



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Stratus Tech Capital Corp and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL, FFL

Introduction

The Landlord filed an Application for Dispute Resolution on October 12, 2021 seeking compensation for damages to the rental unit, and reimbursement of the Application filing fee. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on May 30, 2022.

Both the Landlord and the Tenants (hereinafter the “Tenant”) attended the conference call hearing. I explained the process and both parties had the opportunity to ask questions and present oral testimony during the hearing. Each party confirmed they received the prepared documentary evidence of the other in advance; on this basis the hearing proceeded as scheduled.

Preliminary Matter – Landlord evidence provided to the Tenant

In their message on February 17, 2022 to the Landlord’s representative, the Tenant directly addressed the Landlord not sending evidence to them as soon as possible as per Rule 3.11 of the *Residential Tenancy Branch Rules of Procedure*. The Tenant’s request to the Landlord for their evidence continued through March. The Tenant mentioned this specifically as a reason to set aside the Landlord’s evidence, as a matter of the Landlord simply not complying with the hearing procedure at any stage.

I find the Landlord did not provide disclosure to the Tenant in a timely manner; however, Rule 3.17 also provides for a consideration of new and relevant evidence. I am mindful as well of the 14-day timeline provided by the Landlord. I find the acceptance of the evidence here does not unreasonably prejudice the Tenant; this is because the Tenant had the opportunity to

respond to the evidence in question, and they did so in a thorough manner, also ensuring their response was disclosed to the Landlord prior to the hearing.

Preliminary Matter – Tenant request for fines

Throughout their submissions in response to the Landlord's claim for compensation, the Tenant cited the Landlord's non-compliance with a prior monetary order from the Residential Tenancy Branch, their delay in serving evidence to the Tenant, violation of public health orders and other breaches of the *Act* concerning entry into the rental unit, provision of the Condition Inspection Report, and false advertising regarding the rental unit for new tenants.

The Tenant asked for two separate fines of up to \$5,000 under s. 95 of the *Act*. (The Tenant referred to s. 91(3) of the *Act* in error.)

The Compliance and Enforcement Unit of the Residential Tenancy Branch is responsible for administrative penalties that may be levied under the *Act*. That unit has sole authority to determine whether to proceed with a further investigation into repeated matters of contraventions of the *Act*, and they are the sole authority to determine whether administrative penalties are warranted. The Tenant can contact the Residential Tenancy Branch to inquire about starting the investigation process by that unit, should they believe the Landlord is continuing to circumvent the *Act*.

Issues to be Decided

Is the Landlord entitled to compensation for damage to the rental unit, pursuant to s. 67 of the *Act*?

Is the Landlord entitled to reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

Background and Evidence

Both parties provided a copy of the tenancy agreement and both parties in the hearing confirmed the basic details. The tenancy started on August 1, 2018. The rent amount of \$2,600 did not increase during the tenancy. The Tenant paid a "security & furnishings deposit" of \$2,600.

The tenancy ended when the Tenant advised the Landlord they would leave at the end of June 2021. They advised the Landlord of this in March 2021.

The Landlord's submission

The Landlord provided their own affidavit in the evidence, sworn on April 30, 2022. They reviewed this document in the hearing. The pertinent points are as follows:

- They arranged for cleaning and handyman work prior to the Tenant taking up residence within the rental unit – this was carpet cleaning, windows/covering cleaning, appliances cleaned, and “light bulbs and fuses were in good working order.”
- They completed a move-in Condition Inspection Report with the Tenant on September 1, 2018. This report provided for “scuffs on the walls that both [the Tenant] and I acknowledged.”
- At the end of the tenancy, the Tenant did not clean appliances, floors and wall vents, windows/coverings, walls/baseboards, fireplace, clean/shampoo carpets.
- The Tenant and Landlord agreed on the Condition Inspection Report at the start of the hearing; anything that arose during the tenancy was the result of the Tenant failing to clean properly during the hearing.
- The Tenant did not clean the carpet professionally, even though they had pets which were not allowed. The Landlord submits the Tenant breached the tenancy agreement by not having the carpets professionally cleaned.
- The Tenant failed to clean the balcony and windows/coverings as shown in photos provided.

They provided copies of the receipts they paid for the following:

#	Items	\$ claim
1	painting suite walls	1,258.11
2	Kitchen counters, sink replacement	864.23
3	Damaged chair replacement	116.47
4	Cleaning service (carpets, deck, oven, floors) – 5 hours	120.00
5	Cleaning supplies for balcony mould/algae	49.57
6	Light bulbs	91.53
Total		2,499.91

They provided photos that they stated were taken at the time of the move-out inspection meeting. These 25 photos in the evidence show close detail on areas within the rental unit left

unclean by the Tenant. This includes areas on the walls showed as scuffs and subject to some abrasion. In the hearing, the Landlord provided detailed description for each photo.

In the hearing, a witness attended on the Landlord's behalf to speak to the cleaning they completed prior to the Tenant moving into the rental unit. They noted some painting of the rental unit at that time, acknowledging they were not able to paint all the rooms in the rental unit, *i.e.*, not the bathroom, bedroom, or kitchen.

The Tenant's response

In their affidavit sworn May 19, 2022, the Tenant cited the following:

- The Landlord breached s. 19(1) of the *Act* by requiring a security deposit of \$2,600 which was equal to one full month's rent
- The Landlord stated they would have the unit cleaned and painted before the Tenant moved in
- The Landlord left a substantial amount of their own personal belongings in the rental unit
- There were deficiencies with the condition of the unit at the start of the tenancy, including a bathmat stuck to the bathroom floor
- They completed a Condition Inspection Report with the Landlord on September 3, 2018 – one month after move-in – in which the Tenant identified “various damages to the walls and floors, and that they were largely in poor condition”
- The Landlord did not provide a copy of this completed Condition Inspection Report to the Tenant, breaching s. 23(5) of the *Act* – further, the Landlord did not retain a copy of their own as they presented only the Tenant's snapshot photo of the report
- The Landlord breached s. 38 of the *Act*, by not starting a dispute resolution process to make a claim against the security deposit
- The Tenant filed their own claim for the return of the security deposit, and on September 22, 2021 an Adjudicator at the Residential Tenancy Branch awarded the Tenant full return of double that deposit amount as per s. 38.

The Tenant submits that because of the Landlord's breach of s. 23(5) – presentation of a copy of the Condition Inspection Report to the Tenant – the Landlord's claim should be dismissed because “the initial condition of the unit cannot be identified.”

The Tenant also submits the Landlord breached the *Act* after they notified the Landlord in March of the end of tenancy in June 2021. This was by not providing proper 24-hour notice to

the Tenant of entry into the rental unit. Additionally, the Landlord did not adhere to public health orders by entering with a number of other people for a viewing of the rental unit and posted online “incredibly deceptive rental advertisement displaying a unit that was beautifully updated and renovated, with a completely different layout than [the rental unit].”

The Tenant presented they cleaned the unit thoroughly for “well over 10 hours”, including walls, floors, cupboards, fridge, oven, furniture, balcony, railings, microwave, counters, doors, windows, dressers, floorboards, mirrors, showers, baths, etc.” The Tenant also shampooed all carpeted areas that were not covered by the Landlord’s own furniture in the rental unit. With regard to the useful life of most elements within the rental unit, they submit there were never any renovations in the 25-year-old rental unit; therefore, they maintained the unit to a high standard except for reasonable wear and tear.

The Tenant provided their immediate responses to the Landlord on the single Condition Inspection Report that they completed jointly with the Landlord on June 30, 2021. The Landlord completed the column detailing their observations in what would normally appear for the start of a tenancy; the Tenant wrote their comments in the adjacent column. They provided the indication on the final page that they did NOT agree with the representations set out by the Landlord in the report.

In their affidavit the Tenant noted the Landlord did not identify any major issues, and merely identified “small wear and tear issues”, with items in the report previously identified by the Tenant in the initial Condition Inspection Report. Moreover, they offered \$120 to the Landlord for cleaning fees, and completely disagreeing that further cleaning was needed. They also disputed the Landlord’s claim for \$91.53 for lightbulbs because a number of bulbs were burned out when they moved in. They also identified the poor condition of walls they identified in the initial inspection report.

Additionally, the Tenant pointed to the Residential Tenancy Policy Guideline 40 concerning the useful life of the separate original pieces within the 25-year old rental unit listed by the Landlord. These are: countertops, appliances, carpets, tile, flooring, balcony, and walls.

The Tenant also provided video of their carpet cleaning on June 29, 2021, and their own walk-through of the rental unit on June 30, 2021. This was a room-by-room narrative of the steps they took to clean the rental unit.

In a message to the Landlord’s representative of February 17, 2022 the Tenant noted the Landlord’s photos depict areas only “by moving heavy pieces of furniture that [the Landlord] had left at the unit as well as a bathmat in the condition [the Landlord] had left it in”, with no

reference to these items in the final Condition Inspection Report. The Tenant in their affidavit noted the 10 hours they spent cleaning the rental unit, cleaning the carpets in the areas not covered by the Landlord's heavy furniture.

Analysis

The *Act* s. 37(2) requires a tenant, when vacating a rental unit to leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and give the landlord all the keys and other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

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

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

I find as follows, in regard to each separate line item listed above forming the Landlord's claim for compensation:

- 1 I find the Tenant provided sufficient evidence that the walls in the rental unit were not pristine when the tenancy started. This consists of the clarification they made with the witness that all walls in the rental unit were not freshly painted at the start of the tenancy. Additionally, there was no clear copy of the initial Condition Inspection Report retained by the Landlord and presented as evidence to clearly establish the condition of the rental unit at the start of the tenancy. I am not satisfied the level of work set out in the invoice for \$1,258.11 represents necessary work to restore to the unit to its original state, based on what is shown in the photos provided by the Landlord. There are scuff marks present; however, I find the Tenant credible on their point that the rental unit was not freshly painted at the start of the tenancy. Minus a room-by-room breakdown of rooms that were painted vs. areas that were not (and the witness in the hearing stated they did not paint the bathroom, bedroom, or kitchen) the Landlord has not proven on a balance of probabilities that the marks left on the walls are attributable to the Tenant exclusively. I dismiss this piece of the Landlord's claim for this reason.

- 2 Similar to the point above, I find the Landlord has not proven the kitchen was in a new state at the start of the tenancy. Moreover, there is no clear record of “damage” to the kitchen attributable to the Tenant here. On this I rely on the Tenant’s submission regarding the age of the rental property, and their reference to the useful life cycle of building elements. The Landlord did not establish the need for a new sink replacement, and they have not proven on a balance of probabilities that damage to the kitchen counter ensued during this tenancy, factoring in a longer, rather than a shorter, lifespan of this particular area of the rental unit. I dismiss this piece of the Landlord’s claim for these reasons: chiefly, the Landlord did not prove that a damage to that area exists.
- 3 There is no evidence showing damage to this piece of furniture in question; therefore, I am not satisfied that damage exists. I dismiss this piece of the Landlord’s claim.
- 4 The invoice provided by the Landlord for this piece is scant on details and did not even provide the number of hours involved, nor a listing of the work. Given the Landlord’s photos that show discrete details of required cleaning, I grant the Landlord this piece of their claim. Primarily, this is because of the Tenant’s earlier offer of this amount for cleaning. Secondly, I find the details presented by the Landlord warranted extra amounts of cleaning and I am satisfied that the photos they presented to show this are those taken after the end of the tenancy.

Note this is distinct from carpet cleaning: I accept the Tenant undertook cleaning of the carpets to a sufficient level at the end of the tenancy. That is as shown in the video they submitted specifically showing that. There was no requirement in the tenancy agreement that specified *professional* carpet cleaning. The amount granted to the Landlord here is *only* for the extra cleaning needed as shown in the Landlord’s detailed photos.

- 5 The need for cleaning on the balcony was not specifically noted on the final Condition Inspection Report. I find it more likely than not that this piece of the Landlord’s claim was not known to the Tenant in advance of the Landlord’s claim. I conclude the Landlord did not afford the Tenant the opportunity to rectify any extra needed cleaning for the balcony area; therefore, that is not an effort at minimizing the loss or further work required.
- 6 The Landlord did not provide ample detail of the need for lightbulb replacement. This is a substantial number of lightbulbs involved here. Such a significant amount of loss to the Landlord requires more proof. In particular, there was no evidence of the number and location of lightbulbs missing by way of photos showing that. I also give credence

to the Tenant's presentation that the rental unit was not in a pristine state at the start of the tenancy, and that in itself encompassed a particular description by the Tenant that lightbulbs were not all installed at that time. I dismiss this piece of the Landlord's claim for this reason.

In sum, I find the Tenant credible on their points throughout that the state of the rental unit was not in a reasonable state of cleanliness and readiness at the start of the tenancy. There were existing areas needing repair or cleaning at the start of the tenancy. The Landlord here did not prove on a balance of probabilities that damages or the need for further work in the rental unit was due to the action or inaction of the Tenant during the tenancy.

In total, I find the Landlord has established a claim of \$120. This is a special consideration of the Tenant's earlier offer of this amount to cover extra cleaning required at the end of the tenancy.

Because the Landlord was not successful for the bulk of their claim, I dismiss their claim for reimbursement of the Application filing fee.

Conclusion

Pursuant to s. 67 of the *Act*, I grant the Landlord a Monetary Order in the amount of \$120 for compensation set out above. I provide them this Monetary Order in the above terms and they must serve the Monetary Order to the Tenant as soon as possible. Should the Tenant fail to comply with the Monetary Order, the Landlord may file it in the Small Claims Division of the Provincial Court where it will 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 s. 9.1(1) of the *Act*.

Dated: June 22, 2022

Residential Tenancy Branch