



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PTR Development Holdings Ltd. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes

MNDC MNSD FF

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution. The participatory hearing was held, by teleconference, on November 30, 2020. The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage to the unit, for damage or loss under the Act; and,
- 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.

The Landlord's agent (referred to as the "Landlord") and the Tenant's agent (referred to as the "Tenant") both attended the hearing. All parties provided testimony. The Landlord testified that she sent the complete Notice of Hearing package to each of the respondents by registered mail on August 19, 2020. The Landlord also stated that she sent her complete evidence package to each of the respondents, by registered mail, on September 29, 2020. The Tenant confirmed he got the packages. The Tenant did not dispute getting all of the above noted documents with the exception of the second page of the Notice of Dispute Resolution, which contained the conference codes, and some respondent instructions. The Tenant confirmed that he called into the RTB to obtain the codes to both upload his evidence and dial into the hearing. The Tenant also confirmed he got the Respondent Instructions as part of the Landlord's evidence packages.

The Tenant stated that he got the physical copies of the packages which the Landlord sent by registered mail and then he scanned them, and no longer has the physical copies to rely on. The Tenant stated that in his scanned version, he is missing the second page of the Notice of Dispute Resolution Proceeding. However, he was unable to confirm what was in the physical package because it could not be located during the

hearing. The Landlord specified that she clearly numbered all pages, and sent each respondent these documents. The Landlord explained that page one of the overall package coincided to page 1 of the Notice of Dispute Resolution Proceeding, and page 2 of the overall package coincided with page 2 of the Notice of Dispute Resolution Proceeding. The Landlord was able to flip through an exact replica of the package she mailed the Tenant, while the hearing was going, and confirm that she included all pages, despite the fact that the Tenant stated he did not have page 2 of that document.

When weighing these two versions of events, I find the Landlord has provided a more reliable and compelling account of what was served, when, and which pages were included. The Tenant appears to have scanned the physical package he received, adding another step to the process, which could have contributed to the fact that he was missing a page in the version he had at the hearing (digital copy). I find it more likely than not that the Landlord served the Tenant with the complete dispute resolution package, and all her evidence, by registered mail. I find the Landlord has sufficiently served the Tenants with both the Notice of Dispute Resolution and her evidence.

The Tenant stated he did not serve the Landlord with his evidence because he did not know he had to. The Tenant stated he just uploaded his documents to the RTB website. As stated in the hearing, the Rules of Procedure (3.15), states that all of the respondent's evidence must be received by the applicant no later than 7 days before the hearing. All evidence must be given to both the RTB, and the other party. Given this was not done, I find the Tenant's evidence is not admissible. The Tenant relied on oral testimony only.

Both parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

The person in attendance for the Tenant at the hearing confirmed that he subleased the rental unit for 2 months, and he was not a Tenant as listed on the Tenancy Agreement. As such, he is not included in the style of cause or on the monetary orders. The Landlord's application has been amended to reflect the sole tenant, I.C. The individual at the hearing for the Tenant confirmed he was authorized to act as the Tenant's agent, and proceed on her behalf.

Issues to be Decided

- Is the Landlord entitled to a monetary order for damage to the unit or for damage or loss under the Act?
- Is the Landlord authorized to retain all or a portion of the Tenant's security and pet deposit in partial satisfaction of the monetary order requested pursuant to section 38?

Background and Evidence

Both parties provided a substantial amount of conflicting testimony during the hearing. However, in this review, I will only address the facts and evidence which underpin my findings and will only summarize and speak to points which are essential in order to determine the issues identified above. Not all documentary evidence and testimony will be summarized and addressed in full, unless it was specifically pointed out by the parties and is pertinent to my findings.

Both parties agree that:

- The tenant, I.C., moved into the rental unit on August 1, 2019, and lived there for around 10 months. N.M. subleased the unit for June and July of 2020.
- I.C. and N.M. both ceased to occupy the rental unit after July 31, 2020, which is the date vacant possession was given back to the Landlord.
- The Landlord still holds a security deposit in the amount of \$755.00
- A move-in inspection was done on August 1, 2019, and the Tenant signed the move-in portion of the report
- A move-out inspection was done on July 31, 2020, and N.M. was acting as the Tenant's agent for that inspection. N.M. refused to sign the move-out inspection report because he did not agree with the noted issues on that report.

The Landlord provided photos to accompany the condition inspection report, as well as receipts for all of the items she is seeking.

The Landlord provided a monetary order worksheet stating she is seeking \$832.38 in compensation for 4 items, as follows:

1) \$378.00 – Suite Cleaning

The Landlord stated the entire rental unit needed to be re-cleaned after the Tenant left. The Landlord stated that they hired a cleaning company which cost the above noted amount. This cleaning company invoice shows they had to clean the following items:

Clean:

Wash hallway walls

Wash fronts of all closet doors

Wash front of fridge and handle

Deep clean of inside of oven, oven drawer, stovetop, elements and drip pans

Pull out stove and fridge and wash sides of each and wash floor underneath

Wash inside of all kitchen drawers, front of drawers and all handles

Wash inside of cupboards and all cupboard doors inside and out and all handles

Clean inside of dishwasher

Clean front of microwave

Vacuum all floors throughout

Wash all floors

Vacuum all baseboards and wash baseboards

Wash light switches

Wash all walls

Bathroom:

Note: Numerous scratches in bathtub. Clean tub

Clean bathtub faucet. clean grout

Clean toilet

Wash floor

Clean ceiling fan

Clean deck

Clean glass on deck railings

Clean inside of washer and dryer

Wash black marks off ceiling above cupboards

The Landlord stated that they were charged 8 hours of cleaning at a rate of \$45.00 per hour. The Landlord took several photos showing spills, stains, and marks on surfaces, fixtures, appliances, and walls. The Landlord stated that there was a general layer of dirt and grease on all the surfaces.

The Tenant disagreed that the unit was unclean. The Tenant stated he had the blinds and windows cleaned professionally. The Tenant stated that the Landlord's photos are too zoomed in to be reliable. The Tenant stated that the place was "spotless" and feels the charges are excessive.

2) \$157.50 – General wall repairs and painting

The Landlord provided a copy of an invoice for the above noted amount, which was incurred to do small wall patches, and paint the entire rental unit. The Landlord stated they were charged this amount for 3 hours labour, and all materials/paint. The Landlord provided a couple of photos showing some general dirt and film on the walls, and a few minor scratches. The Landlord stated that the unit was last repainted 1 year ago.

The Tenant denies that the walls were in need of a repaint or that they were dirty. The Tenant stated that the only things he agrees to with respect to wall damage was for the small adhesive wall hangers which damaged the paint when removed. The Tenant feels the Landlord has exaggerated the damage to the walls and the paint.

3) \$196.88 – Bathtub Re-glazing

The Landlord stated that this entire rental unit was brand new in 2016, and the tub was only 4 years old at the end of the tenancy. The Landlord provided photos of the tub, showing scratches all over the floor of the bathtub. The Landlord pointed to the move-in condition inspection report to show that these scratches were not noted at the time the Tenant moved into the building, but as per the photos, the scratches were present when this tenancy ended. The Landlord provided a copy of the invoice to show they paid the above noted amount to have the white glaze on the bathtub re-done.

The Tenant stated that the bathtub was not scratched, and feels any of this damage the Landlord is alleging is from normal wear and tear. The Tenant stated he is unaware how any of the scratches happened, and feels the Landlord may have doctored the color/lighting of the photos to make them seem worse than they are.

4) \$100.00 – Filing Fee

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim.

In this instance, the burden of proof is on the Landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenant. Once that has been established, the

Landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord did everything possible to minimize the damage or losses that were incurred.

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

Based on all of the above, the evidence and the testimony provided at the hearing, I find as follows:

Condition Inspection Report

Sections 23 and 35 of the Act states that a Landlord and Tenant together must inspect the condition of the rental unit on the day the Tenant is entitled to possession of the rental unit, and at the end of the tenancy before a new tenant begins to occupy the rental unit. Both the Landlord and Tenant must sign the condition inspection report and the Landlord must give the Tenant a copy of that report in accordance with the regulations.

In this case, I note the parties completed a move-in inspection report, and signed a copy of this document together. I find this document provides consistent and reliable evidence with respect to the condition of the rental unit at the start of the tenancy. However, the parties disagree completely about the Landlord's characterization of the rental unit at the end of the tenancy. It appears a move-out inspection was completed on July 31, 2020. However, after a disagreement during this inspection, the Tenant left, without signing the document.

After considering the totality of this situation, I find the move-out portion of the condition inspection report is of limited evidentiary value, as it was never agreed upon. The Tenant alleges that the Landlord has exaggerated the issues. Given the limited evidentiary value of the move-out portion of the condition inspection report, I have given it no weight. Instead, I rely on the photos taken at the end of the tenancy, as well as testimony to highlight the condition at the end of the tenancy.

Next, I turn to the Landlord's monetary items, as laid out above. They will be addressed in the same order as above:

1) \$378.00 – Suite Cleaning

The Landlord stated the entire rental unit needed to be re-cleaned after the Tenant left. The Landlord stated that they hired a cleaning company which cost the above noted amount. I note there were photos provided into evidence which, although zoomed in, show lots of surface staining, and debris. It appears many of the surfaces were either not cleaned, or improperly cleaned. I accept that the rental unit would have required further cleaning, based on the photos provided. I do not agree with the Tenant's characterization of the rental unit, in that it was "spotless".

I note the following portion of the Act:

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,*

I do not find the unit was reasonably clean, and I find the Landlord's costs on this matter are reasonable, and supported by the invoice provided. I award this item, in full.

2) \$157.50 – General wall repairs and painting

The Landlord provided a copy of an invoice for the above noted amount, which was incurred to do small wall patches, and paint the entire rental unit. The Landlord stated that this company charged this amount for 3 hours labour, and all materials/paint. The Landlord stated that this was required because of all the scuffs and dirt on the walls.

Having reviewed the testimony and evidence on this matter, I note this unit was last repainted 1 year ago. It does not appear any significant damage was noted on the walls at the start of the tenancy. I have reviewed the photos taken at the end of the tenancy and I find the damage is very minor and there is insufficient evidence to show that any of the damage or dirt warranted repainting of the rental unit. As this is the biggest component of this invoice, I dismiss the Landlord's claim for compensation. It appears much of the debris and dirt was surface level, and could potentially have been cleaned, without actually needing repainting.

That being said, the Tenant did acknowledge making a couple of holes in the drywall/paint where adhesive wall hangers pulled off the paint and some of the drywall. I award a nominal award for the repair of the damaged spots where drywall damage occurred from the adhesive hangers. Although it is reasonable for a Tenant to hang pictures on walls, and use a reasonable number of small nails to do so, I accept that this type of adhesive hanger can create holes and damage that goes beyond what would be considered normal or reasonable. I award the Landlord a nominal award of \$80.12 to go towards the cost to repair these holes, which would have been included in this invoice.

3) \$196.88 – Bathtub Re-glazing

I have reviewed the testimony and evidence on this matter, and I note there is no damage noted on the move-in portion of the condition inspection report. Although the move-out portion of the condition inspection report has been given no weight, I note the photos show many scratches on the floor of the bathtub. Even if the color or shading of the photo isn't perfect, I find there are clearly many scratches. I find it more likely than not that this damage was caused by the Tenant, and I find the Tenant is liable for this item, in full. I note the bathtub is only 4 years old, and under normal wear and tear, the surface of the tub should last much longer than this. I award this item, in full, as per the invoice provided.

Further, section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. As the Landlord was partially successful with her application, I order the Tenant to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution.

Also, pursuant to sections 72 of the Act, I authorize that the security deposit, currently held by the Landlord, be kept and used to offset the amount owed by the Tenant.

Claim	Amount
Cleaning Charges	\$378.00
Painting/Wall repair – Nominal	\$80.12
Bathtub Reglazing	\$196.88
Filing fee	\$100.00
Less: Security/Key Deposit currently held by Landlord	(\$755.00)
TOTAL:	\$0

Conclusion

The Landlord is authorized to retain all deposits currently held (\$755.00), and no further monetary order will be issued.

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: November 30, 2020

Residential Tenancy Branch