



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Columbia Property Management Ltd. and
[tenant name suppressed to protect privacy]

DECISION

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

Introduction

This hearing dealt with a landlord's application for monetary compensation for damage and cleaning costs; and, authorization to retain or make deductions from the tenant's security deposit. The landlord's agents appeared at the hearing; however, there was no appearance on part of the tenant.

Since the tenant did not appear, I explored service of the landlord's hearing materials upon the tenant. The landlord's agent testified that the proceeding package was sent to the tenant via registered mail on November 20, 2020 at her forwarding address. The landlord orally provided a registered mail tracking number as proof of service. The landlord submitted that the tenant's forwarding address appears on the move-out inspection report. The landlord testified that the forwarding address had been provided to a different agent by the tenant over the phone on an earlier date and the agent wrote it on the move-out inspection report. The landlord's agent stated the forwarding address appeared on the move-out inspection report when the tenant signed it. The forwarding address has a date of 10/19/20 beside it and I accept that the forwarding address was on the document when the tenant signed it.

The landlord's agent testified that additional evidence was sent to the tenant via registered mail, to her forwarding address, on February 9, 2021. The landlord orally provided a registered mail tracking number as proof of service and submitted a copy of the registered mail receipt.

A search of the registered mail tracking numbers (recorded on the cover page of this decision) revealed that the registered mail packages were delivered to a community mailbox and there was no signature obtained.

In the absence of evidence to the contrary, I accepted that the landlord met its obligation to serve the tenant in a manner that complies with the Act; however, I cautioned the landlord that if the tenant was not in receipt of the hearing materials the tenant may file an Application for Review Consideration.

Issue(s) to be Decided

1. Has the landlord established an entitlement to compensation from the tenant, as claimed?
2. Is the landlord authorized to retain or make deductions from the security deposit and if so, the amount?
3. Award of the filing fee.

Background and Evidence

The tenancy started on July 1, 2017. The tenant paid a security deposit of \$575.00 and was required to pay rent of \$1150.00 on the first day of every month. The tenancy ended on October 31, 2020.

The landlord prepared move-in and move-out inspection reports.

On the inspection report appears the following:

SECURITY DEPOSIT STATEMENT		<i>How Repairs/Reinf</i>	
Amount of Security Deposit	\$ <u>575.00</u>	Painting	<u>Approx \$ 1500.00</u>
Amount of Pet Damage Deposit	\$ _____	Repair/Replacement	\$ _____
Accrued Interest	\$ _____	Key Replacement	\$ _____
TOTAL	\$ _____	Other Access Devices(s)	\$ _____
		Liquidated Damages	\$ _____
Unpaid rent	\$ _____	Other:	\$ _____
Utilities/Phone/Cable	\$ _____	<u>London Drugs - Pictures</u>	<u>8.30</u>
Suite Cleaning	\$ _____		
Carpet Cleaning	\$ _____	Deduct from Security Deposit	\$ <u>1968.30</u>
Window Cover Cleaning	\$ _____	Deduct from Pet Damage Deposit	\$ _____
Pet Damage	\$ _____		
<u>Broken Blinds Approx 250.00</u>		BALANCE DUE TENANT	\$ _____
<u>Suite Cleaning Approx \$ 250.00</u>		BALANCE DUE LANDLORD	\$ <u>1393.30</u>
<u>Re Key Locks \$ 300.00</u>			

I agree with the amounts noted above and authorize deduction of the Balance Due Landlord from my Security Deposit and/or Pet Damage Deposits. If the total owing to the Landlord exceeds my deposit(s), I agree to pay the Landlord the excess amount.

[Reproduced as written with tenant's signature omitted for privacy purposes]

The date of the move-out inspection was October 31, 2020 and below the tenant's signature is the date October 31, 2021.

I asked the landlord's agent when the charge for "pictures" was written on the "Security Deposit Statement". The landlord's agent testified that it was written on the document on October 31, 2020. When I pointed out to the landlord that the receipt for picture developing was dated for November 12, 2020 the landlord's agent changed her testimony and acknowledged that the amount was likely added on or after November 12, 2020. I also noted that the amount for cleaning was originally \$250.00 and crossed out to read \$210.00 and the cleaning invoice is for \$210.00 but it is dated on November 4, 2021.

I informed the landlord that it appears to me that the landlord had altered the move-out inspection/ Security Deposit Statement after it was signed by the tenant and that I would not rely upon it unless there was other corroborating in determining the landlord's entitlement to compensation as photographs and receipts/invoices.

Below, I summarize the landlord's claims against the tenant:

Wall damage - \$1500.00

The landlord submitted that the walls were damaged during the tenancy and pointed to the photographs provided as evidence. The landlord did not provide any receipt, invoice, written estimate, or the like to substantiate the amount claimed. The landlord's agent stated the wall repairs were done by the owner of the property and the owner did not supply the landlord with any documentation to support the amount claimed.

Suite cleaning - \$210.00

The landlord submitted that the tenant failed to leave the rental unit "renter ready" at the end of the tenancy and a cleaner was hired to clean the unit at a cost of \$210.00.

I noted that the cleaner's invoice described the work performed as being a "move-out clean" without any further particulars as to what the cleaner found to be dirty or what was cleaned.

Since the move-out inspection report was found to be unreliable, the cleaner's invoice did not contain much detail, and the tenant's obligation is to leave a rental unit is "reasonably clean" and not necessarily "renter ready" I asked the landlord to point to

other evidence in support of a cleaning charge. The landlord pointed to one photograph which shows the toilet area. As seen in the photograph, it is obvious someone used the toilet without flushing it and the floor area around the toilet also appears dirty.

Broken blinds - \$190.00

The landlord submitted that the living room blinds are broken at the end of the tenancy but they were in “fair new” condition when the tenancy started. The landlord had estimated \$250.00 to replace the blinds but the cost to purchase new blinds was actually less at \$190.00, not including labour.

Picture developing - \$8.30

The landlord requested the tenant pay for the photographs the landlord had developed for this proceeding. I dismissed this claim summarily as costs to prepare for and participate in a dispute resolution proceeding are not recoverable with the exception of the filing fee, which I will consider in making my decision.

Analysis

With respect to the landlord’s claims against the tenant, I provide the following findings and reasons.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. 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. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Section 21 of the Residential Tenancy Regulations provide that a condition inspection report prepared in accordance with the regulations is the best evidence of the condition of the rental unit in a dispute resolution proceeding unless there is preponderance of evidence to the contrary. In this case, it is evident that the landlord altered the move-out inspection report after it was signed by the tenant. Accordingly, I find the document unreliable and it is not the best evidence as to the condition of the rental unit.

I also find the landlord's agent's testimony, without other corroborating evidence to lack credibility considering the landlord had originally testified that the amount for picture developing was on the move-out inspection report when the tenant signed it but only after I pointed to the date on the picture developing receipt did she change her testimony.

In light of the above concerns over reliability of the move-out inspection report and the landlord's agent's testimony, I have given the most evidentiary weight to other evidence such as receipts/invoices and photographs.

Finally, It is important to note that monetary awards are intended to be restorative. A landlord is expected to repair and maintain a property at reasonable intervals. Where a building element is so damaged that it requires replacement, an award will generally take into account depreciation of the original item. To award the landlord full replacement value of certain building elements that were several years old already would result in a betterment for the landlord.

Wall damage

Section 32 of the Act provides that a tenant is required to repair damage caused to the rental unit or residential property by their actions or neglect, or those of persons permitted on the property by the tenant. Section 37 of the Act requires the tenant to leave the rental unit undamaged at the end of the tenancy. However, sections 32 and 37 provide that reasonable wear and tear is not considered damage. Accordingly, a landlord may pursue a tenant for damage caused by the tenant or a person permitted on the property by the tenant due to their actions or neglect, but a landlord may not pursue a tenant for reasonable wear and tear or pre-existing damage.

Based on the photographs presented to me, which depict walls with Pollyfilla applied, I accept that there was likely some wall damage at the end of the tenancy but I also find it likely that at least some of the Polyfilla applied to the walls is for wear and tear especially when I consider the move-in condition of the walls was described as being in "fair" condition at the start of the tenancy rather than "good". Also, as provided in Residential Tenancy Branch policy guideline 1, it is expected that tenants will put up artwork and some nail holes will occur as a result of wear and tear. Also of consideration is that Residential Tenancy Branch Policy Guideline 40 provides that the average useful life of interior paint is four years and this tenancy was over four years in duration. Accordingly, I am of the view this rental unit was due for touch-ups and

repainting in any event due to aging and wear and tear; and, in the absence of a receipt, invoice or other written estimate, I find the landlord failed to provide sufficient evidence to verify the landlord suffered a loss of \$1500.00 as a result of damage caused by the tenant's actions or neglect. Therefore, I dismiss the landlord's claim for \$1500.00 for wall damage.

Cleaning

Section 37 of the Act provides that a tenant is required to leave a rental unit "reasonably clean" at the end of the tenancy. This standard is not as onerous as "perfectly clean" or even "move-in ready" in many cases. While it is not uncommon for landlords to perform additional cleaning to bring the rental unit up from "reasonably clean" to a move-in ready condition, those efforts are at the landlord's expense and not the obligation of the tenant.

The move-out inspection reflects that every single area of the rental unit was "dirty"; however, I do not rely on that document for the reasons already provided in this decision. I find the cleaning invoice is not overly helpful in determining whether the tenant left the unit "reasonably clean" or not and as stated above, a tenant is not required to clean the unit beyond a "reasonably clean" condition. That leaves me with the landlord's photographs and upon review of the photographs, I find there is one photograph that demonstrates the bathroom was not left reasonably clean. Therefore, I provide a nominal award of \$50.00 to clean the bathroom.

Broken blinds

The landlord provided a photograph of a blind that appears to have a few broken slats and I accept that the blind required replacement. The blinds were described as being "fairly new" by the landlord during the hearing; however, the move-in inspection report reflects that they were in "fair" condition at the start of the tenancy rather than in "new" or "good" condition. Therefore, I find I am unsatisfied the blinds were "fairly new" at the start of the tenancy as stated by the landlord's agent and I proceed on the basis they were in fair condition at the start of the tenancy.

Taking into account the blinds were in fair condition at the start of the tenancy and broken at the end of the tenancy, I find the landlord's request for full replacement value of the blinds is unreasonable. I provide the landlord with a nominal award of \$50.00 as being the tenant's contribution toward the damage to the blinds.

Filing fee

The landlord's claim was minimally successful in comparison to the amount claimed and I award the landlord recovery of \$25.00 of the filing fee paid for the landlord's Application for Dispute Resolution.

Security deposit

In keeping with all of my findings and awards above, I authorize the landlord to deduct \$125.00 [\$50.00 for cleaning, \$50.00 for broken blinds, and \$25.00 for the filing fee] from the tenant's security deposit and I order the landlord to return the balance of the security deposit, in the amount of \$450.00, to the tenant without delay.

In keeping with Residential Tenancy Policy Guideline 17, I provide the tenant with a Monetary Order in the amount of \$450.00 to ensure the landlord refunds the balance of the security deposit to the tenant as ordered.

Conclusion

The landlord is authorized to deduct \$125.00 from the tenant's security deposit and is ordered to return the balance of \$450.00 to the tenant without delay.

Provided to the tenant with this decision is a Monetary Order in the amount of \$450.00 to ensure the landlord makes the payment as ordered.

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: March 10, 2021

Residential Tenancy Branch