



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding COPPERFIELD RENTAL PROPERTIES
LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC MNR MNSD FF

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution. The participatory hearing was held, by teleconference, on October 22, 2021. The Landlord applied for multiple remedies, pursuant to the *Residential Tenancy Act* (the "Act").

The Landlord attended the hearing. The Tenant also attended the hearing along with two witnesses. All parties provided affirmed testimony, and were reminded that the recording of hearings is prohibited. All parties confirmed they were not recording the call. The Tenant confirmed receipt of the Landlord's application and evidence. The Landlord confirmed receipt of the Tenant's evidence.

Both parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. 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 a monetary order for unpaid rent and utilities or for damage or loss under the Act?
- Is the Landlord entitled to retain all or a portion of the Tenant's security deposit in partial satisfaction of the monetary order requested?
- Is the Landlord entitled to recover the cost of the filing fee?

Background and Evidence

A copy of the tenancy agreement was provided into evidence which specifies that monthly rent was set at \$1,200.00 and was due on the first of the month. The Landlord collected, and still holds a security deposit of \$600.00. The tenancy started on November 1, 2019, and ended on March 31, 2021, the day the Tenant vacated the rental unit.

Condition Inspections

A move-in inspection was conducted on November 1, 2019, and both parties signed and agreed to that report. At the end of the tenancy, both parties agreed that they had initially arranged to conduct the move-out inspection on the move-out day, at 1:30 pm, once the Tenant had moved out. The Tenant stated that she was not done moving her belongings off the property by the time the Landlord attended the unit at 1:30 pm. The parties did not conduct the move-out inspection that day, and no time was agreed upon. After an unsuccessful move-out inspection, the Landlord left the rental unit around 1:30 pm, later returning to check on the move out status around 2:30 pm. The Landlord stated they refused to do the move-out inspection before the Tenant had finished moving because she was not willing to hand over the keys yet.

The Landlord explained that when they returned at 2:30 pm to check on the move-out status of the Tenant, no one was present, and the Landlord left a Notice of Final Opportunity to Schedule Inspection on the Tenant's door. The date and time suggested by the Landlord was 11:00 am on April 1, 2021. The Landlord attended the unit on April 1, 2021, at 11:00 am, and the Tenant was not present, but appeared to have cleared her belongings out. The Tenant did not return the keys until April 6, 2021. The Tenant did not attend the move-out inspection and the Landlord conducted the inspection in the Tenant's absence.

The Landlord also took some photos of the rental unit at the end of the tenancy on April 1, 2021. These photos were provided into evidence. The Tenant did not take any photos. But her witnesses attest to the fact they believed the unit was properly cleaned at the end of the tenancy, as they were there to witness the cleaning being done, and to the overall clean condition of the unit.

The Landlord withdrew two items from the initial list but it still seeking the following items:

1) \$126.00 – Carpet Cleaning

The Landlord pointed out that the Tenant lived in the unit for 1.5 years, and never cleaned the carpets, despite having clean carpets provided at the start of the tenancy. The Landlord provided a receipt for this item. The Landlord pointed to the following term in the tenancy agreement:

23. **CARPETS AND WINDOW COVERINGS.** The tenant is responsible for periodic cleaning of carpets and window coverings provided by the landlord. While professional cleaning is recommended at all times, if the carpets and window coverings are new or professionally cleaned at the start of the tenancy, the tenant will pay for professional cleaning at the end of the tenancy.

The Tenant acknowledged that she failed to clean the carpets at the end of the tenancy, and opined that it is not possible to have time to move out, and clean the carpets all on the same day.

2) \$225.00 – Cleaning fees

The Landlord stated they paid the above amount to have the place cleaned up after the Tenant left. The Landlord pointed to the photos taken on April 1, 2021, after the Tenant moved out, to show the debris and stains present on surfaces, windows, and appliances. The Landlord provided an invoice for this amount.

The Tenant opined that she left the unit sufficiently clean. The Tenant asserts she vacuumed, washed, and cleaned up and she feels this amount is excessive and an exaggeration. The Tenants witnesses also attest to observing the Tenant cleaning as she was moving out, and feel the unit was sufficiently clean.

3) \$346.50 – Ceiling Damage – Drywall

The Landlord stated that the Tenant had a history of banging the broom handle on the ceiling to signal to the Tenants above her to keep the noise down. The Landlord stated that this left many dents in the ceiling, which they paid the above amount to fix. An invoice was provided, as were photos of the small dents all over the ceiling.

The Tenant admitted to hitting the ceiling with her broom, and stated she did it out of frustration with the upstairs Tenant for being unreasonably loud late at night.

4) \$240.00 – 6 days lost rent in April

The Landlord explained that they had prospective tenants ready to move in on April 1, 2021, and since the Tenant left the unit with unclean carpets and various other

surfaces, they had to delay the move in date of the new Tenants until April 7, 2021. This resulted in a rental loss of \$240.00, which is $6/30 \times \$1,200.00$. The Landlord stated that they tried to remediate the unit as fast as possible, but the Tenant delayed the move-out inspection because she was not finished moving, she failed to return the keys until April 6, 2021, and since April 1-6 fell over a long weekend, it was impossible to get the unit cleaned until the 6th.

The Tenant did not directly comment on this item.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim.

In this instance, the burden of proof is on the Landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenants. Once that has been established, the Landlords must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord did everything possible to minimize the damage or losses that were incurred.

Condition Inspection Report

It appears the move-in inspection was completed without issue. I note the parties had initially planned to complete the move-out inspection on March 31, 2021, at 130, and the Tenant was supposed to be moved out by this time. However, the Tenant was not fully moved out when the Landlord showed up. It does not appear any agreement was reached about an alternative time, and the Landlord left a Notice of Final Opportunity on the Tenant's front door on March 31, 2021, at 2:30 pm. As the Tenant still had the keys, I find it is reasonable to post the Notice in this manner. I find the Landlord complied with providing a second opportunity to inspect, and was entitled to complete the move-out inspection in the Tenant's absence. I also note the Landlord took many photos showing the state of the rental unit, which corroborate what is in the report. I accept the condition inspection report and the photos as reliable evidence.

With respect to the first item, I find the tenancy agreement specifies that the Tenant is responsible for period cleaning of the carpets, and given she had lived there for 1.5 years, I find she should have cleaned them before she left, regardless of whether or not she had time. The Tenant does not refute that she failed to clean the carpets. I award this item in full.

With respect to item #2, I note the photos show the Tenant left debris on surfaces, dirty appliances, and fixtures. I note the Tenant's witnesses stated she left the rental unit clean, but I find photos are more compelling and detailed than general statements. I find it more likely than not that the Tenant left the mess, as detailed in the photos, and that this required cleaning prior to new Tenant's moving in. I award the full amount of this invoice, \$225.00.

With respect to item #3, I find the Tenant is responsible for this item. Regardless of how noisy the Tenant was upstairs, it does not entitle the Tenant to damage the drywall of her ceiling. The Tenant does not refute hitting the ceiling and leaving the pock marks as shown in the photos. I award the full amount of this invoice, \$346.50.

With respect to item #4, I find the Tenant is liable for this rent, as I find the lost rent is a direct result of the Tenant's delayed move out, the delayed return of the keys, and the need to bring in cleaners over a long weekend before the new renters took possession. I award this item in full, \$240.00.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. As the Landlord was substantially successful with the application, I order the Tenant to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution. Also, I authorize the Landlord to retain the security deposit to offset the other money owed.

In summary, I find the Landlord is entitled to the following monetary order:

Item	Amount
Total of 4 items claimed above	\$937.50
PLUS: Filing Fee	\$100.00
Subtotal:	\$1,037.50
LESS: Security Deposit	\$600.00
Total Amount	\$437.50

Conclusion

The Landlord is granted a monetary order in the amount of **\$437.50**, as specified above. This order must be served on the Tenant. If the Tenant fails to comply with this order

the Landlord may file the order in the Provincial Court (Small Claims) and 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: October 22, 2021

Residential Tenancy Branch