Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HUGH & MCKINNON REALTY LTD and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S, FFL

Introduction

On April 13, 2021, the Landlord made an Application for Dispute Resolution seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the "*Act*"), seeking to apply the security deposit towards this debt pursuant to Section 38 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Tenant attended the hearing. B.P., an agent for the Landlord, attended hearing five minutes late. After B.P. had joined the hearing, I explained to the parties that as the hearing was a teleconference, neither party could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, the parties were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so. All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation.

B.P. advised that he believed that each Tenant was served a separate Notice of Hearing and evidence package by registered mail, but he was unsure of the date that these packages were served. He did not submit any proof of service to corroborate that a separate Notice of Hearing and evidence package was served to each Tenant. As well, he was unsure if the Amendment that was filled out was ever filed with the Residential Tenancy Branch, but he believes this Amendment was included in the Notice of Hearing and evidence packages.

The Tenant confirmed that he received a Notice of Hearing and evidence package, but it is unclear if the other Respondent received a separate Notice of Hearing and evidence package. He also confirmed that he received the Landlord's Amendment in this package.

As the Tenant confirmed he had received the Notice of Hearing and evidence package, I am satisfied that he has been duly served this package. However, as the Landlord has not provided any proof of service for the second Respondent, I am not satisfied that this person has been sufficiently served a separate Notice of Hearing and evidence package as per Rule 3.1 of the Rules of Procedure (the "Rules"). As such, the other Respondent has been removed from the Style of Cause on the first page of this Decision.

Furthermore, with respect to the Landlord's Amendment, records indicate that the Landlord did not file the completed Amendment with the Residential Tenancy Branch, in accordance with Rule 4.1 of the Rules, but simply included it as part of the evidence package. However, as the Tenant confirmed that he received this Amendment with the Notice of Hearing package and that he understood the nature of the Landlord's claims, I am satisfied that the Tenant was sufficiently served this Amendment and that the hearing would proceed on the updated amount being claimed.

The Tenant advised that he did not submit any evidence for consideration. As well, he requested an adjournment because he forgot about the hearing and needed more time to submit relevant evidence.

As the Tenant received the Notice of Hearing and evidence package approximately five months prior to the hearing date, I find that the Tenant had ample time to submit his evidence for consideration. I am not satisfied that him simply forgetting about the date of this hearing would satisfy the criteria under Rule 7.9 of the Rules to grant an adjournment. As such, this adjournment request was denied.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to a Monetary Order for compensation?
- Is the Landlord entitled to apply the security deposit towards this debt?
- Is the Landlord entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on September 1, 2019 and that the tenancy ended when the Tenant gave up vacant possession of the rental unit on March 30, 2021. Rent was established at an amount of $2,400.00 per month and was due on the first day of each month. A security deposit of $1,200.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

All parties also agreed that a move-in inspection report was completed on August 12, 2019, that a move-out inspection report was conducted on March 30, 2021, and that the Tenant provided a forwarding address to the Landlord by email sometime in April 2021. A copy of the move-in and move-out inspection report was submitted as documentary evidence for consideration.

B.P. advised that the Landlord is seeking compensation in the amount of **$799.32** because the Tenant did not return the rental unit to a re-rentable state. He referenced pictures submitted to demonstrate the state of the rental unit at the end of the tenancy and he cited a receipt for the cost to clean the unit. However, he could provide little detail on what specifically was unclean in the rental unit. As well, he could not speak to why there were three separate entries on the cleaning receipt, how many staff were involved in the cleaning, how many hours were spent, or how much this company charged hourly.

The Tenant questioned why there would be three different entries on the cleaning receipt. As well, he indicated that he was a realtor, and in his experience, he has not seen a receipt like this, nor has he ever seen a bill for cleaning that exceeded $500.00. He speculated that this was the second page of a receipt and he has generally only

seen one-page receipts for cleaning. In addition, he questioned why the owner of the rental unit had the cleaning done when it should have been the responsibility of the property management company.

With respect to the condition of the rental unit, he advised that the first-floor freezer and the bathroom shower were the only areas that were not cleaned. He stated that he hired a cleaning company to clean the rental unit on March 29, 2021. Three staff members from this company cleaned the rental unit for three hours; however, they were called away for an emergency and could not complete the cleaning of the rental unit. As a result, he stated that he was never charged by this company for the cleaning. He did not submit any evidence to corroborate this submission. He confirmed that the Landlord's move-out pictures accurately depict the condition that he left the rental unit in, and he stated that he did not have a chance to correct these deficiencies.

B.P. advised that the Landlord is seeking compensation in the amount of **$175.00** because the owner of the rental unit paid for dump fees. He testified that he "could not speak to what this claim was for". When he was pressed to elaborate on this claim, he stated that "I'm going to assume" and "Let's assume" that it was for disposal of property that the Tenant left behind. However, he then advised that he was withdrawing this claim and was no longer seeking compensation for it.

B.P. advised that the Landlord is seeking compensation in the amount of **$367.50** because the Tenant stained the carpet and did not clean it prior to the tenancy ending. He stated that the carpet was "dirty everywhere" and he referenced the pictures submitted to illustrate the staining. As well, he cited the invoice submitted to support the cost of the cleaning of the carpet.

The Tenant advised that it was his belief that the company that the owner hired to clean the rental unit would also clean carpets, so he questioned why another company was hired to clean the carpet. However, he acknowledged that he was responsible for the stains in the carpet and that the Landlord's pictures accurately reflect the condition of the carpet at the end of the tenancy.

B.P. advised that the Landlord is seeking compensation in the amount of **$367.50** because the carpet required a second cleaning as the first attempt was unsuccessful. He could not provide any more detail on this claim as this was all that was explained to him by the owner. He assumed that it was cleaned again so as to be "more to the owner's liking." As well, he could not explain why, on second invoice for alleged carpet cleaning, the service type was indicated as "Extra Service – House Cleaning" and the

description of the work done was “Entire House Cleaning.” This was inconsistent with the Landlord’s first invoice for carpet cleaning.

The Tenant again questioned why the owner was paying for these bills as it was his belief that the property manager should be responsible. As well, he claimed that in the real estate industry, carpet cleaning was often a perk that is provided. He questioned why the company that did this cleaning would come in and do the same job again. However, he confirmed that the stains on the carpet were due to his daughter spilling turmeric on them, and then attempting to clean the stains with bleach.

Finally, B.P. advised that the Landlord is seeking compensation in the amount of **$426.21** because the Tenant broke the top of the toilet and it had to be replaced. He referenced the pictures and the invoice submitted to support this claim.

The Tenant confirmed that he was responsible for breaking the toilet. It is his position that he has seen this toilet for $200.00 at a local hardware store and he questioned why the Landlord replaced it with a more expensive one.

Analysis

Upon consideration of the testimony before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 23 of the *Act* states that the Landlord and Tenant must inspect the condition of the rental unit together on the day the Tenant is entitled to possession of the rental unit or on another mutually agreed upon day.

Section 35 of the *Act* states that the Landlord and Tenant must inspect the condition of the rental unit together before a new tenant begins to occupy the rental unit, after the day the Tenant ceases to occupy the rental unit, or on another mutually agreed upon day. As well, the Landlord must offer at least two opportunities for the Tenant to attend the move-out inspection.

Section 21 of the *Residential Tenancy Regulations* (the “*Regulations*”) outlines that the condition inspection report is evidence of the state of repair and condition of the rental unit on the date of the inspection, unless either the Landlord or the Tenant have a preponderance of evidence to the contrary.

Sections 24(2) and 36(2) of the *Act* state that the right of the Landlord to claim against a security deposit for damage is extinguished if the Landlord does not complete the condition inspection reports in accordance with the *Act*.

Section 32 of the *Act* requires that the Landlord provide and maintain a rental unit that complies with the health, housing and safety standards required by law and must make it suitable for occupation. As well, the Tenant must repair any damage to the rental unit that is caused by their negligence.

Section 67 of the *Act* allows a Monetary Order to be awarded for damage or loss when a party does not comply with the *Act*.

As the consistent and undisputed evidence is that a move-in inspection report and a move-out inspection report was conducted, I am satisfied that the Landlord completed these reports in accordance with the *Act*. As such, I find that the Landlord has not extinguished the right to claim against the deposit.

Furthermore, Section 38 of the *Act* outlines how the Landlord must deal with the security deposit at the end of the tenancy. With respect to the Landlord's claim against the Tenant's security deposit, Section 38(1) of the *Act* requires the Landlord, within 15 days of the end of the tenancy or the date on which the Landlord receives the Tenant's forwarding address in writing, to either return the deposit in full or file an Application for Dispute Resolution seeking an Order allowing the Landlord to retain the deposit. If the Landlord fails to comply with Section 38(1), then the Landlord may not make a claim against the deposit, and the Landlord must pay double the deposit to the Tenant, pursuant to Section 38(6) of the *Act*.

Based on the consistent and undisputed evidence before me, this Application was made within 15 days of the end of tenancy and the approximate date when the Tenant advised that the forwarding address was provided. As such, I find that the doubling provisions do not apply to the security deposit in this instance.

With respect to the Landlord's claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or

loss", and that "the value of the damage or loss is established by the evidence provided."

As noted above, 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. When establishing if monetary compensation is warranted, it is up to the party claiming compensation to provide evidence to establish that compensation is owed. In essence, to determine whether compensation is due, the following four-part test is applied:

- Did the Tenant fail to comply with the *Act*, regulation, or tenancy agreement?
- Did the loss or damage result from this non-compliance?
- Did the Landlord prove the amount of or value of the damage or loss?
- Did the Landlord act reasonably to minimize that damage or loss?

In addition, when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. Given the somewhat contradictory testimony and positions of the parties, I must also turn to a determination of credibility. I have considered the parties' testimonies, their content and demeanour, as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy.

With respect to the Landlord's claim for compensation in the amount of $799.32 for cleaning of the rental unit, I find it important to reiterate that the onus is on the Landlord to prove each claim, and B.P. was unable to elaborate to specifically detail the nature of any of the Landlord's claims on the Application. Despite being afforded many opportunities to do so, he had limited knowledge of any details and would speak vaguely by using words such as "let's assume" and "maybe it was for…" It was apparent that either B.P. was unprepared, disorganized, and unable to properly represent the Landlord, or he had little knowledge of the details of this particular Application. As well, other than him advising me simply to look at the pictures and the invoice, he could not directly point me to any of his evidence that would support the claims for uncleanliness. Moreover, he did not even reference any noted deficiencies in cleanliness in the move-out inspection report.

While the Tenant made several submissions based on his past experience as a realtor that were speculative and/or entirely irrelevant to the claim at hand, the only salient submission was his acknowledgement that he did not leave the rental unit in a re-rentable state. While he claimed that a cleaning company partially cleaned the rental unit, I find it dubious that a company would send three staff members and allow them to

clean the rental unit for three hours without billing the Tenant. Furthermore, I give no weight to the Tenant's submission that he has not observed any cleaning bills exceeding $500.00 during his time as a realtor. I find this submission to be illogical as it is completely anecdotal. Moreover, it is entirely reasonable, plausible, and consistent with common sense and ordinary human experience that the condition that some tenants have left a rental unit in could likely have exceeded what he himself has only observed in his limited experience as a realtor.

Given that the Tenant acknowledged that he did not clean the entirety of the rental unit and that the Landlord's move-out pictures accurately demonstrated the condition of the rental unit at the end of the tenancy, I am satisfied that the Tenant is responsible for some cost of cleaning. However, as B.P. had little explanation for the extent of the cleaning required, and as he could not speak to the odd and un-detailed invoicing of this claim for cleaning, I am not satisfied that the Landlord has sufficiently justified the entirety of this claim. As I am satisfied that some cleaning was required, based on the pictures submitted, I grant the Landlord a monetary award in the amount of **$600.00** to satisfy this claim.

Regarding the Landlord's claim for compensation in the amount of $175.00 for the cost of dump fees, as B.P. advised that the Landlord was no longer seeking compensation for this issue, this claim is dismissed without leave to reapply.

With respect to the Landlord's claim for compensation in the amount of $367.50 for the cost of carpet cleaning, B.P. provided minimal submissions and the Tenant again made speculative and mostly irrelevant arguments. Regardless, as the Tenant confirmed that he was responsible for the stains in the carpet and that the Landlord's pictures accurately reflected the condition of the carpet at the end of the tenancy, I am satisfied that the Tenant is responsible for carpet cleaning. As such, I grant the Landlord a monetary award in the amount of **$367.50** to rectify this issue.

Regarding the Landlord's claim for compensation in the amount of $367.50 for an additional carpet cleaning, given that B.P. could not explain the nature of this claim at all and as the invoice does not indicate it was for carpet cleaning, I dismiss this claim in its entirety.

I note that at one point during the hearing, B.P. complained that the Tenant was making all the submissions. However, the reason for this was because of B.P.'s own limited knowledge of the Landlord's claims and his inability to provide any, more thorough submissions, despite being provided with multiple opportunities and prompting to do so

by myself. It should be reiterated that B.P. was asked multiple times on each claim if he would like to make additional submissions or directly point me to the documentary evidence that supports the limited submissions that he did make. However, in each instance he simply refrained from doing so, often stating that he did not know what else to add.

Finally, with respect to the Landlord's claim for compensation in the amount of $426.21 for the cost of replacing the toilet that the Tenant broke, given that the Tenant acknowledged to being responsible for this, I am satisfied that the Tenant should be required to compensate the Landlord for the loss. I note that Policy Guideline # 40 states that the approximate useful life of a toilet is 20 years. Given that the toilet does not appear in the picture to be remotely past its useful life, I grant the Landlord a monetary award in the amount of **$298.35**, which represents the estimated remaining useful life of the previous toilet. I give no weight to the Tenant's claim that he has seen a similar toilet at a local hardware store for a lower price.

As the Landlord was partially successful in these claims, I find that the Landlord is entitled to recover the $100.00 filing fee paid for this Application. Under the offsetting provisions of Section 72 of the *Act*, I allow the Landlord to retain the security deposit in partial satisfaction of these claims.

Pursuant to Sections 38, 67, and 72 of the *Act*, I grant the Landlord a Monetary Order as follows:

Calculation of Monetary Award Payable by the Tenant to the Landlord

Item	Amount
Cleaning	$600.00
Carpet cleaning	$367.50
Toilet replacement	$298.35
Recovery of Filing Fee	$100.00
Security deposit	-$1,200.00
Total Monetary Award	**$165.85**

Conclusion

I provide the Landlord with a Monetary Order in the amount of **$165.85** in the above terms, and the Tenant must be served with **this Order** as soon as possible. Should the Tenant 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 17, 2021

Residential Tenancy Branch