



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding AL STOBBER CONSTRUCTION
LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCL-S, FFL

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on February 14, 2021 (the "Application"). The Landlord applied as follows:

- For compensation for monetary loss or other money owed
- To keep the security deposit
- For reimbursement for the filing fee

W.L. and K.T. appeared at the hearing for the Landlord. The Tenant appeared at the hearing. I explained the hearing process to the parties. I told the parties they were not allowed to record the hearing pursuant to the Rules of Procedure (the "Rules"). The parties provided affirmed testimony.

The Landlord submitted evidence prior to the hearing. The Tenant did not submit evidence. I addressed service of the hearing package and Landlord's evidence and the Tenant confirmed receipt of these.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all testimony provided and reviewed the documentary evidence submitted. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Landlord entitled to compensation for monetary loss or other money owed?
2. Is the Landlord entitled to keep the security deposit?
3. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

The Landlord sought the following compensation:

Item	Description	Amount
1	Carpet cleaning	\$105.00
2	Drape cleaning	\$97.50
3	Suite cleaning	\$120.00
4	Filing fee	\$100.00
	TOTAL	\$422.50

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. The tenancy started September 01, 2019 and was for a fixed term ending August 31, 2020. Rent was \$865.00 per month due on or before the first day of each month. The Tenant paid a \$422.50 security deposit.

The parties agreed the tenancy ended January 31, 2021.

The parties agreed the Tenant provided a forwarding address to the Landlord in writing December 31, 2020 and on the Condition Inspection Report (the "CIR") January 31, 2021.

The parties agreed the Landlord did not have an outstanding monetary order against the Tenant at the end of the tenancy.

The parties agreed the Tenant did not agree in writing at the end of the tenancy that the Landlord could keep some or all of the security deposit.

The parties agreed they did a move-in inspection September 01, 2019, a CIR was completed and signed by the parties and a copy of the CIR was provided to the Tenant the day of the inspection.

The parties agreed they did a move-out inspection January 31, 2021, a CIR was completed and signed by the parties and a copy of the CIR was provided to the Tenant the day of the inspection.

W.L. testified that the Tenant did not agree with the move-out CIR.

The Tenant testified that the Landlord had one person attend the move-in inspection and three people attend the move-out inspection. The Tenant testified that the move-out inspection was more thorough than the move-in inspection.

W.L. testified as follows in relation to the compensation sought. The Tenant did not provide a receipt showing carpet and drape cleaning had been done at the end of the tenancy as required in the tenancy agreement. The Tenant lived in the rental unit for more than one year. The rental unit required cleaning at the end of the tenancy as shown in the photos submitted. A receipt for the cleaning has been submitted.

The Tenant testified as follows. The Tenant rented a machine to clean the carpet and did clean the carpet at the end of the tenancy. The Tenant did not realise a professional company had to clean the carpet. The Landlord is being “picky”. The Landlord had three people attend the move-out inspection and they poked around every corner to find an issue. The Landlord did not keep up a reasonable standard of cleanliness in the rental unit. The rental unit flooded during the tenancy. The flood left stains and streaks on the walls and cupboards.

The Tenant testified that they do not know if the Landlord had drape cleaning and suite cleaning done.

During the hearing, the Tenant asked about a \$15.00 key deposit and \$60.00 remote deposit paid to the Landlord. W.L. agreed these deposits were paid. W.L. said the Landlord intended to return these deposits once this matter was concluded. W.L. agreed to me ordering the return of the key and remote deposits regardless of the decision on the Application.

The Landlord submitted an invoice for carpet cleaning and photos of the rental unit at the end of the tenancy.

Analysis

Security deposit

Under sections 24 and 36 of the *Act*, landlords and tenants can extinguish their rights in relation to the security deposit if they do not comply with the *Act* and *Residential Tenancy Regulation* (the “*Regulations*”). Further, section 38 of the *Act* sets out specific requirements for dealing with a security deposit at the end of a tenancy.

Based on the testimony of both parties, I accept that the Tenant participated in the move-in and move-out inspections and therefore did not extinguish their rights in relation to the security deposit under sections 24 or 36 of the *Act*.

It is not necessary to determine whether the Landlord extinguished their rights in relation to the security deposit under sections 24 or 36 of the *Act* as extinguishment only relates to claims for damage to the rental unit and the Landlord has claimed for cleaning.

Based on the testimony of both parties, I accept that the tenancy ended January 31, 2021.

Based on the testimony of both parties, I accept that the Tenant provided a forwarding address to the Landlord in writing December 31, 2020 and January 31, 2021.

Pursuant to section 38(1) of the *Act*, the Landlord had 15 days from the later of the end of the tenancy or the date the Landlord received the Tenant's forwarding address in writing to repay the security deposit or file a claim against it. Here, the Landlord had 15 days from January 31, 2021. The Application was filed February 14, 2021, within time. I find the Landlord complied with section 38(1) of the *Act*.

Compensation

Section 7 of the *Act* states:

7 (1) If a...tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying...tenant must compensate the [landlord] for damage or loss that results.

(2) A landlord...who claims compensation for damage or loss that results from the [tenant's] non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Pursuant to rule 6.6 of the Rules, it is the Landlord as applicant who has the onus to prove the claim. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

Section 37 of the *Act* states:

(2) When a tenant vacates a rental unit, the tenant must

(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear...

#1 Carpet cleaning \$105.00

The tenancy agreement states at page two, "If the carpets and window coverings are new or professionally cleaned at the start of the tenancy, the tenant will pay for professional cleaning at the end of the tenancy."

Policy Guideline 01 states at page 2:

CARPETS

1. At the beginning of the tenancy the landlord is expected to provide the tenant with clean carpets in a reasonable state of repair.
2. The landlord is not expected to clean carpets during a tenancy, unless something unusual happens, like a water leak or flooding, which is not caused by the tenant.
3. The tenant is responsible for periodic cleaning of the carpets to maintain reasonable standards of cleanliness. Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets

after a tenancy of one year. Where the tenant has deliberately or carelessly stained the carpet he or she will be held responsible for cleaning the carpet at the end of the tenancy regardless of the length of tenancy.

4. The tenant may be expected to steam clean or shampoo the carpets at the end of a tenancy, regardless of the length of tenancy, if he or she, or another occupant, has had pets which were not caged or if he or she smoked in the premises.

I am not satisfied based on the evidence provided that the Tenant was required to have the carpet professionally cleaned at the end of the tenancy pursuant to the tenancy agreement because the Landlord has not provided sufficient evidence to show that the carpet was new or professionally cleaned at the start of the tenancy.

Further, regardless of whether the carpet was new or professionally cleaned at the start of the tenancy, I do not accept that this term in the tenancy agreement is enforceable. Section 5 of the *Act* states:

5 (1) Landlords and tenants may not avoid or contract out of this Act or the regulations.

(2) Any attempt to avoid or contract out of this Act or the regulations is of no effect.

Section 37 of the *Act* sets out what a tenant must do in relation to cleaning at the end of the tenancy and states that a tenant must leave the rental unit reasonably clean. The standard in the *Act* is not one of professionally cleaned. I find that a tenant has no obligation to have carpets professionally cleaned as long as carpets are left reasonably clean. I find that imposing a term in a tenancy agreement requiring professional cleaning is an attempt to change the standard in section 37 of the *Act* and is an attempt to contract outside of section 37 of the *Act* and is therefore unenforceable.

In the circumstances, I do not accept that the Tenant was required to have the carpet professionally cleaned. The Tenant testified that they did clean the carpet with a carpet cleaning machine. The photos submitted by the Landlord do not show that the carpet was not left reasonably clean. There is no documentary evidence before me to show that the carpet was not left reasonably clean.

In the circumstances, I am not satisfied based on the evidence provided that the carpet was not left reasonably clean and am not satisfied the Tenant breached the *Act*,

Regulations or an enforceable term of the tenancy agreement. Therefore, I am not satisfied the Landlord is entitled to compensation for carpet cleaning. This request is dismissed without leave to re-apply.

#2 Drape cleaning \$97.50

The Landlord has not submitted a receipt or invoice showing they paid \$97.50 for drape cleaning and therefore the Landlord has failed to prove the amount or value of the loss claimed. The Landlord has therefore failed to prove they are entitled to compensation for drape cleaning. This request is dismissed without leave to re-apply.

#3 Suite cleaning \$120.00

The Landlord has not submitted a receipt or invoice showing they paid \$120.00 for suite cleaning and therefore the Landlord has failed to prove the amount or value of the loss claimed. The Landlord has therefore failed to prove they are entitled to compensation for suite cleaning. This request is dismissed without leave to re-apply.

#4 Filing fee \$100.00

Given the Landlord was not successful in the Application, the Landlord is not entitled to reimbursement for the \$100.00 filing fee.

Summary

The Landlord has failed to prove they are entitled to the compensation sought. Therefore, the Landlord must return the security deposit to the Tenant. No interest is owed on the security deposit as the amount of interest owed has been 0% since 2009. The Landlord must also return the key and remote deposits and therefore must return a total of \$497.50 to the Tenant. The Tenant is issued a Monetary Order in this amount.

Conclusion

The Landlord has failed to prove they are entitled to the compensation sought. The Application is dismissed without leave to re-apply. The Landlord must return \$497.50 to the Tenant. The Tenant is issued a Monetary Order in this amount. If the Landlord does not return \$497.50 to the Tenant, this Order must be served on the Landlord. If the Landlord fails to comply with this Order, it 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 *Act*.

Dated: July 06, 2021

Residential Tenancy Branch