



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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 January 26, 2022 (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 Landlord and Tenant 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.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence.

The Tenant confirmed receipt of the hearing package and evidence from the Landlord and confirmed there are no service issues.

The Landlord testified that they did not receive evidence from the Tenant. The Tenant testified that they sent their evidence to the Landlord by mail; however, the Tenant could not point to evidence to support this.

I was not satisfied the Tenant served their evidence on the Landlord as required by rule 3.15 of the Rules. I heard the parties on whether the evidence should be admitted or excluded. The Landlord sought exclusion of the evidence and the Tenant sought

admission. Pursuant to rule 3.17 of the Rules, I excluded the evidence as I found it would be unfair to admit it when the Landlord had not seen it.

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	Screen wicket	\$22.48
2	Fridge door handle	\$82.97
3	Carpet cleaning	\$140.00
4	Filing fee	\$100.00
	TOTAL	\$345.45

A written tenancy agreement was submitted, and the parties agreed it is accurate. The tenancy started February 24, 2021. The Tenant paid a \$850.00 security deposit.

The parties agreed the tenancy ended November 30, 2021.

The parties agreed the Landlord returned \$601.00 of the security deposit to the Tenant December 02, 2021. The parties agreed the Landlord kept \$249.00 of the security deposit.

The parties agreed the Tenant provided the Landlord their forwarding address in writing January 11, 2022.

The parties agreed on the following. The Landlord did not have an outstanding Monetary Order against the Tenant at the end of the tenancy. The Tenant did not agree to the Landlord keeping the security deposit.

The parties agreed on the following. No move-in or move-out inspections were done, and the Tenant was not offered two opportunities, one on the RTB form, to do a move-in or move-out inspection.

#1 Screen wicket \$22.48

The Landlord sought compensation for a broken screen. The Landlord testified that the screen was not repairable and had to be replaced. The Landlord said they could not find the actual receipt for the screen so submitted evidence of the cost online.

The Tenant testified that the screen was broken when they moved into the rental unit.

In reply, the Landlord testified that the Tenant sent an email of deficiencies in the rental unit to the Landlord when they moved in and there was no mention of a broken screen which shows the screen was not broken when the Tenant moved in.

In further reply, the Tenant testified that they did not look at everything in the rental unit closely before sending the email to the Landlord and that they just looked quickly and noted what they observed as deficiencies.

#2 Fridge door handle \$82.97

The Landlord sought compensation for having to replace the fridge door handle. The Landlord testified that the handle was broken at the end of the tenancy and could not be repaired. The Landlord relied on a photo and receipt in evidence.

The Tenant testified that they already had mentioned the condition of the fridge to the Landlord prior to the end of the tenancy. The Tenant testified that they mentioned the handle was loose at the start of the tenancy. The Tenant testified that they never used the handle of the fridge and opened the fridge from the side.

In reply, the Landlord again pointed out that the fridge handle was not mentioned in the Tenant's email about deficiencies sent at the start of the tenancy. The Landlord submitted that it is unlikely the fridge handle was broken at the start of the tenancy and

the Tenant failed to mention this given how often the fridge handle would have been used.

In further reply, the Tenant testified that the fridge handle was not broken at the start of the tenancy, it was just loose. The Tenant testified that they told their family not to use the fridge handle.

#3 Carpet cleaning \$140.00

The Landlord sought compensation for carpet cleaning at the end of the tenancy. The Landlord testified that the carpet was cleaned prior to the Tenant moving into the rental unit. The Landlord testified that the carpet was stained and not clean at the end of the tenancy. The Landlord relied on photos of the carpet submitted.

The Tenant testified that there were minor stains on the carpet when they moved into the rental unit; however, these were not serious enough to mention to the Landlord. The Tenant testified that they vacuumed the carpet at the end of the tenancy but did not shampoo it.

Documentary evidence

The Landlord submitted the following relevant documentary evidence:

- Photos
- Receipts
- Emails between the parties
- Written submissions
- E-transfers

Analysis

Security deposit

Pursuant to sections 24 and 36 of the *Residential Tenancy Act* (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 about move-in and move-out inspections, I find the Tenant 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 carpet cleaning, in part because the carpet was not clean, which is not damage.

Based on the testimony of the parties, I find the tenancy ended November 30, 2021.

Based on the testimony of the parties, I find the Tenant provided the Landlord their forwarding address in writing January 11, 2022.

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 Tenant's forwarding address in writing to repay the security deposit or file a claim against it. Here, the Landlord had 15 days from January 11, 2022, to repay the security deposit or file a claim against it. The Application was filed January 26, 2022, within time. I find the Landlord complied with section 38(1) of the *Act* and was permitted to claim against the security deposit.

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.

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...

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.

#1 Screen wicket \$22.48

The parties disagreed about whether the Tenant broke the screen. The Landlord has the onus to prove the Tenant broke the screen.

The Landlord relied on an email sent by the Tenant at the start of the tenancy outlining deficiencies with the rental unit to show there was no broken screen at the start of the tenancy. I have reviewed the evidence submitted and there is no email from the Tenant about deficiencies at the start of the tenancy. The Landlord did not do a Condition Inspection Report ("CIR") at the start of the tenancy as required and therefore I cannot rely on such to determine whether the screen was fine or broken at the start of the

tenancy. None of the objective evidence submitted supports that the screen was fine and not broken on move-in.

I am not satisfied based on the evidence provided that the Tenant broke the screen and therefore am not satisfied the Tenant breached section 37 of the *Act*. Given this, I am not satisfied the Landlord is entitled to compensation for this item and this claim is dismissed without leave to re-apply.

#2 Fridge door handle \$82.97

I decline to award the Landlord compensation for the fridge door handle for the same reasons set out above. The Landlord has failed to prove the Tenant broke the fridge door handle because the Landlord has failed to prove the condition of the fridge door handle at the start of the tenancy through a CIR, photos, videos or other compelling evidence. I acknowledge that a fridge door handle may be used a lot during a tenancy; however, I do accept that the Tenant and their family could have simply opened the fridge by the door and not the handle. Given I am not satisfied the Tenant broke the fridge door handle, I am not satisfied the Tenant breached section 37 of the *Act* and am not satisfied the Landlord is entitled to compensation for this item. This claim is dismissed without leave to re-apply.

#3 Carpet cleaning \$140.00

RTB Policy Guideline 01 addresses carpet cleaning and states in part at page two:

3. The tenant is responsible for periodic cleaning of the carpets to maintain reasonable standards of cleanliness. Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year. Where the tenant has deliberately or carelessly stained the carpet he or she will be held responsible for cleaning the carpet at the end of the tenancy regardless of the length of tenancy.

This tenancy was not one year long. I am not satisfied based on the evidence provided that the Tenant stained the carpet because the Landlord has failed to prove the condition of the carpet at the start of the tenancy, the same issue noted above. The Landlord submitted two photos of stains on the carpet; however, I am not satisfied based on the evidence provided that these stains were not present at the start of the tenancy. Given this, I am not satisfied the Tenant caused the stains.

Further, there is no documentary evidence showing the carpet was dirty, other than for the two stains. Given this, I am not satisfied based on the evidence provided that the Tenant failed to leave the carpet reasonably clean at the end of the tenancy.

In the circumstances, I am not satisfied the Tenant breached section 37 of the *Act* or that the Tenant was required pursuant to RTB Policy Guideline 01 to have the carpets shampooed at the end of the tenancy. Given this, I am not satisfied the Landlord is entitled to compensation and I dismiss this claim without leave to re-apply.

#4 Filing fee \$100.00

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

Summary

In summary, the Landlord has failed to prove they are entitled to compensation and the Application is dismissed without leave to re-apply. The Landlord must return the remaining \$249.00 of the security deposit to the Tenant and the Tenant is issued a Monetary Order in this amount.

Conclusion

The Landlord must return the remaining \$249.00 of the security deposit to the Tenant and the Tenant is issued a Monetary Order in this amount. 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: September 12, 2022

Residential Tenancy Branch