



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFL, MNRL-S, MNDL, MNDCL**

Introduction

This hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* (“*Regulation*”) or tenancy agreement pursuant to section 67 of the *Act*;
- Authorization to retain all or a portion of the tenant’s security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*;
- Authorization to recover the filing fee for this application pursuant to section 72.

The landlord attended with the lawyer CK (“the landlord”). The tenant attended with the lawyer EE (“the tenant”). All parties had opportunity to provide affirmed testimony, present evidence and make submissions. No issues of service were raised. The hearing process was explained. The tenant called the witness JO to give affirmed testimony.

Issue(s) to be Decided

Is the landlord entitled to the relief requested?

Background and Evidence

The parties submitted considerable documentary evidence and conflicting testimony in a lengthy hearing. The landlord submitted a written summary of events. Not all this evidence is referenced in my Decision, but only selected, key, relevant and admissible facts are included.

The parties entered into a tenancy agreement starting February 1, 2019 for rent of \$3,750.00 payable on the first of the month. At the beginning of the tenancy, the tenant provided a security deposit of \$1,875.00 and a pet deposit in the same amount. The landlord retains the deposits without the tenant's authorization. A copy of the agreement was submitted.

The parties agreed the unit is a 3-bedroom 1.5-bath house of approximately 2,500 square feet.

The parties agreed that a condition inspection was conducted on moving in which indicated the unit was in good condition in all material aspects; a copy of the inspection was submitted as evidence signed by both parties.

The parties agreed that they had an agreement to meet at a certain time on the last day of the tenancy for an inspection and the tenant failed to attend. The tenant vacated on April 30, 2020. The landlord completed the inspection without the tenant being present; a copy of the report was submitted signed by the landlord only. The report indicated that the unit needed cleaning.

The tenant failed to provide a forwarding address when he left the unit. The landlord obtained an Order for Substituted Service on July 21, 2020 allowing the landlord to serve the tenant by email. A copy of the Decision was submitted along with evidence that service took place by email sent on July 22, 2020.

The parties agreed that the landlord shall be awarded the following expenses which form part of the landlord's claim:

ITEM	AMOUNT
Rent outstanding 1 month	\$3,750.00
City utility	\$100.50
Furniture	\$499.98
Replace stone cap	\$504.00

Drywall repair	\$819.00
AGREED AWARD	\$5,673.48

The following claims by the landlord are disputed by the tenant:

ITEM	AMOUNT
Cleaning of house	\$5,131.59
Cleaning – remediation and cleaning of garage	\$2,827.42
Reduced rent subsequent/incoming tenant	\$250.00
Keys - unlocking	\$105.00
Rekeying	\$338.63
TOTAL DISPUTED CLAIM OF LANDLORD	\$8,652.64

Each claim is addressed in turn.

Cleaning

The landlord testified that he attended at the unit on the last day of the tenancy for a scheduled condition inspection. The tenant did not attend. The tenant left the house locked and the landlord had to call a locksmith to get in. The incoming tenant was waiting with moving trucks to move in.

The landlord said the home was “filthy” and “a disaster”; he had “no time to look around”.

The landlord testified did not obtain any cleaning quotes when he saw the condition of the house on the last day of the tenancy. He stated that as the incoming occupant was waiting to move in, he felt pressured to decide on a cleaner quickly.

The landlord stated that the incoming tenant was a Director and Officer of a cleaning company referenced as HC Ltd (“HC”). The company’s correspondence stated, “HC, Disaster Restoration Services”. The incoming occupant agreed to “take care of” the cleaning and invoice the landlord. The incoming tenant was not called as a witness.

HC provided cleaning services for the house for which the landlord was invoiced \$5,131.59 consisting of 40.7 hours of cleaning at \$99.80 an hour. In addition to the usual taxes, the invoice added one line for "Overhead" of \$407.27 and "Profit" in the same amount; a copy of the invoice was submitted as evidence.

The invoice includes the following as "scope of work":

- Heavy, detailed cleaning of entire residence on the interior
- Floor coverings
- Appliances
- Windows

The tenant acknowledged that the house needed cleaning when he vacated. He stated that he moved everything out on the last day and did not do a thorough cleaning afterward. However, the tenant stated that the cleaning invoice from HC is unsupportable and too high for the work involved.

No photographs of the house on moving in or moving out were submitted.

The tenant submitted a copy of an email from DD who assisted the tenant with the move out. The email stated in part:

This letter is in regards to the clean up in the [unit] home for [tenant and wife].

The place was left free of garbage and debris. Wept and mopped b4 I left. No standing water left, anywhere on the property. Any water left was left drying on the waterproof floor. And would have dried in a few hours.

As a witness called by the tenant, JO testified that he had considerable experience in home renovation, construction and home cleaning in the area in which the unit was located. JO testified that he knew the tenant for years and he considered him an excellent tenant. The witness stated that he had seen the tenant during the tenancy do various cleaning, landscaping and painting jobs over and above what a tenant would do, "just because he was a good tenant".

JO stated he helped the tenant to move on the day the tenant vacated, and the home looked "O.K." although the cupboards "looked like they could be wiped". The witness expressed surprise and disbelief at the amount of the cleaning invoice submitted by the landlord in view of his observation of the condition. JO testified a rate for cleaning in the

area would be \$35.00 to \$40.00 an hour and the time for a cleaning job of this type would cost \$450.00 to \$750.00 for both the home and garage.

Cleaning – remediation and cleaning of garage

The landlord testified that there are two garages on the property. The tenant grew marijuana plants in one of the garages which had previously been used solely as a “hobby room”. This building, part of the rental unit, is referred to as “the garage” although it was not used for vehicle storage.

The landlord stated that the garage needed cleaning after the tenant vacated. He submitted a quote from HC for the proposed cleaning of the garage in the amount of \$2,827.42, a copy of which was submitted; the work has not yet taken place. The landlord testified that the building smells of marijuana and chemicals; a thorough cleaning of the type recommended by HC is required to restore the building to its previous condition.

A letter from HC dated June 3, 2020, a copy of which was submitted, described the cleaning planned for the garage to deal with “invisible contaminants” including “Toxic Black Mold”. This involved planned removal of the floor, the application of an anti-microbial agent to the surface area to kill bacterial and prevent fungal growth, applying a sealant, and reassembling the lock-together flooring. The quote from HC listed the planned restoration/repairs, including detaching and resetting the click together flooring in order to remove standing water, cleaning with “pressure/chemical spray, applying “anti-microbial agent”, electrical repairs, and swimming pool accessory replacement

The tenant acknowledged that he grew four marijuana plants in the garage. He acknowledged removal of shelves and responsibility for a portion of the quoted expenses in the amount of \$450.00 which is based on the landlord’s estimate. The tenant agreed to pay the landlord this amount only. He denied anything else needed to be done. The tenant asserted that no mold or standing water were present in the garage. He claimed there was no lingering odor when he vacated.

The tenant’s witness JO stated that he walked through the garage on the final day of the tenancy. It looked like a “normal garage” to him, in average condition and normal state of cleanliness. The witness testified he observed no unusual odor. The witness DD’s comments are quoted above to the effect there was no “standing water”.

The tenant submitted photographs which he testified were of an HC employee vacuuming the floor of the garage after he vacated which did not have observable

standing water; the employee was not wearing protective clothing. The tenant stated that these photographs effectively counter the landlord's claims that the garage needs major cleaning.

Reduced rent - subsequent tenant

The landlord submitted documentary evidence that the subsequent tenant and the landlord agreed to a rent reduction of \$250.00 for one month to compensate for the lack of usability of the garage for the reasons stated. The incoming tenant wrote a letter dated May 2, 2020 to the landlord informing of "safety concerns" from "airborne and surface contaminants" and stating the "condition of the garage space is not usable/livable for contents storage", and so on. No evidence of tests to ascertain the existence of such contaminants was submitted.

The tenant testified that the garage was in a reasonable state of cleanliness and repair, except as noted above, for which he agreed to compensate the landlord \$450.00. He denied that the subsequent occupant was unable to use the garage based on the condition when he left. As stated above, he asserted that there is no evidence that cleaning of the nature described in the quote is necessary.

Keys – Unlocking and Re-keying

The landlord stated that when he attended at the unit for the agreed-upon inspection, the tenant was not there, and the door was locked. The landlord was not expecting this to happen and did not have his own keys to the unit with him. Accordingly, the landlord incurred the expense of \$105.00 to have a locksmith open the door; he then incurred an expense of \$338.63 to have the lock tumblers changed as he believed the tenant had a set of keys with him. Copies of the receipts were submitted.

The tenant testified that he left the keys in a "key drawer" and he assumed the landlord would let himself in and check the drawer for the keys. The tenant denied these expenses were necessary.

Analysis

I have considered all the submissions and refer only to key, admissible facts. Substantial evidence and conflicting testimony were submitted in a 109-minute hearing. Only relevant findings are referenced.

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the Act, regulations or a tenancy agreement.

Section 7(1) of the Act provided that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

To claim for damage or loss, the claiming party bears the burden of proof on a balance of probabilities; that is, something is more likely than not to be true. The claimant must establish four elements.

1. The claimant must prove the existence of the damage or loss.
2. Secondly, the claiming party must that the damage or loss stemmed directly from a violation of the agreement or a contravention on the part of the other party.
3. Once those elements have been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.
4. Finally, the claimant has a duty to take reasonable steps to reduce, or mitigate, their loss.

The landlord must meet the burden of proof with respect to each claim. Each of the landlord's claims are considered in turn as follows:

- 1. Cleaning of house**
- 2. Cleaning – remediation and cleaning of garage**
- 3. Reduced rent subsequent tenant**
- 4. Keys – unlocking; Rekeying**

1. Cleaning of house

Each of the tests are addressed below.

1. Did the tenant fail to comply with Act, regulations, or tenancy agreement?

Under section 37(2) of the *Act*, the tenant must *leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.*

In hearing the testimony of the parties, I find the tenant failed in the tenant's obligation under section 37(2) with respect to cleaning. I find the tenant did not clean the unit to the standard required by the Act.

I have considered the testimony and receipt submitted by the landlord; I find the landlord has met the burden of proof that the tenant failed to comply with their obligation under section 37(2).

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2. Did the loss or damage result from non-compliance?

Having found that the tenant failed to comply with the Act and the tenancy agreement, I must next determine whether the landlord's loss resulted from that breach.

This is known as cause-in-fact, and which focusses on the factual issue of the sufficiency of the connection between the respondent's wrongful act and the applicant's loss. It is this connection that justifies the imposition of responsibility on the negligent respondent.

The conventional test to determine cause-in-fact is the *but for* test: would the applicant's loss or damage have occurred *but for* the respondent's negligence or breach?

If the answer is "no," the respondent's breach of the Act is a cause-in-fact of the loss or damage.

If the answer is "yes," indicating that the loss or damage would have occurred whether the respondent was negligent, their negligence is not a cause-in-fact.

Under section 37(2) of the *Act*, the tenant must *leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear*.

In hearing the testimony of the landlord, supported by the receipt, I find the tenant failed in the tenant's obligation under section 37(2) and the Guideline with respect to cleaning.

I find that the landlord would not have incurred a cleaning expense but for the tenant's breach of their obligations.

3. Has applicant proven amount or value of damage or loss?

RTB Guideline # 1 – Responsibility for Premises states the tenant must maintain "reasonable health, cleanliness and sanitary standards" throughout the rental unit or site, and property or park. 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.

I accept the testimony of the tenant supported by the witnesses JO and DD, that the unit needed a normal amount of cleaning. In the absence of photographs or testimony from HC or the incoming occupant, I find the time and cost on the submitted invoice to be excessive given the facts as I understand them.

I therefore find the landlord has not met the burden of proof with respect to the amount of value of the damage or loss claimed.

4. Has applicant done whatever is reasonable to minimize damage or loss?

In considering the landlord's testimony, I find that they took the unusual step of hiring a "disaster restoration" company for what I find was an average move-out cleaning job of a family home. The landlord acknowledged he did not check what a job of this type would cost; he did not contact any other cleaning service. I therefore find the landlord failed to take reasonable steps to minimize the damage or loss.

Conclusion

I considered *Policy Guideline 16: Compensation for Damage or Loss* which states:

An arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward:

Nominal damages....

Aggravated damages.

I find the landlord has failed to meet the burden of proof with respect to the amount of the claim for cleaning. Considering the acknowledgement by the parties that some cleaning was necessary, I find the landlord is entitled to reasonable compensation for cleaning which I set at \$1,000.00.

2. Cleaning – remediation and cleaning of garage

The landlord has not yet incurred the expense of \$2,827.42 for cleaning the garage and relies on the submitted quote.

1. Did the tenant fail to comply with the Act, regulations or tenancy agreement?

The tenant acknowledged he failed to comply with the Act in a limited way and was responsible for damage and compensation to the extent of \$450.00.

I accept the tenant's testimony, supported by the witnesses JO and DD, as a more likely version of the condition of the garage at the end of the tenancy than that provided by the landlord. I accept the tenant's credible testimony, as supported by the witnesses, that the garage looked "normal" when the tenant vacated and did not have an unusual smell or hazardous conditions as claimed by the landlord

I find the landlord has not established the presence of substances or odors in the garage necessitating the cleaning of the type suggested in the HC quote; I find the quote excessive and unsupported by the testimony and evidence.

I therefore find the tenant failed to comply with the Act in the limited manner (\$450.00) he acknowledged including the storage shelves and so on, and to that extent only.

2. Did the the damage or loss stem directly from a violation of the agreement or a contravention on the part of the other party?

As stated above, I find that only the damage acknowledged by the tenant of 4450.00 meets this criterion. I do not accept that the additional loss or damage has been established or that the claimed cleaning is required.

3. Has applicant proven amount or value of damage or loss?

The claimed cleaning cost under this heading has not been incurred and I have found the estimate excessive. I find the landlord has established the value of \$450.00 which is acknowledged by the tenant.

4. Has the landlord met the duty to take reasonable steps to reduce, or mitigate, their loss.

I find the landlord has not met the burden of proof with respect to this aspect of the claim. There is no evidence the landlord has sought another cleaning company's assessment or that there are conditions which require remediation of the kind claimed.

Conclusion

As outlined in the previous section, considering the Act, the Guidelines and the facts as I find them, I find the landlord is entitled to reasonable compensation which I set at

\$450.00. I find the landlord has met the burden of proof only with respect to this amount. I dismiss the remainder of the landlord's claim under this heading without leave to reapply.

3. Reduced rent subsequent tenant

Because of my findings with respect to the condition of the garage, I am not satisfied that the garage could not be used by the incoming occupant. Having accepted the tenant's assertion that some minor repairs were necessary, I find the garage was otherwise usable.

I find the landlord has failed to meet the burden of proof with respect the first element and there is no need to consider the remaining factors.

I dismiss the landlord's claim under this heading without leave to reapply.

4. Keys – Unlocking; Rekeying

I find the landlord has met the burden of proof with respect to both claims under all four elements. The parties agreed that the landlord showed up for a scheduled condition inspection only to find the tenant had left and locked the entrance door. The landlord testified the incoming tenant was waiting to move in and the landlord reasonably believed the tenant still had a set of keys.

Taking into consideration the testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving all four criteria in establishing entitlement to compensation in the amount claimed of \$105.00 and \$338.63..

Filing fee and security deposit

My award to the landlord is summarized as follows:

ITEM	AMOUNT
Agreed Award (above table)	\$5,673.48
Cleaning of house	\$1,000.00
Cleaning – remediation and cleaning of garage	\$500.00

Keys - unlocking	\$105.00
Rekeying	\$338.63
AWARD LANDLORD	\$7,617.11

Pursuant to section 72, the landlord is entitled to reimbursement of the filing fee and is authorized to apply the security deposit to the award as follows:

ITEM	AMOUNT
Award to landlord (above)	\$7,617.11
Filing fee	\$100.00
(Less security deposit)	(\$1,875.00)
(Less pet deposit)	(\$1,875.00)
MONETARY AWARD LANDLORD	\$3,967.11

I therefore grant a Monetary Order to the landlord in the amount of **3,967.11**.

Conclusion

The landlord is entitled to a Monetary Order in the amount of **\$3,967.11**. This Monetary Order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) to be 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: November 13, 2020

Residential Tenancy Branch