



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HOLLYBURN PROPERTIES LIMITED and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord filed under the *Residential Tenancy Act* (the “*Act*”) for a monetary order for damages or compensation for losses under the *Act*, permission to retain the security deposit and for the return of their filing fee. The matter was set for a conference call.

One of the Tenants, the Tenant’s Advocate (the “Tenant”) and two Agents for the Landlord (the “Landlord”) attended the conference call hearing and were each affirmed to be truthful in their testimony. The parties 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 oral and written evidence 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 monetary compensation for damages under the *Act*?
- Is the Landlord entitled to retain the security deposit for this tenancy?
- Is the Landlord entitled to the return of their filing fee for this application?

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 September 1, 2020, that rent in the amount of \$2,125.00 was payable on the first day of each month, and the Tenants had paid a security deposit of \$1,062.50 and a pet damage deposit of \$1,062.50 at the outset of this tenancy. Both parties submitted a copy of the tenancy agreement into documentary evidence.

The parties also agreed that the tenancy ended on March 31, 2021, in accordance with the *Act* and that the move-out inspection had been completed by the Landlord and the Tenants that same day. A copy of the move-out inspection was submitted into documentary evidence by the Landlord.

The Landlord testified that the Tenants had returned the rental unit to them damaged and dirty. The Landlord testified that they are claiming \$400.00 to replace a damaged fridge door and \$90.00 for two hours of cleaning.

The Landlord testified that the Tenants had used an abrasive to clean the stainless steel door on the fridge, which caused scratches that can not be repaired. The Landlord is requesting \$400.00 for the replacement costs of the fridge door. The Landlord submitted a copy of an estimate to replace the fridge door into documentary evidence.

The Landlord was asked if the door had been replaced as of the date of these proceedings; the Landlord testified that the whole fridge had been replaced as they had a spare one but that they are requesting the cost for the damaged door. The Landlord was asked why the damaged fridge door was not recorded on the move-out inspection; the Landlord testified that the inspection had been contentious and that the property manager had rushed through it and missed noting the fridge door. The Landlord submitted a picture and the move-in/move-out inspection report (the "inspection report") into documentary evidence.

The Tenant testified that they did not scratch the fridge door and that they should not be responsible for buying the Landlord a new door. The Tenant also testified that they had been present for the move-out inspection and that the property manager who conducted

the inspection had not mentioned that there was an issue with the fridge door at that time. Additionally, the Tenant testified that they had signed part five of the move-out inspection report but that they had not signed the final section labelled "SECURITY DEPOSIT STATEMENT" that it had been the property manager who conducted the inspection who had signed in that section. The Tenant testified that they had not agreed to any deductions to their security deposit for this tenancy.

The Landlords testified that the Tenants had returned the rental unit to them dirty and that the rental unit required two hours of additional cleaning at the end of tenancy. The Landlord was asked why the move-out inspection had indicated that everything was clean if additional cleaning was required. Again, the Landlord testified that the inspection had been contentious and that the property manager had rushed through it and missed noting the required cleaning. The Landlord also testified that a dirty stove had been recorded on the inspection report but agreed that the handwriting was illegible.

The Tenant testified that the property manager had mentioned, during the inspection, that the stove needed more cleaning, stating that "it shouldn't take long but that they charge for a minimum of two hours so they would be charged \$90.00." The Tenant testified that they did not agree to the extra cleaning and that the stove was returned reasonably cleaned as required.

Analysis

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

The Landlord is requesting \$490.00 in compensation for damage and cleaning costs at the end of the tenancy. Awards for compensation due to damage or loss 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.

During the hearing, the parties to this dispute provided conflicting verbal testimony regarding the condition of 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 looks to the inspection report as the official document that represents the condition of the rental unit at the beginning and the end of a tenancy as it is required that this document is completed in the presence of both parties and seen as a reliable account of the condition of the rental unit.

I have reviewed the inspection report for this tenancy, and I noted that the damage and cleaning the Landlord is claiming in these proceedings was not recorded on this document.

I acknowledge that the Landlord's testimony, that it was one of their representatives who had conducted the move-out inspection, stating that the move-out inspection had been contentious and that they had intentionally not recorded the true state of the rental unit, on the inspection report, in order to keep the peace during the inspection. Where I can recognize that the move-out inspection can be a stressful time during any tenancy and can often lead to dispute, I find that the presence of a disagreement between these parties during the inspection, to be insufficient justification for making false statements on this legal document.

Furthermore, it is the legal responsibility of the Landlord to ensure that they or their assigned agent are prepared to conduct a professional, accurate and legible move-in and move-out inspection for each of their tenancies. I find that there is a requirement, on both parties, to ensure that the inspection report accurately records any deficiency in the rental unit during the inspection and that those deficiencies are clearly communicated to the other party during the inspection. I also find the action of willing recording that the rental unit was returned in good condition at the time of inspection and then backtracking, to make a claiming for \$490.00 in compensation for cleaning and repairs that ought to have been easily noticeable as deficient, and communicated and recorded as such, during the inspection, to be an unacceptable action.

As this inspection report is a legal document signed by both a representative of the Tenants and a representative of the Landlord, I find that this document legally binds both parties. Consequently, as the items claimed by the Landlord in these proceedings were not clearly recorded on this document, I dismiss the Landlord's claim in its entirety.

Additionally, after reviewing the inspection report and making a comparison of the Tenant's signatures on this document, I accept the Tenants testimony that they did not sign the final section of this inspection report labelled "SECURITY DEPOSIT STATEMENT" and that they did not agree to the Landlord keeping any portion of their security or pet damage deposits for this tenancy.

As the Landlord has been unsuccessful in their claim against the Tenants, I find that pursuant to section 38 of the *Act*, the Tenants are entitled to the return of their security and pet damage deposits in the amount of \$2,125.00. I order the Landlord to return the security and pet damage deposits for this tenancy to the Tenants within 15 days of the date of this decision.

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 not been successful in this application, I find that the Landlord is not entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

The Landlord's application is dismissed without leave to reapply.

I order the Landlord to return the Tenants' security deposits to the Tenants within 15 days of receiving this decision.

I grant the Tenants a **Monetary Order** in the amount of **\$2,125.00** for the return of their remaining security deposit pursuant to section 38 of the *Act*. 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: October 15, 2021

Residential Tenancy Branch