



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PETER WALL YALETOWN
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S, FFL

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on November 11, 2021 (the "Application"). The Landlord applied as follows:

- For compensation for damage to the rental unit
- To keep the security deposit
- For reimbursement for the filing fee

The Agent appeared at the hearing for the Landlord. The Tenants appeared at the hearing. I explained the hearing process to the parties. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure (the "Rules"). The parties provided affirmed testimony.

The Landlord submitted evidence prior to the hearing. The Tenants did not submit evidence. I confirmed service of the hearing package and Landlord's evidence and no issues arose.

Tenant S.L.U. provided the correct spelling of their name which is reflected in the style of cause.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all evidence provided. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Landlord entitled to compensation for damage to the rental unit?
2. Is the Landlord entitled to keep the security deposit?
3. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

The Landlord sought the following compensation:

Item	Description	Amount
1	Painting	\$105.00
2	Cleaning	\$157.50
3	Filing fee	\$100.00
	TOTAL	\$362.50

A written tenancy agreement was submitted. The tenancy started April 01, 2019. The Tenants paid a \$950.00 security deposit.

The parties agreed the tenancy ended October 31, 2021.

The parties agreed the Tenants provided their forwarding address to the Landlord in writing on October 31, 2021.

The parties agreed the Landlord did not have an outstanding monetary order against the Tenants at the end of the tenancy and the Tenants did not agree to the Landlord keeping the security deposit.

The parties agreed they did a move-in inspection March 31, 2019, and a move-out inspection October 31, 2021.

The parties agreed the Landlord returned some of the security deposit; however, neither party had the exact amount. Both parties seemed to agree that the Landlord returned the entire security deposit minus the amount claimed for painting and cleaning.

#1 Painting \$105.00

The Agent testified as follows. There is a photo in evidence of the living/dining room wall which required repair at the end of the tenancy. The wall had a hole in it that had to be patched which cost \$100.00. The invoice for the wall repair is in evidence.

The Tenants testified as follows. The rental unit was not painted when they took it over and there were holes in the walls from previous tenants. The photo in evidence was taken on the day of the move-out inspection and the wall was as shown in the photo which does not show a hole or damage that required repair. There was no hole or damage on the wall as claimed. The Tenants noted their objection to the wall damage claim on the move-out Condition Inspection Report (the "CIR") in evidence.

#2 Cleaning \$157.50

The Agent testified as follows. There is a photo of the balcony door that required cleaning in evidence. The cleaning cost \$150.00 plus GST. The tenancy agreement required that the Tenants leave the rental unit reasonably clean.

The Tenants testified as follows. They spent two days cleaning the rental unit. The agent for the Landlord who did the move-out inspection told the Tenants the balcony door was not clean enough and the Tenants offered to clean it further; however, the agent would not allow them to do so. The agent said the balcony door had to be cleaned by a professional. The invoice in evidence shows it was for a move-out clean and the cost is unreasonable for cleaning the balcony door alone.

Analysis

Security deposit

Pursuant to sections 24 and 36 of the *Act*, landlords and tenants can extinguish their rights in relation to the security deposit if they do not comply with the *Act* and *Residential Tenancy Regulation* (the "*Regulations*"). Further, section 38 of the *Act* sets out specific requirements for dealing with a security deposit at the end of a tenancy.

Based on the testimony of the parties, I find the Tenants participated in the move-in and move-out inspections and therefore did not extinguish their rights in relation to the security deposit pursuant to sections 24 or 36 of the *Act*.

It is not necessary to determine whether the Landlord extinguished their rights in relation to the security deposit pursuant to sections 24 or 36 of the *Act* because extinguishment only relates to claims that are solely for damage to the rental unit and the Landlord has claimed for cleaning which is not damage.

Based on the testimony of the parties, I accept that the tenancy ended October 31, 2021.

Based on the testimony of the parties, I accept that the Tenants provided their forwarding address to the Landlord October 31, 2021.

Pursuant to section 38(1) of the *Act*, the Landlord had 15 days from the later of the end of the tenancy or the date the Landlord received the Tenants' forwarding address in writing to repay the security deposit or file a claim against it. Here, the Landlord had 15 days from October 31, 2021, to repay the security deposit or file a claim against it. The Application was filed November 11, 2021, within time. I find the Landlord complied with section 38(1) of the *Act*.

Compensation

Section 7 of the *Act* states:

7 (1) If a...tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying...tenant must compensate the [landlord] for damage or loss that results.

(2) A landlord...who claims compensation for damage or loss that results from the [tenant's] non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Pursuant to rule 6.6 of the Rules, it is the Landlord as applicant who has the onus to prove the claim. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

Section 37 of the *Act* states:

(2) 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...

RTB Policy Guideline 01 states:

Reasonable wear and tear refers to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. An arbitrator may determine whether or not repairs or maintenance are required due to reasonable wear and tear or due to deliberate damage or neglect by the tenant. An arbitrator may also determine whether or not the condition of premises meets reasonable health, cleanliness and sanitary standards, which are not necessarily the standards of the arbitrator, the landlord or the tenant.

#1 Painting \$105.00

I have viewed the photo of the living/dining room wall and find the quality is such that I cannot tell where the damage alleged to be caused by the Tenants is. The CIR shows the living room wall was fine on move-in and damaged on move-out; however, the Tenants noted their disagreement with the painting/wall repair charge on the CIR. I find there is insufficient compelling evidence before me to determine whether the Tenants damaged the living/dining room wall beyond reasonable wear and tear and therefore I

decline to award the Landlord the amount sought. This request is dismissed without leave to re-apply.

#2 Cleaning \$157.50

The standard to be met for cleaning at the end of a tenancy is “reasonably clean”. The standard is not one of perfection. I find the photo of the balcony door shows a very minimal issue with the cleanliness of the balcony door. I accept that the Tenants offered to clean the balcony door further because the Tenants testified about this, and the Agent was not present at the move-out inspection such that they could dispute this. I find the type of issue shown in the photo is the type of issue that would have taken minutes to address and the agent for the Landlord conducting the move-out inspection should have allowed the Tenants to address it. Further, I find it unreasonable that the Landlord seeks \$157.50 for the very minimal issue shown in the photo. In the circumstances, this request is dismissed without leave to re-apply.

#3 Filing fee

Given the Landlord was not successful in the Application, I decline to award them reimbursement for the filing fee.

Summary

The Landlord is not entitled to compensation. I find based on the CIR and testimony of the parties that the Landlord holds \$700.00 of the security deposit and order the Landlord to return this \$700.00 to the Tenants. No interest is owed on the security deposit. The Tenants are issued a Monetary Order for \$700.00.

Conclusion

The Tenants are issued a Monetary Order for \$700.00. This Order must be served on the Landlord. If the Landlord fails to comply with this Order, it 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 *Act*.

Dated: June 13, 2022

Residential Tenancy Branch