



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, MNDL-S, FFL

Introduction

The Landlord filed an Application for Dispute Resolution on November 24, 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 June 24, 2022.

Both the Landlord and 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.

Issues to be Decided

Is the Landlord entitled to compensation for damage to the rental unit and/or other money owed, 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 October 1, 2020 for a fixed term to end on September 30, 2021. The rent amount of \$1,800 did not increase during the tenancy. The Tenant paid \$50 extra for November and December 2021, and January and February 2022 –

these are the colder winter months, with more demand on the utilities in the rental unit. The agreement specifies that water, natural gas, electricity, and heating are included in the rent amount.

The Landlord provided a copy of an addendum, signed by both parties on September 21, 2020. The document sets out: "The utilities fee includes Internet, water, gas and electricity." Also: "The house must be clean when it is returned to landlord." Also: "The Tenant accepts as is condition."

In the hearing the Landlord provided they were renting the rental unit home from the owner and subletting the basement rental unit to the Tenant. The Tenant in the hearing stated they did not know this prior to this hearing.

In July 2021, the Tenant announced to the Landlord that they would not be extending the lease. The Tenant presented that the Landlord issued a notice to end the tenancy for the end of September, which basically was the end of the tenancy anyway. Additionally, according to the Tenant the Landlord kept pressuring them to move out early. The Tenant accommodated the Landlord's need to show the rental unit to possible new tenants.

At the start of the tenancy, the Tenant paid a security deposit of \$900. The return of the security deposit, and the Landlord not filing a claim in the required time after the end of the tenancy, was the subject of a prior dispute hearing. In a decision dated December 30, 2021, an adjudicator awarded double the security deposit amount to the Tenant, as per s. 38(6) of the *Act*. In response to the Landlord's request for a review of that decision, an arbitrator on January 10, 2022 confirmed that decision.

The Landlord submitted they reviewed the condition of the rental unit, room-by-room, with the Tenant on the final day of the tenancy. They stated the Tenant "left earlier" and left the key in a mailbox. The Tenant did not sign a form attesting to the condition of the rental unit. The Landlord confirmed they did not complete a form; however, they mailed receipts to the Tenant approximately one month after the end of the tenancy.

A statement dated November 24, 2021 appears in the Landlord's evidence. In this statement, the Landlord provided that they offered a move-in inspection to the Tenant. There was a portable dishwasher available that the Landlord acquired, at the cost of \$160 to the Landlord. The Landlord described the Tenant staying an additional 10 days after the tenancy agreement ended, and the Tenant simply dropped the key in a mailbox without doing an inspection meeting with the Landlord.

The Tenant recalls no Condition Inspection Report completed at the start of the tenancy. The Tenant maintained they completed the final inspection together with the Landlord on the day they moved out, the Landlord checked the appliances during that meeting, and they walked out to the driveway together on that day.

The Landlord's submission

The Landlord completed a claim with their Application on November 24, 2021. They updated the claimed amount twice in the days that followed.

#	Items	\$ claim
1	Cleaning – carpets (\$350); house clean (\$180)	530.00
2	“blinder replace”	20.00
3	Painting door material & labour	90.00
4	Portable dishwasher – damage	160.00
5	Missing furniture	100.00
6	Utility bill	1,725.00
7	Kitchen carpet replacing	1,895.00
8	Estimated carpet replacing costs	10,500.00
9	estimated printing and registered mail costs	100.00
	Total	15,120.00

The Landlord prepared three worksheets that variously added amounts: one dated November 24, 2021 provides the total of \$2,625 excluding items 7 and 8 above; another dated November 25, 2021 adds 7 and 8 above, to total \$19,540. A third sheet adds the cost of item #9 for the total set out above.

In their written submissions, as well as statements in the hearing, and with reference to the receipts they provided on some items, the evidence provided by the Landlord is:

- The Landlord provided a receipt dated October 1, 2021, listing carpets cleaned for \$350 and house cleaning for \$180. They provided this to the Tenant with a letter dated October 28, 2021 via registered mail.

The Landlord provided miscellaneous photos with their own highlighting showing detail. These included an image of twisted blinds on one of the unit's entry doors; carpet and furniture stains; miscellaneous cleaning in the bathroom area; dirty kitchen cabinets and countertop.

- The Landlord provided a photo showing a portable dishwasher they purchased for the Tenant. The photo notes it was “moved to garage”. In their letter prepared for this hearing dated November 25, 2021, the Landlord described “there was only [a] portable dishwasher available, which was in good working condition.” I paid \$160 when I bought it. In the hearing, the Landlord described this portable dishwasher as “leaking”.
- The Tenant did not always keep the unit clean – never turn off the lights when out and kept the oven running until 3 am. – the Landlord required the Tenant to pay one-half of the electricity bills from November 2020 to June 2021 – this is \$1,725 as listed on their Monetary Order Worksheet.

They presented various bills from the period covering the tenancy. The Landlord also presented a form showing they served a Notice to End Tenancy to the Tenant on August 31, 2021. That form contains the Landlord’s note that “The basement unit used [extremely] high volume of electric [sic] in the past 6 months.”

In the hearing, the Landlord described the amount claimed as being 50% in total of the bills they presented. These bills were relayed to them by the owner of the rental unit property.

- The Landlord also wanted to replace the carpet in the kitchen. This cost is \$1,895. As stated in their November 25 written submission: “I am planning to replace entire floor carpet, which will also in tenant’s burden.” The Landlord forwarded images of a carpeted area to the Tenant on December 4, 2021. This is referred to as the “dirty kitchen carpet”, then replaced with new flooring. The Landlord provided a file titled “Labor_cost_flooring”; however, the file was not viewable as provided to the Residential Tenancy Branch.

The Tenant’s response

In their written response to the Landlord’s Application, the Tenant provided the following points:

- Utilities are clearly stated on the tenancy agreement to be included in the rent. Additionally, they paid an extra \$50 for each of November, December, January and February as shown on the agreement.
- The Landlord’s claims are “false”, with respect to items 1 through 5 above. There was a single item of furniture that the Tenant in error packed as their own at the end of the

tenancy. When they asked the Landlord about this individual piece, they received no response.

- The Landlord did not communicate the higher usage of utilities to the Tenant at the time, i.e., in November/December 2020. Instead, the Landlord mentioned this in August 2021 “when [the Tenant] had expressed the interest in not extending the tenancy to another year. . .”, effectively seeking to end the tenancy.
- The Landlord “did not raise any objections to anything not being clean.” At the end of the tenancy, the rental unit was cleaner than at the beginning. The Landlord stated at their final meeting they would mail the deposit back to the Tenant; however, the Landlord did not respond to the Tenant’s inquiries on this.
- The dishwasher was makeshift, purchased by the Landlord for \$100 used. This was a temporary solution until they could install a full dishwasher. The Landlord is only seeking to replace the dishwasher now because no other prospective tenant would rent a unit without a normal-sized functioning dishwasher.
- There is no carpet in the kitchen area. There were several stains on the carpet when the Tenant moved in, and the Landlord encouraged them to cover the area with other rugs, also promising to clean the carpet before the Tenant moved in without that happening. There was an incident of leaking from the Landlord’s own upstairs unit on to the Tenant’s water stain.
- The rental unit home is “more than 12 years old and most likely the carpets are of the same age.” The carpet was “pretty worn out and had several stains all over the floor in different rooms.” The “as is” clause in the tenancy agreement is an indication that the Landlord knew the house was not in “mint condition but [the Landlord] didn’t want to spend any money either.”
- There was a move-out inspection walkthrough with the Landlord, and they did not simply drop the key in a mailbox. The Tenant questioned the Landlord’s credibility with respect to their recollection of events.

The Tenant responded in the hearing to each point raised by the Landlord. Their statements were consistent with their account as set out in their formal response.

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 **all of 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.

In general, the Landlord's evidence and account throughout was either vague, incomplete, or disorganized. They completed a series of monetary order worksheets and calculated the amount of their claim incorrectly on one of those sheets. As well, certain pieces of their evidence were in the incorrect format, and I was not able to view them as electronic photos. Also: there were three invoices from a home improvement store for varying amounts that the Landlord did not refer to elsewhere. It is the Landlord's claim; therefore, they bear the responsibility to ensure that it is clearly presented, legible, and able to be viewed.

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

- 1 The Landlord did not provide evidence of the need for carpet cleaning throughout the rental unit. Most importantly, there is no documentation referring to the state of the rental unit at the start of the tenancy. The fact that the tenancy agreement specified that the rental unit was taken on its condition "as is" more likely than not refers to an imperfect state; therefore, it is more likely than not that the carpet was unclean at the start of the tenancy as the Tenant stated in response to this claim. For the carpet, I am not satisfied that a damage or loss to the Landlord existed here. Additionally, I do not understand why the Landlord sought to replace the carpet, if this is the same carpet they had paid to have cleaned.

As per s. 37(2), I accept the Tenant's account that they completed cleaning in the rental unit at the end of the tenancy. The Landlord's evidence does not show the need for

cleaning beyond what is required, that is “reasonably clean, and undamaged except for reasonable wear and tear.” Again, there is nothing to show the state of the rental unit at the start of the tenancy.

- 2 The Landlord did not provide evidence of a purchase for a new blind. The only evidence is a handwritten receipt adding a separate line item for \$20. This is not representative of a true cost of a purchase and is only a handwritten receipt. This does not show an actual purchase. As well, there is no record of this being mentioned to the Tenant at the time they moved out. I dismiss this piece of the Landlord’s claim.
- 3 There is no evidence showing specific damage to a door requiring repainting. There is no evidence of the cost of materials, or specific information on the date of this work. I am not satisfied that damage existed. I dismiss this piece of the Landlord’s claim.
- 4 The Landlord did not provide an adequate account with sufficient evidence to show why they are claiming this cost from the Tenant. There is no evidence of damage to the portable dishwasher. The true cost of the item is not established with a purchase price on a receipt. I accept the Tenant’s account that the Landlord is, after this tenancy, attempting to procure some funds from the Tenant for its replacement, with it being more likely than not that the Landlord is trying to upgrade what is available within the unit.

I dismiss this piece of the Landlord’s claim outright due to lack of evidence.

- 5 There was no accounting for missing furniture from the rental unit. The Landlord made a vague reference to a queen-sized bed; however, there is no evidence for this. I accept the Tenant’s clearly stated account that there was no mention of missing furniture by the Landlord at the time of their final meeting. The record shows the Tenant asked the Landlord about a single item, with no response from the LL. I dismiss this vague and incomplete piece of the claim from the Landlord, with simply no evidence of the cost thereof.
- 6 I find the Landlord is claiming the cost for ongoing utilities from the Tenant after this tenancy has ended. This was added up over a timespan of several months. The Landlord did not explain why they could not ask this from the Tenant, or renegotiate the tenancy agreement, during the tenancy. Though the Landlord presented the Tenant would use excessive power – even leaving the oven on at 3am – I find this is speculative at best. I find this was a situation where the Landlord here was subletting to the Tenant in the basement rental unit, with no pre-established scheme for sharing of

the utility costs. It is not acceptable to claim the totality of 50% power costs from this Tenant near the end of the tenancy, with the only reference in place being a tenancy agreement that sets out this utility cost is part of the rent. The addendum is not clearly worded and sets no positive obligation on the Tenant to pay for any utility; rather, it oddly sets out what the utility charge encompasses.

Because of the vague account of the Landlord here, and particularly the fact that they made no demand to the Tenant for payment of any kind during the tenancy, I dismiss this piece of the Landlord's claim outright.

- 7 The only evidence the Landlord presented about the carpet is two images they provided to the Tenant on December 4, 2021 via email. There is one image of a rather dirty carpet in place; the Landlord refers to this as the "kitchen carpet". The next image is the same piece apparently replaced by flooring. There is no record of the value of this work, nor the date it was completed.

I find on a balance of probabilities that the carpet was in the state shown in the photo at the start of the tenancy. This is based on the credibility of the Tenant's account which I find is more thorough and organized. There is no record of the state of the rental unit at the start of the tenancy; the fact that the Tenant rented the unit "as is" lends credence to their account that the rental unit was not pristine or in a new state at the start of the tenancy. The Tenant provided evidence of a water leak issue that contributed to the state of the carpet at the end of the tenancy. There is no record the Landlord mentioned this damage to the Tenant at their final meeting; again, the Tenant is more credible on their account about the discussion had, and there is no final condition report that documents the state of the rental unit at the end of the tenancy.

All claims of the Landlord concerning the carpet are dismissed outright, with no evidence of the cost of replacement in the record.

- 8 As above, I dismiss all claims of the Landlord having to do with the carpet. This piece is an estimate, with no evidence. This only exists as a dollar amount on the Landlord's compensation worksheet, with no evidence of actual damage from the Tenant requiring replacement.
- 9 The *Act* does not provide for recovery of other costs associated with serving hearing documents – therefore, the cost of registered mail is not recoverable. As well, this is an estimate from the Landlord, with no accurate accounting showing the true cost to them. I grant no compensation for this amount to the Landlord; this is the cost they must bear for this claim, each piece of which I find to be baseless.

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.

Because the Landlord was not successful in any piece of this Application, I dismiss their claim for reimbursement of the Application filing fee.

Conclusion

For the reasons outlined above, I dismiss the Landlord's Application in full, without leave to reapply. I caution the Landlord that failure to pay an outstanding monetary order may result in the Tenant pursuing the matter 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 24, 2022

Residential Tenancy Branch