



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MACGREGOR REALTY & MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **MNDL-S, FFL**

Introduction

This hearing dealt with a landlord's request to deduct cleaning costs from the tenant's security deposit.

The named landlord is a property management company and the landlord was represented by an agent for the property management company, along with his assistant. One of the named co-tenants appeared and confirmed he was representing both co-tenants. Both parties were given the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure. The hearing process was explained to the parties and the parties were given the opportunity to ask questions about the process.

I confirmed the parties had served each other with the same hearing materials submitted to the Residential Tenancy Branch and I admitted the materials into evidence for consideration in making this decision.

Issue(s) to be Decided

1. Has the landlord established an entitlement to compensation, as claimed, for cleaning the rental unit?
2. Award of the filing fee.
3. Is the landlord authorized to make any deductions from the security deposit?
4. Disposition of the security deposit.

Background and Evidence

The tenancy started on March 30, 2018 and ended on August 31, 2020. The tenants paid a security deposit of \$1450.00 and the landlord continues to hold the security deposit, in its entirety, pending the outcome of this proceeding.

At the start of the tenancy the parties participated in a move-in inspection together and a move-in inspection report was prepared and signed by the parties.

At the end of the tenancy, the property manager and the tenant met at the property in the evening of August 31, 2020 and performed the move-out inspection together. The property manager prepared a move-out inspection report but the tenant would not sign it and did not authorize the landlord to make any deductions from the security deposit.

The landlord sent the tenant a copy of the move-out inspection report via email on September 3, 2020. The tenant declined to authorize any deductions from the deposit again and provided the landlord with a forwarding address in an email of September 4, 2020. The landlord proceeded to make this Application for Dispute Resolution on September 10, 2020 seeking to deduct \$450.00 in cleaning costs.

The landlord submitted the tenants failed to leave the rental unit clean at the end of the tenancy and after the move-out inspection ended, later that same evening, the property manager took photographs of the rental unit. The property manager testified that he took the photographs of the exterior of the rental unit the following day, September 1, 2020.

The property manager testified that he met with a representative for the incoming tenant at the rental unit later in the evening of August 31, 2020, after the move-out inspection had ended. The representative and the property manager had a discussion concerning cleaning the rental unit. The property manager informed the representative the he did not have a cleaner available to clean the unit by September 1, 2020 and the representative indicated he/she could arrange for a cleaner. The property manager testified that there was no discussion concerning the amount the property manager would authorize for cleaning and the property manager was subsequently provided an invoice, as revised, reflecting 31 hours of cleaning at a cost of \$450.00.

The property manager acknowledged that the property management company did not pay the cleaner even though the property management company paid the cleaner hired

at the start of the subject tenancy \$100.00, as evidenced by a cheque provided as evidence by the landlord. Rather, the owner of the property claimed to have paid the cleaning invoice of September 1, 2020 in the amount of \$450.00.

The property manager acknowledged that 31 hours of cleaning appeared high to him and he expected 25 hours and a bill of between \$300.00 to \$400.00 considering the rental unit is a 4 bedroom, 2.5 bathroom, 2000 square foot house.

The tenant was of the position the rental unit was left clean at the end of the tenancy and during the move-out inspection the landlord was seeking authorization to deduct \$100.00 from the security deposit for cleaning but the tenant was not agreeable with the landlord's assessment that the rental unit needed cleaning or with a deduction of \$100.00 so he did not sign the move-out inspection report.

The tenant submitted that the property manager has changed the amount appearing on the move-out inspection report a number of times. Initially, the landlord had inserted \$100.00 at the time of the move-out inspection. Subsequently, the amount was changed to \$495.00 and then \$450.00.

The tenant also submitted that upon receiving the landlord's email concerning cleaning he questioned the veracity of the cleaner's invoice since he could not find any internet presence of the cleaner and there is no address or contact information for the cleaner on the invoice. The tenant acknowledged that in an email of October 28, 2020 the property manager sent him a copy of the front side of a cheque written by the owner of the property made out to the cleaner by the owner of the property but the back side of the cheque was not provided.

The tenant submitted that 31 hours of cleaning is extremely excessive and the tenant maintained that costs for additional cleaning were not incurred as the unit was left clean and since a pastor was moving into the rental unit there were several members of the church setting up the residence on September 1, 2020. The tenant submitted that he called the owner of the property on September 1, 2020 and the owner stated he could not talk to the tenant as the rental unit was full of church members.

The tenant testified that the landlord did not take any photographs of the property while the tenant was there. The tenant questioned the property manager's testimony that photographs of the rental unit were taken on August 31, 2020 as he received an email from the property manager's assistant stating the photographs were taken on September 1, 2020, as indicated on time stamps on the photographs. The property

manager responded that his assistant would have received his photographs on September 1, 2020 when she arrived at work on that day.

The tenant submitted that the property manager manages several similar homes in the area and he suggested that the photographs were not of the rental unit and it is impossible to determine where the photographs were taken since the photographs were taken so close up.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. Verification of the value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Under section 37 of the Act, a tenant is required to leave a rental unit “reasonably clean” at the end of the tenancy. The parties provided opposing evidence, including testimony, as to the state of cleanliness left by the tenants at the end of the tenancy.

While I find it is arguable that the tenants failed to leave the rental unit reasonably clean at the end of the tenancy, I find the landlord’s verification of the value of the loss is highly questionable, for the following reasons.

The landlord pointed to an invoice in support of the amount claimed. As pointed out by the tenant, there is no contact information such as a telephone number or address for the cleaning entity, which appears to be an unincorporated partnership. Furthermore, there is no proof of payment provided to me. The property manager testified that the owner claims to have paid the cleaners himself and only the front side of a cheque was provided to the tenant. The front side of a cheque does not demonstrate payment was made. Also of consideration, is that the property manager had paid cleaners at the start of the subject tenancy and no explanation was provided as to why this cleaning invoice was not paid by the property manager. Finally, even the property manager acknowledged that 31 hours of cleaning appeared excessive for the rental unit in the

condition it was left. Therefore, I find the invoice provided as evidence lacks veracity and I do not find it is not sufficiently reliable as proof of loss.

For all the reasons provided above, I find I am unsatisfied the landlord suffered a loss of \$450.00 and I dismiss the landlord's claim. Since the landlord was unsuccessful in this Application for Dispute Resolution I make no award for recovery of the filing fee. Accordingly, I dismiss the landlord's application in its entirety, without leave to reapply, and I do not authorize any deductions from the tenant's security deposit.

As provided in Residential Tenancy Policy Guideline 17: *Security Deposit and Set-Off*, where a landlord's claim against the security deposit is dismissed, the Arbitrator will provide the tenant with a Monetary Order for return of the security deposit. In keeping with the policy guideline, I order the landlord to refund the entire amount of the security deposit, or \$1450.00, to the tenants without delay; and, with this decision I provide the tenants with a Monetary Order in the amount of \$1450.00 to ensure payment is made.

Conclusion

The landlord's application is dismissed in its entirety and I order the landlord to refund the tenants' security deposit in the full amount of \$1450.00 to the tenants without delay. Along with this decision, the tenants are provided a Monetary Order in the amount of \$1450.00 to ensure payment is made.

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: December 24, 2020

Residential Tenancy Branch