



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNDCL-S, FFL

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the landlord and the tenant and another occupant.

I note the original Application for Dispute Resolution identified both a male and female tenant. However, during the hearing the landlord provided testimony and evidence that each of the occupants of the residential property signed separate tenancy agreements. As such, I found that landlord was not able to pursue his claim against both tenants. The landlord chose to have the claim against the male tenant. As such, I have amended this application to exclude the female occupant.

I also note that the landlord sought that I issue an order to have the tenant apology to the landlord for "all the lies and false exaggerated comments and harassment directed at me...." in their submissions for a previous file. I advised the landlord at the outset of the hearing that I had no authority to make such an order and I amended the landlord's application to exclude this matter.

I also noted that the landlord's application was confusing, in terms of the quantum claimed. I note that the amounts claimed appeared as different total amounts in three different places in his submission. The application itself indicated a claim for \$3,118.09; then the landlord submitted an amendment form increasing his claim to \$8,643.18; but provided an additional type written submission indicating his total claim was \$5,716.00.

While it was not clear, during the hearing I clarify the landlord's claim totals \$5,518.09 as outlined in the table below.

The landlord submitted additional evidence to the file two days after the hearing. As I had not requested any further submissions, I have not considered this information.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for damage to or cleaning off the rental unit; for compensation for other financial losses and a penalty to the tenant for not attending a move out inspection; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord submitted into evidence a copy of a tenancy agreement signed by the parties on November 30, 2020 for a month-to-month tenancy beginning on November 1, 2020 for a monthly rent of \$500.00 due on the 1st of each month with a security deposit of \$250.00 paid. The tenancy ended on March 31, 2021.

The landlord submitted no documentary evidence of the condition of the rental unit at the start of the tenancy or an inventory of any items left in the rental unit, but did provide photographs taken at the end of the tenancy. The landlord seeks the following compensation:

Description	Amount
Return of payment to tenant of 4.8 hours of work @ \$25.00 per hour to clean out the solarium.	\$120.00
Replacement of vacuum attachment	\$42.10
Vacuuming of rental unit: 7 hours @ \$40.00 per hour	\$280.00
Replacement table for failing to return a middle extension piece	\$579.99
Replacement of suit; three dress shirts and pants	\$500.00
Move items from garage into house 3 hours @ \$40.00 per hour	\$120.00
Bidet repair – includes a verbal quote of \$350.00 plus 2 hours of driving time @ \$40.00 per hour for landlord to attend; and \$2 ½ hours @ \$40.00 to supervise plumber, and \$30.00 part.	\$560.00
Claim for tenant's damage deposit – for failing to attend move in and move out inspections	\$500.00
Driving time from home to rental unit and for waiting for tenants to attend move out inspection 10 hours @ \$40.00 per hour plus gas in the amount of \$16.00	\$416.00

Time preparing previous and current hearing 70 hours @ \$40.00 per hour	\$2,400.00
Total Claim	\$5,518.09

The landlord submitted that he paid the tenants \$120.00 for extra work on the property but that they do not have an agreement for this work. The landlord testified the tenant had promised to return he \$120.00 but has not yet done so.

The landlord submitted that he loaned a vacuum cleaner to the tenant but that when it was returned it did not it was missing hardwood floor attachment. The landlord provided photographs of the missing part but did not provide an inventory list of what attachments had been provided to the tenant and what was returned.

For all claims where the landlord completed work himself, he seeks \$40.00 per hour, which is what he charges his siblings for managing the property on behalf of his family. The landlord also submitted that the tenant is the son of his wife but that he and his wife are in the process of separating.

The landlord seeks compensation for vacuuming the rental unit at the end of the tenancy. In support of this claim the landlord has provided several photographs of debris in the vacuum cleaner.

The landlord submitted that the rental unit was furnished and contain family mementos but that no inventory or conditions were recorded at the start of the tenancy. The landlord seeks the replacement of a kitchen table because he submits that the leaf to expand the table was not found in the rental unit after the tenancy ended.

In addition, the landlord stated that he had left clothing in the rental unit as he sometimes would require a change of clothes when he was at the property. The landlord submitted that a suite; three shirts and three pants were missing at the end of the tenancy. The landlord has provided no inventory or documentary evidence for this claim.

The landlord submits the tenant were supposed to move a number of things back into the house from the garage, that they had not been using during the tenancy. The landlord has provided photographs of a number of items.

The landlord submitted the tenants caused damage to the bidet in the master bathroom; that the damage could only have occurred during the tenancy; and that it was deliberately caused. The landlord obtained two verbal quotes for this work and included additional charges to be paid to him for travelling to the rental unit and being there while

the plumber installed the replacement. The landlord provided no evidence of the condition of the bidet at the start of the tenancy but did provide pictures after the tenancy ended.

The landlord submits the tenant did not attend the move out condition inspection despite the landlord setting up two appointments to do so. The landlord submitted a copy of an email dated February 28, 2021 stating, in part, "Going forward so there is no more misunderstanding, please let me know 24 hours ahead when you want to do the 'damage inspection' between the three of us."

The landlord also submitted into evidence an email dated April 2, 2021 setting April 5, 2021 between the hours of 10:00 to 12:00 a.m. for the move out inspection. The landlord also submitted a document that does not show that it was sent to the tenant by email and it was exactly the same content of the April 2, 2021 email setting a new time on April 7, 2021 between 10:00 to 11:00 for a move out inspection.

As a result, the landlord seeks to claim to retain the security deposit for the tenant failing to attend the move out inspection. In addition, the landlord seeks compensation for his driving time; his time waiting at the rental unit; and gas.

The landlord also seeks compensation for his time in preparing submissions for a previous hearing and for this hearing. The landlord submitted that he had spent 70 hours doing this work and at \$40.00 he sought a total of \$2,400.00. I note that for that amount of time at that rate, the actual amount would have been \$2,800.00.

Analysis

In regard to the landlord's claim for preparing for hearings and writing and preparing his responses to our claims he is making; I find that the *Act* does not allow for the recover of such funds. Therefore, I dismiss the landlord's claim for \$2,400.00 for his time in preparing for hearings without leave to reapply.

Likewise, the *Act* does not provide for the recovery of travel costs from a landlord's home to a rental unit under any circumstances or to complete their business as a landlord such as waiting for tenants to attend a move out inspection or completing the inspection in their absence. As such, I dismiss the landlord's claim for \$416.00 for the costs of travelling and "waiting" at the rental unit to do the move out inspection, without leave to reapply.

In regard to the landlord's claim for \$120.00 for work he did for the tenants, I find that there is nothing in the tenancy agreement regarding the completion of any work and as such, the work was completed outside of this scope and I dismiss this claim without leave to reapply, for want of jurisdiction.

Likewise, I see no evidence that the provision of the vacuum was related to the tenancy and find it to be a loan provided between family members. As such, I dismiss the landlord's claim for a replacement piece without leave to reapply.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 37 of the *Act* stipulates that when a tenant vacates a rental unit, the tenant must:

- a) Leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and
- b) Give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

While the landlord claims the tenant is responsible for damage to the bidet, I find the landlord has provided no evidence of the condition of the bidet at the start of the tenancy. As such, I find the landlord has failed to provide any evidence, regardless of the photographs taken at the end of the tenancy, that the damage was caused during the tenancy. I dismiss this portion of the landlord's claim without leave to reapply.

Likewise, in the absence of any inventory outlining what personal affects and possessions that remained in the rental unit during the tenancy I find the landlord has failed to establish that there was a leaf attached to the table at the start of the tenancy and cannot therefore provide evidence to establish it was removed as a result of the tenant or his actions. I dismiss this portion of the landlord's claim without leave to reapply.

Similarly, the landlord has no evidence whatsoever that a suit; three shirts; and pants were left in the rental unit during the tenancy and/or that they disappeared during the tenancy. Therefore, I dismiss this port of the landlord's claim without leave to reapply.

However, I find the landlord has established that the tenant failed to leave the rental unit reasonably cleaned at the end of the tenancy and failed to move the items back into the rental unit as required. As such, I am satisfied the landlord suffered a loss as a result of the tenant's failure to comply with their obligation to leave the rental unit reasonably clean at the end of the tenancy.

I am also satisfied, by the photographic evidence, that the landlord's claim for 7 hours of cleaning and 3 hours or moving items back into the rental unit is reasonable. I am not persuaded that \$40.00 per hour is a reasonable rate. Similar work can be purchased from professional cleaners in the amount of \$25.00 per hour. As such, I award the landlord 250.00 for 10 hours of cleaning and moving items into the unit.

Section 35 of the *Act* stipulates the landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit on or after the day the tenant ceases to occupy the rental unit, or 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.

Section 17 of the Residential Tenancy Regulation requires the landlord to offer a first opportunity to schedule the inspection by proposing one or more dates. I accept the landlord's email of April 2, 2021 fulfilled this requirement. However, Section 17 goes on to say that if the tenant is not available at that time the tenant may propose another time or the landlord must propose a second opportunity, different from the original opportunity to the tenant by **providing the tenant with a notice in the approved form.** [emphasis added]

I note the approved is available on the Residential Tenancy Branch Website and is called "Final Notice of Opportunity to Schedule a Condition Inspection (Form RTB22)"

Section 36 of the *Act* states that if the landlord does not comply with the requirements under Section 35 in relation to providing two opportunities, including the use of the prescribed form, the landlord extinguishes their right to claim against the security deposit.

In the case before me, I find the landlord did not issue a "Final Notice of Opportunity to Schedule a Condition Inspection" to the tenant. As such, I dismiss the landlord's claim to retain the security deposit in full, pursuant to the extinguishment of his right to do so under Section 36 of the *Act*, without leave to reapply.

Conclusion

Based on the above, I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$250.00**. As the landlord was largely unsuccessful in his claim, I dismiss his request to recover the filing fee of \$100.00 paid for this Application.

I order the landlord may deduct this amount from the security deposit held in the amount of \$250.00 in full satisfaction of this claim.

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: February 14, 2022