



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding P.C.P.M. AS AGENTS FOR COUNTESS GARDENS
INC. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S, FFL
 MNSDS-DR

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “Act”). The matter was set for a conference call.

The Landlord’s Application for Dispute Resolution was made on March 16, 2021. The Landlord applied for a monetary order for losses due to the tenancy, permission to retain the security deposit and to recover their filing fee.

The Tenants’ Application for Dispute Resolution was made on April 28, 2021. The Tenants applied for the return of their security deposit.

Two Agents for the Landlord (the “Landlord”) and both the Tenants attended the hearing and were each affirmed to be truthful in their testimony. The Tenants and the Landlord were provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing. Both parties were advised of section 6.11 of the Residential Tenancy Branches Rules of Procedure, prohibiting the recording of these proceedings.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Is the Landlord entitled to a monetary order for losses due to the tenancy?
- Is the Landlord entitled to the recovery of their filing fee?
- Are the Tenants entitled to a monetary order for the return of their security deposit?

Background and Evidence

While I have considered all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

Both parties agreed that the tenancy began on April 1, 2014, that by the end of tenancy, rent in the amount of \$1,619.00 was payable on the first day of each month, and that the Tenants had paid a security deposit of \$700.00 at the outset of this tenancy.

The parties also agreed that this tenancy ended in accordance with the *Act* on January 31, 2021, and that no move-out inspection was completed for this tenancy; the Landlord testified that they did not conduct the move-out inspection due to concerns they had about being indoors with the Tenants during the covid-19 pandemic. The Landlord and Tenants agreed that \$375.65 of the security deposit for this tenancy was returned to the Tenants on March 8, 2021.

The Landlord testified that the Tenants returned the rental unit to them with the carpets uncleaned. The Landlord is requesting the recovery of their carpet cleaning costs in the amount of \$147.00. The Landlord submitted a copy of the carpet cleaning receipt into documentary evidence.

The Tenant testified that they had the carpets professionally cleaned at the end of their tenancy, on January 30, 2021, and that the carpets were clean when the rental unit was returned to the Landlord. The Tenants submitted a copy of their carpet cleaning receipt into documentary evidence.

The Landlord testified that they are also requesting the recovery of their junk removal cost in the amount of \$177.35. The Landlord testified that the Tenants left several personal items on the street curb at the end of their tenancy and that the Landlord had

to pay to have them removed. The Landlord submitted a copy of the junk removal receipt and three pictures into documentary evidence.

The Tenants agreed that they had left one chair on the street curb at the end of their tenancy but that someone in the community had agreed to pick it up and that they were just leaving it out for this person. The Tenant's testified that they witnessed several people in the area leaving other items on the same street curb but that these other items were their property and were not left by them.

Analysis

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

In this case, the Landlord has requested permission to retain 424.35 of the \$700.00 security deposit in compensation for damages and losses caused by the tenants due to this tenancy.

Section 38(1) of the Act gives the landlord 15 days from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to file an Application for Dispute Resolution claiming against the deposit or repay the security deposit to the tenant.

Return of security deposit and pet damage deposit

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

I find that this tenancy ended on January 31, 2021, the day the Tenants vacated the rental unit and returned the keys to the rental unit to the Landlord's Agents. I also find

that the Tenant provided their forwarding address to the Landlord by personal service on that same day, January 31, 2021, as required by section 38 of the *Act*. Accordingly, the Landlord had until February 15, 2021, to comply with section 38(1) of the *Act* by either repaying the deposit in full to the Tenants or submitting an Application for Dispute resolution to claim against the deposit.

I have reviewed the application for these proceedings, and I find that the Landlord submitted the Application for Dispute resolution to claim against the deposit on March 16, 2021. I find that the Landlord breached section 38(1) of the *Act* by not returning the Tenants' security deposit or filing a claim against the deposit within the statutory timeline.

Additionally, I accept the testimony of the Landlord that they did not conduct the move-out inspection for this tenancy. Section 35 of the *Act* sets the requirement for the move-out inspections, stating the following:

Condition inspection: end of tenancy

35 (1) The landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit

*(a) on or after the day the tenant ceases to occupy the rental unit,
or*

(b) on another mutually agreed day.

(2) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.

(3) The landlord must complete a condition inspection report in accordance with the regulations.

(4) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.

(5) The landlord may make the inspection and complete and sign the report without the tenant if

(a) the landlord has complied with subsection (2) and the tenant does not participate on either occasion, or

(b) the tenant has abandoned the rental unit.

I find that the Landlord also breached section 35 of the *Act* when they did not complete the required move-in inspection of the rental unit. Section 36 of the *Act* outlines the

consequence for a landlord when the inspection requirements are not met, stating the following:

Consequences for tenant and landlord if report requirements not met

36 (2) *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*
(a) does not comply with section 35 (2) [2 opportunities for inspection],
(b) having complied with section 35 (2), does not participate on either occasion, or
(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.

Consequently, I find that the Landlord had extinguished their right to make a claim against the security deposit for damage and that they were required to return the Tenants' security deposit in full to the Tenants no later than February 15, 2021, which, in this case, the Landlord did not do.

Section 38 (6) of the *Act* goes on to state that if the landlord does not comply with the requirement to complete the inspections, and return or apply to retain the deposit within the 15 days, the landlord must pay the tenant double the security deposit.

Return of security deposit and pet damage deposit

38 (6) *If a landlord does not comply with subsection (1), the landlord*
(a) may not make a claim against the security deposit or any pet damage deposit, and
(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Therefore, I find that pursuant to section 38(6) of the *Act*, the Tenants have successfully proven they are entitled to the return of double their security deposit and that the security deposit for this tenancy is now valued at \$1,400.00.

I accept the agreed-upon testimony of these parties that the Landlord returned \$375.65 of the \$1,400.00 security deposit for this tenancy to the Tenants on March 8, 2021.

Therefore, I find that the Landlord continues to hold \$1,024.35 of the Tenants' security deposit for this tenancy.

The Landlord has claimed for \$177.35 in junk removal, \$147.00 in carpet cleaning and the recovery of their \$100.00 filing fee for these proceedings. Awards for compensation due to damage are provided for under sections 7 and 67 of the *Act*. A party that makes an application for monetary compensation against another party has the burden to prove their claim. The Residential Tenancy Policy Guideline #16 Compensation for Damage or Loss provides guidance on how an applicant must prove their claim. The policy guide states the following:

“The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. 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.

I will address the items the Landlord has claimed for individually, starting with their request for \$147.00 for carpet cleaning. During the hearing, the parties to this dispute provided conflicting verbal testimony regarding the condition of the carpets in the rental unit at the end of this tenancy. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim, in this case, that is the Landlord.

An Arbitrator normally looks to the move-in/move-out inspection report (the “inspection report”) as the official document that represents the condition of the rental unit at the beginning and the end of a tenancy; however, as it has already been determined that the move-out inspection was not completed for this tenancy, I am not able to rely on that document in my decision. In the absence of a completed move-in/move-out inspection

report, I must rely on the remaining documentary evidence regarding the condition of the rental unit at the end of this tenancy.

In my review of the Landlord documentary evidence, I noted that there is no evidence before me to show the condition of the carpets in the rental unit at the end of this tenancy. I also noted that the Tenants had submitted a receipt for professional carpet cleaning, dated January 30, 2021. Therefore, in the absence of evidence to prove that carpets in the rental unit were dirty at the end of this tenancy, I find that I must dismiss the Landlord's claim for carpet cleaning in its entirety.

As of the Landlord's claim for \$177.35 in the recovery of their costs for junk removal at the end of this tenancy, again, during the hearing, the parties to this dispute provided conflicting verbal testimony regarding who owned the items left on the street curb at the end of this tenancy. As stated above, where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim, and again, in this case, that is the Landlord.

During my review of the Landlord documentary evidence, I noted that there is one picture that shows one item in the rental unit at was also left on the street curb at the end of the tenancy. However, I noted that there are several other items depicted in the picture of the street curb that the Landlord has not proven, to my satisfaction, belong to these Tenants.

In the absence of evidence to prove that all of the items depicted on the street curb were owned by these Tenants, I find that I am unable to award the Landlord the full amount claimed for junk removal. However, as the Tenants have agreed that they owned one of the items that were left on the street curb, I find that the Tenants are partially responsible for the junk removal costs. Therefore, I award the Landlord \$88.67, half of their claimed amount for junk removal at the end of this tenancy. I grant permission to the Landlord to retain \$88.67 from the security deposit they are holding for this tenancy in full satisfaction with this award.

Finally, section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord has been partially successful in their application, I find that the Landlord is entitled to the return of their filing fee. I grant permission to the Landlord to retain \$100.00 from the security deposit they are holding for this tenancy in full satisfaction of this award.

Overall, I award the Tenants a monetary order in the amount of \$835.68; comprised of \$1,024.35 in the recovery of the remaining value of their security deposit, less \$88.67 awarded to the Landlord for junk removal and less \$100.00 awarded to the Landlord in the recovery of the Landlord's filing fee for these proceedings.

Conclusion

I grant permission to the Landlord to retain \$188.67 from the security deposit for this tenancy in full satisfaction of the awarded amounts contained in this decision.

I find for the Tenants under section 38 of the *Act*. I grant the Tenants a **Monetary Order** in the amount of **\$835.68**. 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: August 31, 2021

Residential Tenancy Branch