



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL, MNDCL, FFL

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for damages to the unit - Section 67;
2. A Monetary Order for compensation - Section 67; and
3. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Parties confirm that no recording devices are being used for the hearing. The Parties confirm their exchange and receipt of evidence.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The following are agreed or undisputed facts: the tenancy started on May 1, 2020 and ended on June 30, 2021. During the tenancy rent of \$2,500.00 was payable on the first day of the month. The security deposit has been dealt with. No move-in or move-out condition inspections were offered, and no inspection reports were completed. The tenancy included furnishings. The unit was sold with a possession date of July 5, 2021.

The Landlord states that the Tenants left some items of the furnishings damaged. The Landlord states that no repairs have been made and no replacements purchased. The Landlord states that the items being claimed for were all thrown away. The Landlord claims \$1,500.00 for the loss. The Landlord also claims \$597.50 for the disposal costs of the furniture left in the unit and states that the Tenant is responsible for the costs as they were damaged to the point of no use. The Landlord states that the furnishings were damaged by the Tenant storage of them in the garage. The Landlord states that the garage was not ventilated and caused mold. The Landlord states that the Tenants were not warned against use the garage for storage however the Tenant never informed the Landlord of this storage. The Landlord states that at least one item is probably an antique from 1980 and that other items such as the loveseat and couch were new in 2012 or 2013.

The Tenant states that the unit was previously an airbnb. The Tenant states that they did not damage any of the furnishings that were old and trashed at the onset of the tenancy. The Tenant states that they did not use most of the furnishings because they were in bad shape. The Landlord states that the unit was not used other than for vacation rentals that were longer term. The Landlord states that at no time during the tenancy did the Tenant inform the Landlord of any of the damages to the furnishings.

The Landlord states that the tenancy agreement requires the Tenants to pay for all utilities except water. The Landlord states that the Tenants were given a full propane tank at the outset of the tenancy and failed to leave the propane tank full at the end of the tenancy. The Landlord states that the tank was left partially empty with the gauge reading 55% full. The Landlord claims \$224.94. The Landlord calculates this cost based on the previous monthly usage costs. The Landlord provides a receipt for this previous cost. The Landlord states that they did not incur a cost to fill the tank at the end of the tenancy, but the cost of a full tank was part of the statement of adjustments for the sale of the unit.

The Tenant states that the propane tank did not have a gauge and that the Tenant had no idea on whether the tank was full at the onset of the tenancy. The Tenant questions how the gauge now appears. The Tenant states that the Landlord previously warned the Tenant about letting the tank go completely empty and told the Tenant to estimate their usage to determine when to obtain more propane. The Tenant provides emails of this conversation between the Parties. The Tenant states that the purchasers paid \$500.00 for the full propane tank. The Landlord denies telling the Tenant to estimate their usage and that the Tenant was told to use the gauge.

The Landlord states that the Tenants left the unit unclean and claim the cleaning costs of \$300.00. The Landlord states that the Tenants failed to clean all surfaces including the floors, counters and cupboards. The Landlord provides a photo of one bedroom. The Tenant states that the unit was left perfectly and completely clean. The Tenant provides photos of the state of the unit at move-out. The Tenant states that the unit was left with the Landlord's furnishings in place that were used by the Tenant during the tenancy and that any costs to clean after their removal belongs to the Landlord.

The Landlord states that the Tenants failed to remove about 10 garbage bags and claims \$75.00 submitted as the Landlord's time to address the garbage removal. The Landlord provides a photo. The Landlord clarifies that a friend hauled away the garbage charging the Landlord \$50.00 and the dump fee. The Landlord states that the dump fee was \$25.00 or something like that. The Landlord does not provide any receipts or invoices. The Tenant states that they did leave some garbage bags beside the bins as the Strata rules did not allow them to place them elsewhere. The Tenant states that the tenancy agreement provides that garbage removal is included with the rent. The Tenant states that the Landlord earlier stated that only a few bags were left.

Analysis

Section 37 of the Act provides that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable

wear and tear. Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, *inter alia*, that the damage or loss claimed was caused by the actions or neglect of the responding party, that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed, and that costs for the damage or loss have been incurred or established.

Given the Tenant's evidence of pre-existing damage to the furnishings, as the Landlord's photo of a junk container with furnishings support the Tenant's evidence of the furnishings being aged and as the Landlord has no supporting evidence that the Tenant caused damage to the furnishings, such as a move-in and move-out condition report, I find on a balance of probabilities that the Landlord has not substantiated that the Tenant caused the furnishings to be damaged. I dismiss the claims for loss and removal costs.

As the Landlord's only supporting evidence of the state of the unit at move-out is the one photo that appears to show the state of the room after the Landlord's furnishings were removed, as there is no evidence to determine that the cleaning undertaken by the Landlord was before the Landlord moved out its own belongings, and given the Tenant's supported evidence of the state of the unit at move out, I find on a balance of probabilities that the Landlord has not substantiated that the cleaning costs claimed arose from any failure of the Tenant to leave the unit reasonably clean. I dismiss the cleaning costs claimed.

As the Landlord has not provided supporting evidence that the Landlord incurred any costs in relation to the tank after the tenancy ended, I find that the Landlord has not substantiated that it incurred the costs claimed. However, and whether or not there was a gauge for the propane usage, it is undisputed that the tank was not left full at the end

of the tenancy and there were no submissions that the Tenant was not required to pay for the propane usage during the tenancy. For this reason, I find that the Landlord is entitled to a nominal entitlement of **\$100.00**.

As the Landlord has not provided any supporting evidence of costs, I find that the Landlord has not sufficiently substantiated that the costs claimed were incurred. However, given the undisputed evidence that the Tenant left garbage behind that was not secured in the bins, I find that the Landlord has substantiated a nominal entitlement of **\$50.00**.

As the Landlord's claims have met with limited success, I find that the Landlord is only entitled to recovery of half the fling fee in the amount of \$50.00 for a total entitlement of **\$200.00**.

Conclusion

I grant the Landlord an order under Section 67 of the Act for **\$200.00**. If necessary, this order may be filed in the Small Claims 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 Act.

Dated: May 04, 2022

Residential Tenancy Branch