



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, FFL

Introduction

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

- a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover their filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony.

Both parties were advised that the conference call hearing was scheduled for 60 minutes and pursuant to the Rules of Procedure, Rule 6.11 Recordings Prohibited that recording of this call is prohibited.

Both parties confirmed the landlord served the tenant with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on April 1, 2021. Both parties also confirm the tenant serve the landlord with the submitted documentary evidence in person on August 19, 2021. Neither party raised any service issues. I accept the undisputed affirmed evidence of both parties and find that both parties have been properly served as per sections 88 and 89 of the Act.

Issue(s) to be Decided

Are the landlords entitled to a monetary order for compensation and recovery of the filing fee?

Are the landlords entitled to retain all or part of the security deposit?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on April 1, 2020 on a fixed term tenancy ending on March 31, 2021 as per the submitted copy of the signed tenancy agreement dated November 6, 2020. The monthly rent was \$1,700.00 payable on the 1st day of each month. A security deposit of \$600.00 was paid.

The landlords seek a monetary claim of \$631.25 for:

\$131.25	Carpet Cleaning
\$400.00	Cleaning
\$100.00	Filing Fee

The landlords claim that the tenant vacated the rental unit without having the carpets professionally cleaned. The landlord also claims that the carpets were dirty and stained requiring cleaning which the landlord incurred an expense of \$131.25 based upon the submitted copy of the invoice dated March 18, 2021.

The tenant disputed the landlord's claim arguing that the rental unit was left adequately clean and that professional carpet cleaning was unnecessary. The tenant did note that there was a small white stain in her son's bedroom (later identified as bedroom #2 on the Condition Inspection Report).

The landlord did not provide any photographs of the dirty carpet and instead relied solely on the incomplete condition inspection report dated March 15, 2021. The landlord referred to the notations of the carpet in the master bedroom as "F-DT" which according to the table description is "Fair" and "Dirty"; bedroom 2 shows the carpet as "F-DT" with an additional notation of "white stain"; and finally bedroom 3 carpet noted as "F-DT". The landlord clarified that despite the landlord completing the condition inspection for the move-out the tenant vacated the property as all of the deficiencies were noted without signing in agreeing or disagreeing with the report.

The tenant confirmed that she was present with the landlord to complete the condition inspection report but left due to not feeling well. The tenant stated that she disagreed with the landlord's report.

The landlord also seeks compensation of \$400.00 for the cost of cleaning the rental unit at the end of the tenancy. The landlord claims the tenant vacated the rental unit and failed to properly clean it resulting in the landlord paying \$400.00 based upon the submitted invoice dated March 22, 2021. I note that the invoice references cleaning of 16 hours at \$25.00 per hour.

The tenant disputes this claim arguing that the rental unit was left adequately clean.

The landlord has submitted 37 documentary evidence files and has referenced 27 different photographs showing the condition of the rental unit at the end of tenancy. A review of the files shows the various dirty walls, baseboards, cupboards, microwave, refrigerator, oven, window, door track, blind and multiple marks/scrapings on the various walls and door.

The tenant has also referred to photographs submitted showing a clean stove, laundry shelf, fridge door/shelf and master bathroom. A review of these files show a clean stove, laundry shelf, fridge door/shelf and master bathroom.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

In this claim, I find on a balance of probabilities that I prefer the evidence of the landlord over that of the tenant and that the landlord has established a claim for \$631.25 as filed. The landlord despite relying on an incomplete condition inspection report for the move-out has also submitted numerous photographs and invoices as supporting evidence that

the tenant vacated the rental unit leaving it dirty requiring cleaning. Despite the photographs submitted by the tenant, I was unable to properly compare the photographs of both parties and that the tenant's photographic evidence were from different angles and I was not able to view the same areas presented by the landlord. On this basis, I accept the landlord's supporting evidence as sufficient to show that the rental unit was left dirty requiring cleaning.

The landlord's \$631.25 claim includes the \$100.00 filing fee. I authorize the landlord to retain the \$600.00 security deposit in partial satisfaction of this claim.

I also note that during the hearing the landlord referenced a condition of the tenancy agreement that the tenant had agreed to have the rental unit professionally cleaned at the end of the tenancy. The landlord was cautioned that a strict reliance on such a condition can be interpreted as an unconscionable and unenforceable term of the tenancy agreement. In this case however, the landlord provided sufficient evidence that carpet cleaning was warranted due to the carpet being left dirty and stained. Had this not been the case it would be highly likely that such a term would be struck down and be found unconscionable and unenforceable.

Conclusion

The landlord is granted a monetary order for \$31.25.

This order must be served upon the tenant. Should the tenant fail to comply with this order, the 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 27, 2021

Residential Tenancy Branch