



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Mainstreet Equity Corp.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S, FFL

Introduction

The tenant filed an Application for Dispute Resolution on April 22, 2021 seeking an order for compensation for damages to the rental unit. Additionally, they seek reimbursement of the Application filing fee. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on June 4, 2021.

Both parties attended the conference call hearing. I explained the process and both parties had the opportunity to ask questions and present oral testimony during the hearing. At the outset, each party confirmed they received the prepared evidence of the other; on this basis, the hearing proceeded.

Issue(s) to be Decided

Is the landlord entitled to a Monetary Order for Damage or Compensation, applying the security deposit to the claim, pursuant to s. 67 of the *Act*?

Is the landlord entitled to recover the filing fee for this Application pursuant to s. 72 of the *Act*?

Background and Evidence

The landlord submitted a copy of the tenancy agreement for this hearing and spoke to its terms. Both the landlord and tenant signed this agreement on November 1, 2019. The tenancy started on that day for an initial fixed term ending on April 1, 2020; thereafter, it continued on a month-to-month basis. The monthly rent was \$1,025 per

month and with the addition of \$15 for parking was \$1,040 per month. The tenant paid a security deposit of \$512.50 on January 19, 2017.

The tenancy ended after the tenant advised the landlord they wished to end the tenancy, via email on March 30, 2021. They reported they would “be vacating unit by April 30, 2021.”

In a written statement, the tenant set out that they left the rental unit on April 14, 2021. They planned to meet the landlord for a walkthrough meeting on April 13, but the landlord “did not show or communicate.” A message from the landlord shows they would do the “turnover inspection” on April 13. The message contains: “It only takes a few minutes and u don’t need to be there if you’re busy.” On the 13th, the landlord advised their visit would be “early afternoon.”

The tenant provided their forwarding address to the landlord on April 15, via text message. After this, the landlord sent the outgoing move-out Condition Inspection Report listing the inspection date as April 15, 2021. They advised they charged the tenant for the listed items:

- cleaning entire unit: \$300
- full paint: \$150
- holes to fill: \$70
- light bulbs: \$25
- drawer damage in kitchen: \$50 (only one-half charged)

This total is \$595. They asked for the tenant’s consent on the use of the full amount of the security deposit, that is \$512.50. The landlord provided a copy of a document entitled “Move-out Report” showing these listed amounts. This shows a “Turnover Budgeted Amount” of \$1,000, with \$405 listed as a “discrepancy” for “backsplash and kitchen cabinet painting”.

The landlord also provided a “Inspection Detail with Photos document, totalling 10 pages. This shows 23 separate photos and indicates “fail” for full cleaning, bathroom, cabinets and drawers, and “walls-cleaning”.

In the hearing, the landlord presented that the cost of \$300 cleaning made use of a “standard pricing scheme”, which can be adjusted depending on manager observations. They added: “they don’t provide [the price scheme] to tenants, but it is what the landlord has to spend, typically, on things like this.” They added the tenant had until the 30th,

and if the tenant were present at the inspection, they would have had the chance to address these items.

On April 18, 2021, the tenant responded to say the landlord “CANNOT use the damage deposit of \$512.50.” They stated there was “very minimal damage”. The walls were not freshly painted when the tenancy started, and there were no holes or damage to the walls in any room. There was never any use of the drawers, and “light bulbs, they were burnt out and weren’t replaced, nothing was wrecked.” Further: “The unit needed a clean from dust and a little dirt. . . there was absolutely no damage. . .”

The tenant reiterated these points in the hearing, to say there was “definitely some dirt”, but definitely no damage. They added the unit was “not in the nicest condition when [they] moved in” and the lights in the bathroom were out when they moved in.

Analysis

The *Act* s. 37(2) requires a tenant, when vacating a rental unit, to leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

I am not satisfied that damage or loss exists to the degree that the landlord is claiming here. With regard to s. 37(2), I am not satisfied there is damage or loss with the rental unit resulting from a violation of the *Act* by the tenant.

On specific amounts of the landlord’s claim in relation to the evidence they present:

- The amount of cleaning claimed reflects a standard pricing scheme that the landlord would charge “typically” for things like this. There is no evidence the landlord paid this amount to a cleaner. Images do show the need for cleaning; however, I am not satisfied the need shown relates to the amount charged.

Moreover, this is not an effort at mitigating the damage or cleaning. I find the landlord here implemented a pricing scheme, and this is not reflective of what was found in the unit. The landlord has not established the value of the damage or loss. I grant the landlord \$100 for what is shown in the photos for the kitchen and the bathroom.

- The landlord did not establish the need for lightbulbs in their evidence; moreover, they did not show this was an amount they actually paid. Further, the landlord's evidence is inconsistent where the service order shows the replacement of 10 light bulbs, while the Condition Inspection Report shows 6 light bulbs needing replacement. Because of this inconsistency, I make no award for this cost which is not shown.
- I find the images provided do not show holes in the walls that need repair. There is no award for this amount claimed.
- I am not satisfied of the need for painting for dirty walls. In the images provided, there are no scrapes or holes in the walls needing repair. There is no evidence that the walls needed cleaning; the need for repainting is not established. I find the tenant credible that there were no damages to the walls.
- I grant the landlord \$50 for replacement of the kitchen drawer that they showed in the photo.

In total, I find the landlord is entitled to an award for the amount of \$150.

I find the landlord forfeited their right to make a claim against the security deposit due to the fact they did not offer the tenant at least 2 opportunities for inspection, as s. 35(2) provides. This is the consequence as set out in s. 36(2)(a).

While the landlord has no right to claim against the security deposit, when I make an award for compensation, the *Act* s. 72(2) gives the authority to make a deduction from the security deposit held by the landlord. The landlord has established a claim of \$150. After setting off this amount from the security deposit, there is a balance of \$362.50. I am authorizing the landlord to retain \$150 from the security deposit amount and grant a monetary order to the tenant for the balance of \$362.50 as return of the balance of the security deposit.

As the landlord was marginally successful in this application, I find that the landlord is not entitled to reimbursement of the Application filing fee.

Conclusion

I grant the tenant a Monetary Order in the amount of \$362.50 for the return of the remainder of the security deposit. The landlord is provided with this Order in the above terms and the tenant must be served with **this Order** as soon as possible. Should the tenant fail to comply with this Order, this 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 s. 9.1(1) of the *Act*.

Dated: June 15, 2021

Residential Tenancy Branch