



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Headwater Projects ITF GER-MEX
Holdings and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S, FFL

Introduction

This hearing was 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. An Order to retain the security deposit - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The following are agreed facts: The tenancy under written agreement started on December 1, 2017. Rent of \$1,822.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected \$855.00 as a security deposit and \$855.00 as a pet deposit. The Parties mutually conducted a move-in inspection with a completed report copied to the Tenant. The Tenants moved out of the unit on July 31, 2020. The Landlord received the Tenants’ forwarding address on August 5, 2020. The Landlord returned \$1,450.00 of the security deposit to the Tenants who received that deposit on August 17, 2020.

The Landlord states that the Tenant was originally moving out July 15, 2020 so the Landlord originally made offers for an inspection at that time. The Landlord states that there was some back and forth with the Tenants and the move-out was delayed to July 31, 2020. The Landlord confirms that no offers for an inspection was made after the change of the move-out date. The Landlord states that the Parties came to an agreement that the Landlord would conduct the move-out inspection alone sending the report to the Tenant for signature. The Landlord states that the inspection was subsequently done by the Landlord alone on August 1, 2020. The Landlord provides email correspondence as supporting evidence.

The Tenant states that prior to July 29, 2020 they emailed the Landlord several times asking for a move-out inspection date with no response from the Landlord. The Tenant states that they were flexible and prepared to conduct the inspection following safety precautions. The Tenant states that they proposed an inspection for August 1, 2020 however the Landlord did not respond. The Tenant states that on July 29, 2020 the Landlord informed them that the inspection would be conducted by the Landlord alone. The Tenant states that the Landlord never made any offers to conduct the move-out inspection.

The Landlord states that the Tenants failed to leave the unit clean. The Landlord states that the Tenants left the kitchen cabinets, the kitchen sink, the freezer, the oven unclean and the floors unclean. The Landlord provides photos of the oven and one photo of a small kitchen floor area. It is noted that the move-out report does not indicate any issue with the oven and only sets out that the living room floor was left in poor condition. The Landlord claims \$130.00 for the costs of cleaning and provides a receipt for this cost. It is noted that the receipt does not set out the cleaning tasks undertaken for the 5 hours of cleaning costs charged. The Tenant states that they hired a professional cleaner as required under the tenancy agreement for the move-out clean. The Tenant states that

the unit was left reasonably clean. The Tenant provides a receipt detailing the cleaning done to the unit.

The Landlord states that the Tenant left a bedroom wall, two walls in the living room and kitchen and a half wall needing paint. The Landlord does not provide any photos of any walls. It is noted that only the living room wall is noted as “poor” in the move-out report. The Landlord claims an estimated cost of \$120.00. The Landlord confirms that the work was completed but that no invoice for the costs has been provided.

The Tenant does not dispute the Landlord’s claim of \$10.00 for the replacement cost of a laundry card.

Analysis

Section 35(1) of the Act provides that the landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit on or after the day the tenant ceases to occupy the rental unit, or on another mutually agreed day. Section 36(2)(a) of the Act provides that unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord does not offer at least 2 opportunities for inspection. Given the Landlord’s evidence of the Tenant’s reply to the Landlord’s email dated July 29, 2020 informing the Tenant that the Landlord would conduct the move-out inspection alone, I find on a balance of probabilities that the Tenant agreed to this arrangement. I consider this agreement to be an acceptance of the Landlord’s offer to conduct an inspection. As such I find that the Landlord’s right to claim against the security deposit was not extinguished.

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. 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. Given the Tenant's evidence of a detailed professional cleaning receipt, as the Landlord's cleaning invoice does not indicate what was cleaned, as the move-out report does not indicate any unclean oven, I find on a balance of probabilities that the Landlord has not substantiated that the total costs claimed are based on the minor misses left by the Tenants. I dismiss the claim for cleaning costs.

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. As the move-out report does not indicate damage to any walls other than the "poor" shape of a living room wall and as the Landlord has not provided supporting evidence of having incurred the costs claimed, I dismiss the Landlord's claim for painting the unit.

Given the Tenant's agreement for the costs to replace the laundry card I find that the Landlord has substantiated the claim of **\$10.00**. As the only claim of the Landlord that has been successful is a claim that the Tenant did not dispute and as is this a very minor amount, I decline to award recovery of the filing fee. Deducting the Landlord's entitlement of **\$10.00** from the remaining \$260.00 retained by the Landlord leaves **\$250.00** to be returned to the Tenants forthwith.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$250.00**. 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 Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: December 11, 2020

Residential Tenancy Branch