rental unit was not completely clean when the tenancy started.

The landlord affirmed the tenant did not want to participate of the move out inspection because of Covid. The tenant disagreed and said she asked for a move out inspection. Text messages between the parties on April 27, 2020 state:

Hi. Sorry I forgot to text back. Yes, the 29th is fine and would be great. I will schedule cleaners and walk through. For the 29th. Just leave all keys and fobs in the counter. Thank you.

Sounds good. When you figure it out, please let e know what time the walk through will be at on the 29th. Thanks again.

Hi [tenant]. What time will you be heading out on the 29th. I have cleaners lined up and they will come in as soon as you are gone. Just let me know when you will be leaving that morning. Thanks [landlord].

Hi [landlord]. I can be gone after 11am.

The move out inspection form, signed only by the landlord on April 29, 2020, states the rental unit needed cleaning, 2 mattress covers were required, 3 light bulbs, there was 1 hole in the cushion and stain on the living room chair.

The landlord stated 2 or 3 cleaners cleaned the 1,200 square feet, 3-bedroom rental unit for almost an entire day. An invoice in the amount of \$514.50 was submitted into evidence for 14 hours of cleaning.

The landlord submitted photographs taken on April 29, 2020 showing the rental unit when the tenancy ended. The photographs, explained by the landlord, show a dirty barbecue grill, stove, fridge and bathroom. Cigarette burns in the couch are also shown in the photographs, as well as a damaged pull-out couch.

The landlord warned the tenants during the tenancy about the cleaning of the rental unit.

The tenant affirmed that most of the dirtiness was residue from past tenants. 7 photographs taken on April 27, 2020 and 2 videos were submitted by the tenant.

The landlord is seeking compensation for 'Repairs Damage'. These items are mentioned in the single invoice submitted into evidence:

1. Carpet and deck cleaning: \$199.50
2. Mattress covers: \$123.18
3. Deck cushion with cigarette burn: \$150.00
4. Light cord: \$25.00
5. Various light bulbs: \$60.00
6. Broken couch: \$150.00

The tenant agreed to pay for the mattress covers the amount sought by the landlord and \$50.00 for the deck cushion with cigarette burns because it is only worth \$50.00. The couch was damaged when the tenancy started. Text messages between the parties were submitted into evidence:

[tenant]: I would totally understand if the couch was in its best condition when it was rent to us but it wasn't. It was already worn out and dipped in the middle etc. For me and my roommates it doesn't make sense as to how we could've damaged that! We never even realized we had a hide a bed.

[landlord]: Did you ever use it for guests? OR did someone have a wild night on the couch. Ha Ha.

[tenant]: We never opened the hide a bed!! If we had someone stay they would just stay in the bedroom. Lol that was a bit much but I don't think that happened either.

[landlord] Ha Ha. Just being funny.

The tenant and the witness affirmed the light bulbs and the light cord were not working when the tenancy started.

The witness affirmed the invoice submitted by the landlord was issued by a health business.

The landlord submitted a monetary order worksheet. The total amount the landlord is seeking for cleaning and repair damages is \$1,222.18.

Analysis

Section 7 of the Act state:

Liability for not complying with this Act or a tenancy agreement

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

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

Residential Tenancy Branch Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. 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.

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.

Cleaning (item 1 in the monetary order worksheet)

Residential Tenancy Branch Policy Guideline 1 states:

The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard. The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises), or for cleaning to bring the premises to a higher standard than that set out in the Residential Tenancy Act.

Both parties submitted photographs indicating the rental unit's condition when the tenancy ended. I find the photographs submitted by the landlord show more details of the rental unit's condition and cleanliness when the tenancy ended. The photographs and videos submitted by the tenant show the general condition of the rental unit, but they do not show details of the cleanliness.

The tenant was not able to explain why she signed the move in inspection report stating the rental unit was clean when the tenancy started and now affirms it was not clean.

Regulation 21 states:

Evidentiary weight of a condition inspection report

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.

I find the testimony of the tenant does not outweigh the evidentiary value of the signed move in condition inspection report.

The landlord provided a vague testimony about the cleaning of the rental unit ('2 or 3 people for most of the day'). Based on the vague landlord's testimony, photographs submitted by the landlord and the size of the rental unit, I do not find the rental unit needed 14 hours of cleaning at the cost of \$514.50. I find it reasonable to award the landlord \$200.00 for cleaning.

Thus, I award the landlord \$200.00 in compensation for this loss.

Carpet and deck cleaning (item 2 in the monetary order worksheet and 1 in the invoice)
Section 37(2) of the Act states:

Leaving the rental unit at the end of a tenancy

37(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

Residential Tenancy Branch Policy Guideline 01 states:

The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard. The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises), or for cleaning to bring the premises to a higher standard than that set out in the Residential Tenancy Act.

[...]

CARPETS

1. At the beginning of the tenancy the landlord is expected to provide the tenant with clean carpets in a reasonable state of repair.
2. The landlord is not expected to clean carpets during a tenancy, unless something unusual happens, like a water leak or flooding, which is not caused by the tenant.
3. The tenant is responsible for periodic cleaning of the carpets to maintain reasonable standards of cleanliness. Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year. Where the tenant has deliberately or carelessly stained the carpet he or she will be held responsible for cleaning the carpet at the end of the tenancy regardless of the length of tenancy.

The tenant may be expected to steam clean or shampoo the carpets at the end of a tenancy, regardless of the length of tenancy, if he or she, or another occupant, has had pets which were not caged or if he or she smoked in the premises.

Based on the text messages dated April 27, 2020, I find the tenant asked for a move out inspection and the landlord did not offer two possible dates, in accordance with section 35(2) of the Act. Thus, I do not accept the move out inspection report as evidence.

Based on the move in inspection form ('furniture+carpets cleaned Aug.31/19'), the photographs taken by the landlord on the move out date, the invoice and the landlord's testimony, I find the carpet and deck were clean when the tenancy started and dirty when the tenancy ended. I find it reasonable to award the landlord \$199.50 for carpet and deck cleaning.

Thus, I award the landlord \$199.50 in compensation for this loss.

Mattress cover (item 2 in the monetary order worksheet and 2 in the invoice)

The tenant agreed to pay \$123.18 for the mattress covers replacement. Thus, I grant the landlord a compensation in the amount of \$123.18 for the rental unit's mattress covers replacement.

Deck cushion with cigarette burn (item 2 in the monetary order worksheet and 3 in the invoice)

The tenant agreed to pay \$50.00 for the deck cushion with cigarette burn.

Based on the photographs and the invoice submitted, I find it reasonable to award the landlord \$150.00 for the replacement of the deck cushion.

Thus, I award the landlord \$150.00 in compensation for this loss.

Light cord and various light bulbs (item 2 in the monetary order worksheet and 4 and 5 in the invoice)

Residential Tenancy Branch Policy Guideline 01 states:

1. The landlord is responsible for:

- ☐ **making sure all light bulbs and fuses are working when the tenant moves in.**
- ☐ replacing light bulbs in hallways and other common areas like laundry and recreational rooms; and
- ☐ repairing light fixtures in hallways and other common areas like laundry and recreational rooms.

2. The tenant is responsible for:

- ☐ Replacing light bulbs in his or her premises during the tenancy,
- ☐ Replacing standard fuses in their unit (e.g. stove), unless caused by a problem with the stove or electrical system, and
- ☐ Making sure all fuses are working when he or she moves out, except when there is a problem with the electrical system.

(emphasis added)

The parties offered conflicting testimony regarding the condition of the light bulbs and the light cord when the tenancy started. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

The applicant did not provide any documentary evidence to support his claim. The move in inspection report does not mention the condition of the lights when the tenancy started. The applicant did not call any witnesses. The tenant's witness stated the light cord and the several light bulbs were not working when the tenancy started.

Thus, I dismiss the landlord's application for compensation for light cord and light bulbs.

Damaged couch (item 2 in the monetary order worksheet and 6 in the invoice)

Once again the parties offered conflicting testimony regarding the condition of the couch when the tenancy started.

The landlord, when replying to the text message sent by the tenant regarding the damaged couch, was vague and did not deny that it may have been damaged before the tenancy started. The move in inspection report does not mention the condition of the couch when the tenancy started.

Thus, I dismiss the landlord's application for compensation for a damaged couch.

Filing fee and summary

As the landlord was partially successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application.

In summary, the landlord is entitled to:

Expense	\$
Cleaning	200.00
Carpet and deck cleaning	199.50
Mattress cover	123.18
Deck cushion	150.00
Filing fee	100.00
Total	772.68

Set-off

Residential Tenancy Branch Policy Guideline 17 states:

The Residential Tenancy Act provides that where an arbitrator orders a party to pay any monetary amount or to bear all or any part of the cost of the application

fee, the monetary amount or cost awarded to a landlord may be deducted from the security deposit held by the landlord and the monetary amount or cost awarded to a tenant may be deducted from any rent due to the landlord.

As such, the landlord is authorized to retain the amount of \$772.68 from the deposit to offset the monetary award for losses incurred due to the tenant's non-compliance with the Act. As the landlord confirmed receipt of the tenant's forwarding address, the landlord must return the balance of the deposit of \$477.32.

In summary:

Landlord's monetary compensation	\$772.68
Deposit	\$1,250.00
Tenant's monetary award	\$477.32

Conclusion

Pursuant to sections 38, 67 and 72 of the Act, I authorize the landlord to retain \$772.68 from the tenant's deposit in total satisfaction of losses incurred and grant the tenant a monetary award pursuant to sections 38 and 67 of the Act in the amount of **\$477.32**.

The tenant is provided with this order in the above terms and the landlord must be served with this order as soon as possible. Should the landlord 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: October 01, 2020

Residential Tenancy Branch