



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Twenty One Holdings Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

Landlord: MNDL-S, FFL
Tenant: MNSD, MNDCT

Introduction

This was a cross application hearing that dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

1. a Monetary Order for the return of the security deposit, pursuant to section 38; and
2. a Monetary Order for damage or compensation under the *Act*, pursuant to section 67.

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

- a Monetary Order for damages, pursuant to section 67;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant, pursuant to section 72.

The tenant and the landlord's agent (the "agent") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they are not recording this dispute resolution hearing.

Both parties confirmed their email addresses for service of this decision and order.

The agent testified that the tenant was served with the landlord's application for dispute resolution via registered mail but could not recall on what date. The tenant testified that

she received the landlord's application for dispute resolution and evidence on March 3, 2021. The landlord provided the Canada Post tracking number for the above mailing which is located on the cover page of this decision. The Canada Post website states that the landlord's application for dispute resolution was mailed on February 26, 2021 and received by the tenant on March 3, 2021. I find that the tenant was served in accordance with section 89 of the *Act*.

The tenant testified that the landlord was served with the tenant's application for dispute resolution via registered mail on March 12, 2021. The agent testified that the landlord received the tenant's application for dispute resolution on March 14, 2021. The tenant provided the Canada Post tracking number for the above mailing which is located on the cover page of this decision. The Canada Post website states that the tenant's application for dispute resolution was mailed on March 12, 2021 and was received by the landlord on March 16, 2021. I find that the landlord was served in accordance with section 89 of the *Act*.

Issues to be Decided

1. Is the tenant entitled to a Monetary Order for the return of the security deposit, pursuant to section 38 of the *Act*?
2. Is the tenant entitled to a Monetary Order for damage or compensation under the *Act*, pursuant to section 67 of the *Act*?
3. Is the landlord entitled to a Monetary Order for damages, pursuant to section 67 of the *Act*?
4. Is the landlord entitled to retain the tenant's security deposit, pursuant to section 38 of the *Act*?
5. Is the landlord entitled to recover the filing fee for this application from the tenant, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on July 30, 2018 and ended on January 30, 2021. Monthly rent in the amount of \$1,850.00 was payable on the first day of each month. A security deposit of \$925.00 was paid by the tenant to the landlord. A written tenancy agreement was submitted for this application.

The tenant testified that the landlord was served with her forwarding address on February 9, 2021 via registered mail. The agent testified that the landlord received the tenant's forwarding address on February 10, 2021.

Both parties agree that a move in condition inspection report was completed and signed by the parties on July 30, 2018. The move in condition inspection report was entered into evidence.

Both parties agree that a move out condition inspection report was completed by the parties on January 30, 2021. The move out condition inspection report was entered into evidence. The tenant testified that at the end of the move out condition inspection, the landlord did not provide her with a copy of the move out condition inspection report. The tenant testified that in an email dated January 30, 2021, sent after the move out condition inspection, the tenant requested a copy of the move out condition inspection report. The tenant entered into evidence an email chain between the tenant and the agent. The tenant's initiating email is dated January 30, 2021 and time stamped at 8:46 p.m. and states:

Hi [agent],

As rental act, you should return deposit to me within 2 weeks. Otherise, you must email support documents of chargeable list to me with matching inspect report. Many thanks!

On February 8, 2021 the agent responded:

Hi [tenant],

Please send me your forwarding address so we can start the arbitration process.

The tenant testified that she did not receive a copy of the move out condition inspection report until March 3, 2021 when she received the landlord's application for dispute resolution and evidence for this proceeding.

The agent testified that the condition inspection report is a carbon copy report with three layers. The first layer is white and is retained by the landlord, the second is yellow and is given to the tenant after the move in condition inspection report is completed and the third layer is pink and is given to the tenant after the move out condition inspection report. Both parties agree that a different agent of the landlord, who did not appear in this hearing, completed the move in and out condition inspection reports with the tenant. The agent testified that the tenant was provided with the move out condition inspection report on January 30, 2021 after the inspection, which is the common practice of the landlord.

The tenant testified that she did not receive the move out condition inspection report after the inspection which is evidenced by the fact that the landlord's agent signed the move out condition inspection report on January 31, 2021, the day after the move out condition inspection occurred. The agent testified that the date of January 31, 2021 was a typo of the other agent and that he should have written January 30, 2021.

The agent testified that the tenant was very picky when the move in condition inspection report was completed and recorded every little nick and scratch making it seem like the property was in a poorer condition than it was. The agent entered into evidence the move out condition inspection report of the previous tenants dated July 30, 2018 which states that the property was in good condition except for some scratches in the bathtub.

The agent testified that the landlord is seeking the following damages arising from this tenancy:

Item	Amount
Painting	\$748.88
Cleaning	\$180.00
Fridge repair	\$277.12
Fine/fee	\$75.00
Total	\$1,281.00

Painting

The agent testified that the subject rental property was new and first rented out August 1, 2017. The agent testified that the subject rental property was spot painted before the tenant moved in, in July of 2018. The agent testified that the walls of the subject rental property were in good condition at the start of the tenancy and required re-painting at

the end of this tenancy. The landlord entered into evidence photographs showing dents and scratches on the walls and areas which the tenant had filled dents and scratches. The agent testified that the tenant did not do a good job filling the dents and scratches and the filled areas required sanding. The landlord entered into evidence a receipt for painting in the amount of \$1,497.75. The agent testified that the landlord is only seeking 50% of the cost of repainting the subject rental property.

The tenant testified that the walls were in poor condition at the start of this tenancy and that any additional dents were reasonable wear and tear. The tenant testified that the landlord's agent who completed the move out condition inspection report with her did not take any photographs during the move out condition inspection and that the landlord has not proved that the photographs entered into evidence are of the subject rental property. The agent testified that she took the photographs after the move out condition inspection on January 30, 2021. During the hearing I asked the tenant if the images in the photographs looked like the subject rental property and she did not answer my question but maintained that the landlord has not proved that they are from her unit.

The move in condition inspection report states that there are scratches on the following walls:

- Entry, Hall, Stairs
- Living Rooms, Family Rooms,
- Bedrooms

The move in condition inspection report also states that there were marks on the kitchen walls.

The move out condition inspection report states that the scratches were filled in on the following walls:

- Entry, Hall, Stairs
- Living Rooms, Family Rooms,
- Bedrooms
- Bathrooms

The move out condition inspection report states that there are "chips" on the kitchen walls.

Cleaning

The agent testified that the tenant did not leave the subject rental property reasonably clean at the end of the tenancy. The landlord entered into evidence photographs showing the following dirty areas:

- Interior and exterior of kitchen cabinets,
- Behind and to the sides of the stove,
- Interior of fridge,
- Grout around toilet,
- Interior of toilet,
- Walls,
- Patio,
- Closet door,
- Bathroom counter,
- Floors.

The move out condition inspection report states that the following areas require cleaning:

- Entry, Halls, Stairs,
- Living Rooms, Family Rooms,
- Kitchen,
- Bedrooms,
- Bathroom

The move out condition inspection report states that the tenant does not agree that this report fairly represents the condition of the rental unit, for the following reasons:

- I did not damage the cabinet. I never use it. It's too high.

The agent testified that the stove was on rollers. The agent entered into evidence a cleaning receipt for \$300.00. The agent testified that the landlord is only seeking \$180.00 because the landlord is only seeking the property to be reasonably clean.

The tenant testified that she cleaned very well. The tenant testified that the landlord has not proved that the photographs are of the subject rental property.

Fridge repair

The agent testified that the fridge was only one year old at the start of this tenancy and was in good condition and was damaged at the end of this tenancy. The move in condition inspection report states that the appliances were in good condition. The move out condition inspection report states that there is damage to the fridge. The landlord entered into evidence photographs showing scratches to the fridge and freezer doors.

The landlord entered into evidence an online shopping cart with new doors for the fridge and freezer and the cost of freight, totalling \$277.12. The agent testified that the doors were replaced and the total cost to the landlord was \$315.00, but the landlord is only seeking the original amount claimed, that being \$277.12.

The tenant testified that she used the wrong cleaning product on the fridge/freezer and damaged them.

Fine/fee

Both parties agree that the tenant's son threw up in the elevator at the subject rental property and the tenant did not clean it. The agent testified that the tenant was charged \$75.00 for cleaning of the elevator but has not paid this fee. The tenant testified that this happened approximately three years ago and that maybe she already paid the fine in cash. The tenant testified that since the landlord waited so long to collect the fine, she must have already paid it. The agent testified that the tenant has not paid this fine.

Tenant's Claim

The tenant testified that she is seeking double her security deposit in the amount of \$1,850.00 because the landlord did not provide her with a copy of the move out condition inspection report within 15 days of the provision of her forwarding address.

The tenant testified that she is seeking \$14.15 for the cost of wall repair materials she purchased to fill the scratches in the walls that were present when she moved in. The tenant entered into evidence proof that she spent \$14.15 on the above materials.

Analysis

Section 21 of the Residential Tenancy Act Regulation states:

In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

I find that the landlord has not provided a preponderance of evidence to contradict the move in condition inspection report signed by an agent of the landlord and the tenant. I find that the move out condition inspection of the previous tenant does not override the validity of the move in condition inspection report. Where the reports differ, I rely on the move in condition inspection.

Tenant's Claim- Doubled Security Deposit

Based on the testimony of the agent, I find that the landlord received the tenant's forwarding address on February 10, 2021.

I accept the agent's testimony that the standard practice of agents of the landlord after completing a move in or out inspection report is to immediately provide the tenant with a carbon copy of those reports. However, in this instance, I find that the landlord's agent who completed the move out condition inspection did not provide a copy to the tenant after the move out condition inspection was completed. I make this finding based on the date the landlord's agent signed the move out condition inspection report (January 31, 2021, the day after the move out condition inspection) and the email from the tenant to the landlord on January 30, 2021, in which the tenant requests a copy of the move out condition inspection report.

I find that had the landlord's agent provided the tenant with a copy of the move out condition inspection report on January 30, 2021, it is unlikely she would have requested a copy in the January 30, 2021 email. Given the time stamp on the email, 8:46 p.m., I find on a balance of probabilities, the email was sent after the move out condition inspection occurred. I do not accept the agent's testimony that the date the landlord's agent signed was a typo. I find that the totality of the evidence proves, on a balance of probabilities, that the landlord's agent did not provide the tenant with a copy of the move out condition inspection report on January 30, 2021. I accept the tenant's evidence that

she did not receive a copy of the move out condition inspection report until March 3, 2021.

Section 35(3) of the *Act* states that the landlord must complete a condition inspection report in accordance with the regulations.

Section 18(1)(b) of the Residential Tenancy Act Regulation states:

- 18** (1) The landlord must give the tenant a copy of the signed condition inspection report
- (b) of an inspection made under section 35 of the *Act*, promptly and in any event within 15 days after the later of
 - (i) the date the condition inspection is completed, and
 - (ii) the date the landlord receives the tenant's forwarding address in writing.

Section 36(2)(c) of the *Act* states:

- 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
- (c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

I find that the landlord did not provide the tenant with a copy of the move out inspection report within 15 days of receiving the tenant's forwarding address in writing, contrary to section 35(3) of the *Act*. Pursuant to section 36(2)(c) of the *Act*, I find that the landlord's right to claim against the tenant's security deposit for damage to the unit is extinguished.

Section C(3) of Policy Guideline 17 states that unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit if the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the *Act*.

In this case, while the landlord made an application to retain the tenant's security deposit within 15 days of receiving the tenant's forwarding address in writing, the landlord is not entitled to claim against it due to the extinguishment provisions in section 36 of the *Act*. Therefore, the tenant is entitled to receive double their security deposit in the amount of \$1,850.00.

Landlord's Photographs

The tenant disputed the validity of the photographs entered into evidence by the landlord because they were not taken during the move out condition inspection and the landlord did not prove that they were from the subject rental property.

During the hearing I asked the tenant if the images in the photographs looked like the subject rental property and she did not answer my question and maintained that the landlord has not proved that they are from her unit. In this instance I prefer the testimony of the agent over that of the tenant as the tenant evaded my questions and did not dispute that the photographs looked like the subject rental property. I accept the photographs as evidence of the condition of the subject rental property at the end of the tenancy.

Painting

Based on the move in condition inspection report, I find that the walls of the subject rental property were not in good condition when the tenant moved in as it is noted that there were scratches and or marks in the following rooms:

- Entry, Hall, Stairs
- Living Rooms, Family Rooms,
- Bedrooms,
- Kitchen

The move out condition report notes that on move out, there were new scratches in the bathroom and that the tenant filled the scratches in the above noted rooms. Based on the move in and out condition inspection reports, I find that the landlord has not proved, on a balance of probabilities, that the tenant caused all or most of the damage to the walls. I therefore dismiss the landlord's claim for the cost of painting.

Cleaning

Section 37(2)(a) of the *Act* states that when tenants vacate a rental unit, the tenants must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Based on the move out condition inspection report, the testimony of the landlord and the photographs entered into evidence, I find that the subject rental property was not reasonably clean at the end of this tenancy. I note that in the area of the move out condition inspection report where the tenant stated why she did not agree with the contents of the report, the tenant did not state she disagreed with the need for cleaning noted on the move out condition inspection report.

I find that the landlord is entitled to recover the \$180.00 sought by the landlord for cleaning.

Fridge repair

Section 37(2)(a) of the *Act* states that when tenants vacate a rental unit, the tenants must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Based on the testimony of both parties and the move in and out condition inspection reports, I find that the tenant damaged the fridge and freezer doors at the subject rental property, contrary to section 37(2)(a) of the *Act* and is responsible for the cost of that repair. I accept the agent's testimony that the landlord paid \$315.00 for the repair of the fridge and freezer doors. I find that the landlord is entitled to the \$277.12 claimed for the door repair.

Fine

Based on the testimony of both parties, I find that the tenant's son vomited in the elevator of the subject rental property and the tenant did not clean it up. I find that it was reasonable of the landlord to charge a \$75.00 cleaning fine/fee to the tenant as the tenant is responsible for messes made by her child.

I find that the tenant's testimony that she "maybe" already paid the fine to be unconvincing. I accept the agent's testimony that the fine was not paid. I find that the landlord is entitled to a monetary award of \$75.00.

Tenant's Claim for Wall Repair

Section 33 of the *Act* sets out the limited circumstances in which tenants can complete repairs at the subject rental property and then seek re-imbursement. Re-imbursement is only allowed for emergency repairs such as repairs for:

- (i) major leaks in pipes or the roof,
- (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
- (iii) the primary heating system,
- (iv) damaged or defective locks that give access to a rental unit,
- (v) the electrical systems, or
- (vi) in prescribed circumstances, a rental unit or residential property.

I find that the tenant was not permitted to perform non-emergency repairs at the subject rental property without the permission of the landlord, and then seek compensation for those repairs. I therefore dismiss the tenant's claim for compensation for wall repair materials, without leave to reapply.

Filing Fee

As the landlord was successful in this application for dispute resolution, I find that the landlord is entitled to recover the cost of the filing fee in the amount of \$100.00, pursuant to section 72 of the *Act*.

Conclusion

I issue a Monetary Order to the tenant under the following terms:

Item	Amount
Doubled security deposit	\$1,850.00
Less cleaning	-\$180.00
Less fridge repair	-\$277.12
Less fine	-\$75.00

Less filing fee	-\$100.00
TOTAL	\$1,217.88

The tenants are provided with this Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: June 30, 2021

Residential Tenancy Branch