Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Mainline Living Property Management
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S, FFL

Introduction

The Landlord filed an Application for Dispute Resolution on December 2, 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 30, 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

The Landlord provided a copy of the tenancy agreement and both parties in the hearing confirmed the basic details. The tenancy started on November 1, 2020 for a fixed term to end on October 31, 2021. The total rent amount of $1,845, as indicated in the

agreement, did not increase during the tenancy. The agreement shows the rent amount as $1,835, with a $10 pet fee. The Landlord submitted that they collected “pet rent” for 6 months in total, and they converted this amount to $210. The Tenant presented that they collected this amount for 7 months, then converted to $220. This was modified by mutual agreement and by April 8, 2021 the Tenant acknowledged the Landlord was no longer collecting this amount. An amount of $10 was added to the pet damage deposit amount, confirmed by the Landlord on May 6, 2021.

The Tenant paid a security deposit amount of $917.50. The Landlord provided that the pet damage deposit was $210; however, the Tenant presented this amount was $220 from the $10 amount owed to them, added to that deposit amount. They provided emails from April – May 2021 showing the Landlord clarifying that basic amount.

The tenancy ended when the Tenant provided a notice to the Landlord on October 31, 2021, for the final move-out date of November 29, 2021. The Landlord presented in the hearing that they received an email from the Tenant on November 20 informing them of their move out the following day on November 21. The Tenant confirmed they returned the keys to the Landlord on November 21. The Landlord informed the Tenant that this was short notice, so they would conduct a final inspection of the rental unit without the Tenant present. According to the Landlord, with a single day notice from the Tenant of their departure, this was not enough time to schedule the move-out inspection of the rental unit.

The Tenant presented that they cleaned the rental unit prior to their departure, and there were no damages in the rental unit with everything “absolutely reasonably clean.” The Landlord conducted an inspection without the Tenant on November 22. The Landlord provided their completed “Suite Inspection Report” – this appears in their evidence, showing total cleaning charges of $675. The notation on the document shows “only cleaning charges”. The Landlord provided 27 photos in their evidence showing details on the required cleaning throughout the rental unit.

The Landlord forwarded this report to the Tenant via email on November 24, notifying the Tenant that the charges were $555. They requested the Tenant to sign the report so that they could return the balance to the Tenant.

The Tenant responded that same day and requested more detail, e.g., whether a separate company entered to clean/estimate, or whether the Landlord unilaterally charged these costs. The Tenant also proposed hiring a cleaning company to enter the rental unit to complete any existing required cleaning. The Landlord indicated their

approval for that idea, with days remaining before the end of November for which the Tenant had paid rent. In a subsequent email, the Tenant again requested more detail in the form of photos. Following this, the Landlord provided a quote from their "Professional Cleaning Company".

On November 26, the Landlord provided one more opportunity to the Tenant to hire a company to enter and complete the needed cleaning. The Landlord clarified that, as per the quote, $462 will be deducted from the security deposit, with the balance returned. That same day, the Tenant notified the Landlord of "15 days to send us our deposit from our final day", including $220 for the pet damage deposit. The Landlord filed their Application for this hearing on December 2, 2021.

In their evidence, the Landlord provided a copy of the cleaning company quote dated November 26, 2021. This shows the amount of $462 in total, providing a room-by-room breakdown of the work required. On a worksheet, the Landlord showed their calculation for the $462 they are claiming here. The communication from the Landlord shows the work was completed on December 1, 2022 for new tenants moving in that same day.

In a written response, the Tenant wrote that the Landlord "did not provide the tenants two opportunities for an end of tenancy inspection as required by s. 35 . . . and the end of tenancy report is unsigned by the respondents. . ." – this effectively blocks the Landlord from claiming against the deposits. They provided a copy of the same October 31 notice to the Landlord. They obtained their own quote for cleaning a rental unit – from the same company used by the Landlord – for "significantly less" at $262.50, submitting that "the end of tenancy inspection was not accurately conducted and cannot be relied upon." Additionally, "A quote is not evidence of services rendered." They ask for the return of their deposits.

In the hearing, the Tenant also made the following points:

- The Landlord did not provide a quote from a cleaning company until the Tenant started inquiring on the true nature of the costs claimed.
- There was a "significant change" between the Landlord's initial number of $675 through to the cleaning quote of $462.
- The items appearing on the quote are not those the Landlord listed on the final suite inspection report.
- The Tenant disputes that the cleaning company actually entered the rental unit before providing a quote.

- A different agent signed the suite inspection report from the person who actually inspected the rental unit.

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**:

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.

The Tenant correctly provided that s. 35 governs this situation, where a landlord must offer at least 2 opportunities for inspection. Also, a landlord and tenant must sign the condition inspection report. Where a landlord does not comply with s. 35, they are barred from claiming against a security deposit or pet damage deposit.

In this situation, I find the Landlord was aware in advance of the Tenant's end-of-tenancy date within the required timeline of one month in advance. The Landlord did not schedule an inspection in a relatively timely manner; this would have prevented the need to conduct a meeting unilaterally. The Tenant did advise on a Saturday only of their next-day departure; however, the Landlord was aware of the situation in advance. I find s. 35 applies to this situation, and the Landlord is barred from claiming against the deposits.

This however does not alleviate the Tenant's obligation to leave the rental unit reasonably clean. There is no question of damage to any part of the rental unit; however, I find the photos clearly depict the rental unit was not in an ideal state of cleanliness. The Tenant did not deny this and let the evidence speak for itself; however, what remains at issue is a suitable cost associated with the need for an acceptable level of cleanliness at the end of the tenancy.

The Landlord provided the following evidence:

- A “Suite Inspection Report” that is presumably a worksheet for the person who conducts an inspection. This shows total cleaning charges as $675.
- The Tenant provided a copy of the Condition Inspection Report that was forwarded to them. This shows a different amount of $555. I make no adverse judgement that a different Landlord team actually conducted the inspection; however, there is a discrepancy on the two worksheets in the evidence.
- Based on the Tenant’s inquiry, the Landlord obtained a quote from a cleaning company, and this amount is $462.50. I understand the Tenant’s point that this does not reflect the same list provided on the Condition Inspection Report, and exists only a quote. This is the final amount the Landlord relies on for their claim.

Presumably the two documents completed by the Landlord are reflective of an actual inspection. The Landlord relies on set amounts for the purposes of cleaning; these are listed in the “Suite Inspection Report”. Instead, the Landlord here relies on a third-party cleaning company quote to form the basis of their claim for compensation. I find this is in the spirit of mitigating the impact; however, it represents a shift from the original amounts, noted by a team member who actually made the inspection and checked items off on a list.

The Tenant on their own also obtained a generic description-only quote for cleaning. I find this holds as much weight as that obtained by the Landlord. Because the Landlord kept changing the amount, I order compensation to the Landlord only for the quote obtained by the Tenant here which appears to be just as reliable as the Landlord’s own work. This is $262.50.

Again, the Tenant correctly submitted that the Landlord is barred from claiming against the deposit. However, the Tenant is still owing the Landlord for this cleaning charge. Even though s. 35 is in place, the *Act* s. 72(2) gives an arbitrator the authority to make a deduction from the security an/or pet damage deposit held by a landlord. The Landlord here has established a claim of $262.50. After setting off the full amount of the deposits (at $1,137.50), there is a balance of $875. I am authorizing the Landlord to keep $262.50 and grant the balance of $875 back to the Tenant.

Because the Landlord was moderately successful in their Application, I grant one-half of the Application filing fee to them. This amount is $50; subtracted from the $875 amount, the final recompense to the Tenant is $825.

Conclusion

For the reasons outlined above, I grant a Monetary Order to the Tenant for $825. I provide the Tenant with this Order, and they must serve it to the Landlord as soon as possible. Should the Landlord fail to comply with this Monetary Order, the Tenant 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: July 6, 2022

Residential Tenancy Branch