



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Eco-World Property Management
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

MNDL-S, MNDCL-S, FFL

Introduction

The landlord filed an Application for Dispute Resolution (the “Application”) on February 13, 2021 seeking an order for compensation for damage caused by the tenant, and compensation for monetary loss or other money owed. Additionally, the landlord seeks to recover 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 29, 2021. Both parties attended the conference call hearing. I explained the process and offered both parties the opportunity to ask questions. Both parties had the opportunity to present oral testimony and present evidence during the hearing.

At the start of the hearing, each party confirmed their receipt of the other’s evidence. On this basis I proceeded with the hearing.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for damage, and/or other compensation 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

I have reviewed all written submissions and evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this section.

The landlord provided a copy of the tenancy agreement between the parties, and neither party disputed the terms therein. Both parties signed the agreement on November 19 and 20, 2019. The monthly rent was \$2,400 payable on the 1st of each month. The tenant paid a security deposit of \$1,200.

An addendum is attached to the agreement. It provides that “Tenant(s) are required to have the rental property professionally cleaned upon move out. [The landlord] reserved the right to deduct the amount of a professional clean from Tenant(s) security deposit if not completed at move out inspection.” It also provides that, should the condition be found to be unacceptable, the tenant agrees to the landlord hiring professional cleaners to finish “at the Tenant’s expense.” The addendum also provides a list of individual cleaning items the tenant was expected to adhere to.

Upon the tenant moving in, the parties completed a move-in inspection meeting on December 1, 2019. Neither party disputed the content found in the notation in the provided copy. This includes: “water damage on . . . ceiling” and “stains on the carpet.” Both parties signed the document.

The tenant in the hearing noted there was damage to the unit, pre-existing when they moved in. They provided pictures showing incidental damages to pieces of furniture items, a closet door and one baseboard heater. In the hearing they stated this shows “the unit has so many problems in the first place.”

The tenant gave notice that they wish to end the tenancy, via text message on January 9, 2021. The date they advised was for “some date like 20th or later”. The landlord informed the tenant that “hand over” would occur jointly between the parties “after the cleaning company finishes cleaning”. They inquired whether the tenant wanted the landlord to hire a cleaning company on the tenant’s behalf. In response to this, the tenant advised the move-out date would be January 31, and they (i.e., the tenant) will manage the clearing.

According to the extant copy of the Condition Inspection Report, here provided by the landlord, the joint meeting between the parties occurred on January 30, 2021. The report listed marks on the walls, damaged closet door, oil on kitchen appliances, feet marks on the floor. Additionally, the report says: "look like not clean on the carpet" and further: "two bedrooms carpet need reclean."

The report bears the signature of the tenant in the final space, and the indication checked is that the tenant "agree[s] that the report fairly represents the condition of the rental unit." In the hearing the tenant confirmed they signed this report and made the indication that they agreed and signed the document as shown.

In the hearing, the tenant presented they did not receive a copy of this signed document after they moved out. They cited a rule from the Residential Tenancy Branch website that states a landlord must provide a copy of the report within 15 days. The tenant presented they received a copy of this report only as part of the landlord's disclosed evidence for this hearing.

The landlord initially prepared a Monetary Order Worksheet for this hearing, dated February 13, 2021. In the hearing, the landlord stated this version of the worksheet was since updated to show actual amounts paid, instead of the inclusion of estimates on the initial prepared document. The second version dated June 8, 2021 shows the landlord's paid amounts to both a cleaning company (\$441) and a handyman (\$871.50). The total amount of the landlord's claim is thus \$1,312.50.

The landlord provided photos depicting damage after the end of the tenancy. Additionally, they provided photos for comparison of 'before' (i.e., at the start of the tenancy) and 'after' (i.e., at the end of the tenancy.) These show damage to walls requiring repair, a damaged laundry door, two damaged walls, soiled carpet, a damaged closet door, and general items of cleaning.

The tenant maintained they paid for cleaning and carpet shampooing at the end of the tenancy. They provided two invoices showing this, both dated January 31, 2021. This was for carpet cleaning (\$120) and a separate general cleaning fee (\$227.50).

In the hearing, the tenant also presented an email from the landlord dated February 11, 2021 that attached an invoice for a cleaning company estimate. They presented this as inconsistent evidence from the landlord with respect to the amounts indicated on the invoice.

Analysis

Under s. 7 of the *Act*, a landlord or tenant who does not comply with the legislation or their tenancy agreement must compensate the other for damage or loss. Additionally, the party who claims compensation must do whatever is reasonable to minimize the damage or loss. Pursuant to s. 67 of the *Act*, I shall determine the amount of compensation that is due, and order that the responsible party pay compensation to the other party if I determine that the claim is valid.

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.

Applicable to the current claim of the landlord, the *Act* s. 37 requires a vacating tenant to leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

The landlord hired a cleaning company who charged \$441 to the landlord. I grant this portion of the claim to the landlord. From the evidence I am satisfied of the need for carpet cleaning, the need for cleaning throughout (primarily the kitchen), and incidental repairs involving a closet door and the bathroom counter. In the photos the landlord provided showing the state of the rental unit at the start of the tenancy, these items are seen to be intact.

The tenant provided an invoice to show they completed carpet cleaning and other cleaning after the end of the tenancy. This evidence is not clear: the date on the invoice is January 31, which occurs after they had moved out on January 30. The invoice does not indicate the date work was completed, and the tenant did not provide this additional piece of information. As well, consistent with my finding above, I find there was the need for carpet cleaning after the move out, as shown in the landlord's provided pictures.

For the landlord's hired handyman claim, I find the landlord's evidence is insufficient in the following ways:

- There is only one image showing the need for repainting and repair to damaged walls in the bathroom. Given the size of the wall, I am not satisfied that \$150 is a definitive cost. I find that is not a mitigation of the damage or cost for what are comparatively minimal impacts on only the paint in the bathroom.
- I find the damage to the laundry door is reasonable wear and tear, and it is within the scope of that category with the need for only cursory repair.
- The landlord listed "repainted three walls" as work performed by this handyman, and sets out \$472.50 as the cost for this work. The three walls in question are not shown in the landlord's evidence; there is insufficient evidence to show that this damage exists.
- I find replacement of three lightbulbs, for the cost claimed, is not an effort at mitigating the cost thereof. Because the landlord presented that the agreement shows that "light bulbs . . . should all be working" I award \$20 for this cost.

For these reasons, I award \$20 reimbursement to the landlord for work provided by a handyman after the end of the tenancy.

The tenant raised the point that they did not receive a copy of the final Condition Inspection Report, that which documented the state of the unit after the move-out inspection meeting of January 30.

The *Act* s. 35(4) provides that the landlord must give the tenant a copy of that report in accordance with the regulations." The *Residential Tenancy Regulation* s. 18 specifies the timeframe of 15 days after either the date of the condition inspection, or the landlord's receipt of the tenant's forwarding address. Accordingly, where the landlord does not provide the report as such, s. 36 provides that the landlord has no right to claim against the security deposit.

I find the tenant received the report as part of the landlord's disclosure for this hearing. That occurred via the landlord sending their evidence via registered mail on February 24, after they received the tenant's forwarding address on February 4. Strictly speaking this was not within 15 days, as specified in the *Residential Tenancy Regulation*.

I find the landlord is entitled to an award of \$461 from the tenant as a result of the tenant's breach of s. 37 of the *Act*. While the *Act* specifies the landlord is not entitled to claim against the security deposit, an amount payable from one party to another is

governed by s. 72. This allows for any amount payable from a tenant to a landlord to be deducted from any security deposit due to the tenant.

Because of this, I order the return of the security deposit amount to the tenant, less the \$461 the landlord has established as valid in their claim for compensation. I order the landlord to return the remainder to the tenant, and so grant the tenant a monetary order for that amount.

Because the landlord was moderately successful in this Application for compensation, I grant recovery of \$50 of the Application filing fee. This amount is also reduced from the return of the security deposit.

Conclusion

I grant the tenant a Monetary Order in the amount of \$689 for the return of the remainder of the security deposit. I provide the tenant with this Order and they must serve it to the landlord as soon as possible. Should the landlord fail to comply with this Order, the tenant may file it in the Small Claims Division of the Provincial Court where it will be 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: July 2, 2021

Residential Tenancy Branch