



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 an Application for Dispute Resolution by the landlord filed under the Residential Tenancy Act (the “Act”), for a monetary order for damages to the unit, for an order to retain the security deposit in partial satisfaction of the claim and to recover the cost of the filing fee.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions.

The parties confirmed that they are not recording the hearing in compliance with the Residential Tenancy Branch Rules of Procedure 6.11.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Is the landlord entitled to monetary compensation for damages?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The parties agreed that the tenancy began on January 1, 2014. Rent in the amount of \$750.00 was payable on the first of each month. The tenant paid a security deposit of \$337.50 and a pet damage deposit of \$337.50 (the “Deposits”).

The tenancy ended on November 24, 2020. The parties confirmed that the landlord returned a portion of the deposits to the tenant in the amount of \$335.00, leaving the amount of \$340.00 in trust.

The parties agreed a move-in condition inspection report was completed. The tenant did not remain to complete the move-out condition inspection.

The landlord claims as follows:

a.	Cleaning costs	\$440.00
b.	Filing fee	\$100.00
	Total claimed	\$540.00

Cleaning costs

The landlord testified that they had scheduled a move-out condition inspection with the tenant for November 23, 2020; however, when they attended to the premise the tenant was not ready and were informed by the tenant that they would need another day.

The landlord testified on November 24, 2020, the tenant returned the keys; however, the tenant would not stay to do the move-out condition inspection as the tenant wanted to get on the road. The landlord stated they completed the condition inspection report in the absent of the tenant.

The landlord testified that the tenant did not leave the rental unit clean and they had to clean the kitchen cabinets, the stove, and the refrigerator, and clean the kitchen walls. The landlord stated that the bathroom cabinet was dirty, and the entire bathroom needed to be cleaned. The landlord stated that the walls and baseboards were dirty and dusty, and they also had to clean three ceiling fans. The landlord stated that the windows sills and tracks also had to been cleaned.

The landlord testified that the tenant also left behind a car seat for their jeep and the tenant had thrown a bed mattress into the garbage. The landlord stated that they had to spend time removing and disposing these items.

The landlord testified that the tenant was given a move-out checklist of what they were required to clean, and that checklist informed them if they did not do the work that they will be billed at \$35.00 per hour. The landlord stated that they cleaned for 14 hours.

Filed in evidence by the landlord are photographs, copy of the move-in and move-out condition inspection report.

The tenant testified that they had scheduled to do the move-out condition on November 23, 2021; however, they were not ready because they did not realize how difficult it would be to remove their belongings and how exhausting the work would be. The tenant stated that they original thought that it would just take a couple of hours.

The tenant testified that they told the landlord that they needed more time and the landlord told him that they could only stay for one additional night, although they had paid the rent to the end of the month and they were told by their friend that because of that, they are legally entitled to stay until the end of the month. The tenant stated they did not stay to complete the move-out condition report because they wanted to get an early start on their long drive.

The tenant testified that they are not disputing there were some deficiencies; however, they had completed most of the cleaning as they had started 3 weeks earlier. The tenant stated that at most there was three or four hours of cleaning to do.

The tenant testified that the they have issues with the landlord's photographs of the bathtub as that was grout that was on the tub when they moved into the rental property and the pictures of the three pieces of cat food on the floor was only left because that was the last thing they were taking from the rental premise.

The tenant testified that they did leave their jeep seat behind, and that it was a box spring that they left in the garbage; however, they had taken it apart.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, landlord has the burden of proof to prove their claim.

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

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

How to leave the rental unit at the end of the tenancy is defined in Part 2 of the Act.

Leaving the rental unit at the end of a tenancy

37 (2) When a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Normal wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

In this case, the parties scheduled the move-out condition inspection on November 23, 2020 and when the landlord attended to complete the report the tenant was not ready. On November 24, 2020, the tenant returned the keys to the landlord; however, the tenant would not participate in the move-out condition inspection because they wanted an early start to their long drive. The landlord completed the move-out condition inspection report in the absence of the tenant and took photographs. I find the tenant breached the Act when they failed to participate in the move-out condition inspection.

When a tenant does not participate in the move-out condition inspection they extinguish their rights to the return of any portion of their Deposits; however, the landlord did return a portion of the Deposits to the tenant, although they were not required to do so.

However, I must now consider the landlord's claim for cleaning because the amount claimed is greater than the portion of the Deposits they retained.

In this case the landlord is claiming for 14 hours of labour at the rate of \$35.00 per hour, which would be the amount of \$490.00. However, the amount claimed in their application is the amount of \$440.00, while this may be a mathematic error; however,

the landlord's claim cannot be greater than the amount listed in their application for dispute resolution.

While the tenant does not disagree that there were some deficiency; however, the tenant does not agree that it would take 14 hours, and stated that it should have only taken three to four hours to do; however, if that was the case the tenant should have stayed and finished the cleaning and get a later start for their long drive.

Further, even if the landlord did say that the tenant was only entitled to stay one extra night, which was wrong, as the tenant had paid the rent for the entire month. The tenant was informed of their rights by their friend that they were entitled to stay to the end of the month. The tenant could have exercised their rights; there was no evidence that the tenant was threatened by the landlord or that they were locked out of the premise.

While 14 hours does seem to be high; however, I find that is not unreasonable when cleaning walls, baseboards, fans, and appliances and to remove and dispose of the tenant's car seat and bed box spring/mattress. These were the responsibility of the tenant under the Residential Tenancy Policy Guideline to have cleaned and all items removed at the end of the tenancy. Therefore, I find the landlord is entitled to recover the cost of cleaning in the amount claimed in their application in the amount of \$440.00.

I find that the landlord has established a total monetary claim of **\$540.00** comprised of the above described amount and the \$100.00 fee paid for this application.

I order that the landlord retain remainder of the security deposit of **\$340.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 of the Act for the balance due of **\$200.00**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

Conclusion

The landlord is granted a monetary order and may keep the security deposit in partial satisfaction of the claim and the landlord is granted a formal order for the balance due.

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: April 21, 2021

Residential Tenancy Branch