



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- a monetary order for damage to the rental unit pursuant to section 67;
- 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;
- authorization to recover their filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed the landlord served the tenant with the notice of hearing package and the submitted 51 document evidence files via Canada Post Registered Mail on October 16, 2020. Both parties also confirmed the tenant served the landlord with the submitted documentary evidence file via email late on January 28, 2021. The landlord stated that there were no issues in responding to the tenant's late evidence and the hearing could proceed. I accept the undisputed evidence of both parties and find that both parties have been sufficiently served with the notice of hearing package(s) and the submitted documentary evidence as confirmed by both parties. I find that the tenant despite submitting and serving late documentary evidence, both parties are deemed sufficiently served as per section 90 of the Act.

Issue(s) to be Decided

Are the landlords entitled to a monetary order for damage and recovery of the filing fee?
Are the landlords entitled to retain all or part of the security deposit?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on February 1, 2018 on a fixed term tenancy ending on January 31, 2019 and then thereafter on a month-to-month basis, or another fixed length of time as per the submitted copy of the signed tenancy agreement dated February 1, 2019. The monthly rent was \$2,700.00 payable on the 1st day of each month. A security deposit of \$1,350.00 and a pet damage deposit of \$1,350.00 were paid.

Both parties confirmed that a condition inspection report for the move-in was completed by both parties on January 28, 2018. Both parties confirmed that there was no condition inspection report for the move-out nor did the landlord serve a notice of a final opportunity to perform a condition inspection report for the move-out.

The landlords seek a monetary claim of \$1,822.02 which consists of:

\$60.00	Hood Vent Cleaning
\$297.02	Carpet Cleaning
\$441.00	Replacement of Closet Drawer
\$609.00	Garage,Curtain, Faucet
\$315.00	Painting

The landlords claim that the tenants vacated the rental unit leaving it dirty and damaged requiring cleaning, repairs and the replacement of a missing closet drawer.

The landlord stated that extensive cleaning of the kitchen hood fan was required for a cost of \$60.00. The landlord has submitted a copy of a handwritten receipt for \$60.00 dated August 13, 2020 for "kitchen vent cleaning/washing". The landlord also submitted photographs of the kitchen vent condition as of the end of the tenancy showing it as dirty requiring cleaning. The tenant accepted this portion of the landlord's claim stating that due to personal health issues, the tenant was not able to clean the unit.

The landlord seeks recovery of carpet cleaning for pet urine and stains in a bedroom and the common area stairs at a cost of \$297.02. The landlord submitted a copy of the invoice dated August 21, 2020 for \$297.02 for carpet cleaning of 2 bedroom and stairs. The landlord has submitted photographs of the dirty and stained carpet. The tenants argued that while she agrees that the carpets were dirty, the tenants had only agreed to

a \$150.00 amount for carpet cleaning of the bedrooms only as per the submitted copy of a text message from the landlord's agent. The tenant argued against the amount specified on the submitted invoice. The landlord argued that the contracted carpet cleaner was hired by the tenant, J.H. and that the landlord had only facilitated access for the cleaner. The landlord stated that they had paid the invoice for carpet cleaning as the tenants were unavailable at the time of service. A review of the referred to text message from the landlord's agent to the tenant refers to carpet cleaning of a bedroom and stairs. The tenant argued that a carpet cleaning cost of \$150.00 for the tenant, J.H. and \$50.00 for A.M. was specified and agreed to in the text message.

The landlords stated that there was a missing a custom closet drawer (metal and leather) which required replacement at a cost of \$441.00. The landlord submitted a copy of a quote for replacement of the custom basket closet drawer dated August 25, 2020. The tenant disputes this claim confirming that the drawer was missing at the end of tenancy but argued against the cost of the quote provided by the landlord. The tenant stated that an online search for a replacement basket is between \$23.99 and \$45.05. The landlord emphasized that the missing metal and leather basket was custom sized. A review of the advertisements show that these are for various sizes for a metal and fabric/canvas basket. The tenant was unable to provide any details if the online comparisons were usable for the landlord's missing metal and leather basket. The tenant also argued that the landlord had provided an email estimate from the same contractor's quote who had stated that the replacement was for an estimated \$400.00. The tenant also referred a noted item on the condition inspection report for the move-out which was provided to the tenant which states a request for the tenant if they would accept an offer for the tenant to pay \$1,681.02 if the closet leather rack was returned or pay \$2,131.02 if it was not returned. The tenant argued that the landlord had placed a value of \$450.00. The landlord argued that this was a custom basket made from metal and leather which the tenant has acknowledged was missing from the rental unit at the end of tenancy.

The landlord seeks recovery of \$609.00 which consists of:

\$450.00	Garage Track repair
	Replace 1 piece of damaged garage door panel
\$30.00	Fix Curtain/blind
\$100.00	Fix faucet

The landlord stated that at the end of tenancy the landlord found part of the garage door damaged requiring replacement and the garage door track damaged requiring repair.

The landlord submitted a copy of the invoiced dated August 23, 2020 for these 3 items. The landlord stated that the contractor hired charged \$450.00 plus tax to make these repairs. The tenant argued that the garage door was broken sometime during the tenancy for which the landlord was notified sometime in June 2019 via text message. The tenant stated that she put a screw in the track to hold the door in place and reported it to the landlord. The tenant stated that the landlord made no effort to fix the garage door. The tenant stated that the door came off the track and hit her vehicle causing damage to the door. The landlord also seeks labour costs to re-install a curtain/blind and 3 faucet handles for a cost of \$130.00 in total by the contractor. The landlord relies upon the same submitted copy of the invoice dated August 23, 2020. The tenant argued that this item is not a curtain but blinds. The tenant stated that the blinds were present undamaged onsite of the rental unit but was not installed. The landlord stated that this was strictly the cost of re-installing the item as it was not re-installed by the tenant after the end of tenancy. The landlord also seeks recovery of installation costs of 3 faucets in which there missing screws for each faucet lever to hold it in place. The tenant disputed this claim arguing that the screws were missing on all three faucets from the start of the tenancy. The tenant stated that this issue was never reported to the landlord. The tenant claims that it was most likely missing from the original installation. The landlord argued that there was no notations of any issues from the condition inspection report for the move-in.

The landlord seeks recovery of painting costs of \$315.00 for the painting of the rental unit. The landlord stated that the painting was authorized by the tenant, J.H. and has submitted a copy of a text message from J.H. as confirmation. The landlord has also submitted a copy of the painting invoice dated August 12, 2020 for \$315.00 for painting. The tenant provided no comment on this claim.

The tenant argued that the landlord had failed to schedule a condition inspection report for the move-out, nor did the landlord provide atleast 2 opportunities to schedule a final condition inspection report for the move-out.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has

been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

I accept the affirmed evidence of both parties and find on a balance of probabilities based upon the landlord's claims; submitted photographs of the condition of the rental unit at the end of tenancy; the submitted invoices/receipts for services; and the completed condition inspection report for the move-in for comparison, the landlord has provided sufficient evidence to satisfy me that the tenants vacated the rental unit leaving dirty and damaged requiring cleaning and repairs. I prefer the evidence of the landlord over that of the tenants. The landlord has established a claim for \$1,822.02.

Despite the tenant's argument against the landlord's monetary amounts listed for compensation, I find the tenant's argument without sufficient merit. The tenant argued that they had only agreed to a \$150.00 amount for carpet cleaning but based upon the tenant's hired contractor for carpet cleaning a cost of \$297.02 was required. I also find that the tenants have failed to provide sufficient evidence to satisfy me that the "comparable" replacement baskets were "comparable". The tenant was unable to provide any evidence that the online search of replacement baskets were suitable. It is clear based upon the comparisons that none were leather and metal, but instead some metal and canvas.

Section 35 of the Act states in part that a landlord and tenant must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit on or before the day the tenant ceases to occupy the rental unit or another mutually agreed day. The landlord must offer the tenant at least 2 opportunities for the inspection. The landlord must complete a condition inspection report in accordance with the regulations. Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report. The landlord may make the inspection and complete and sign the report without the tenant if the landlord has offered the tenant at least 2 opportunities and does not participate on either occasion.

Section 36 (2) of the Act states in part, 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 comply with section 35(2) [2 opportunities for inspection].

In this case, it is clear that the landlord has failed to comply with section 35(2) of the Act. However, this does not invalidate the landlord's monetary claim for damages.

Residential Tenancy Branch Policy Guideline #17, Security Deposit and Set off, states in part,

A landlord who has lost the right to claim against the security deposit for damage to the rental unit, as set out in paragraph 7, retains the following rights:

- to obtain the tenant's consent to deduct from the deposit any monies owing for other than damage to the rental unit;
- to file a claim against the deposit for any monies owing for other than damage to the rental unit;
- **to deduct from the deposit an arbitrator's order outstanding at the end of the tenancy; and**
- **to file a monetary claim for damages arising out of the tenancy, including damage to the rental unit.**

As such, landlord's are entitled to monetary claim of \$1,822.02 and the recovery of the \$100.00 filing fee shall be offset against the tenants' \$1,350.00 security and \$1,350.00 pet damage deposits, leaving a balance of \$777.98 due to be returned to the tenants.

Conclusion

The landlord's application is granted.

The tenants are granted a monetary order for return of the outstanding security and pet damage deposits balance of \$777.98.

This order must be served upon the landlord. Should the landlord fail to comply with this order, the 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: February 4, 2021

Residential Tenancy Branch