



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL

Introduction

The Landlord filed an Application for Dispute Resolution on February 4, 2022 seeking compensation for damage 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 September 27, 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, 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 that was in place. The tenancy started on February 15, 2019, continuing on a month-to-month basis after the one-year fixed term expired. The monthly rent of \$3,395 did not increase before the tenancy

ended. The Tenant paid a security deposit of \$1,697.50, and a pet damage deposit of \$1,697.50.

The Landlord and Tenant both included a copy of the Condition Inspection Report that they completed together at the time of the Tenant's move into the rental unit. The Tenant highlighted certain points to emphasize their submission that there were items needing attention at the time of move in: some scuffs; scratches in the hard wood floors; stains on blinds; and a stain on the bedroom carpet.

The tenancy ended with the Tenant notifying the Landlord on December 31, 2021 that they wanted to end the tenancy on January 31, 2022. At the end of the tenancy, the Landlord returned the full pet damage deposit to the Tenant; however, they held the security deposit in full and made this Application on February 4, 2022.

In the evidence, both parties provided a copy of the Condition Inspection Report, re-visited and completed when they met on January 31, 2022 to review the state of the rental unit. The Tenant recalled the Landlord coming with their camera to take many pictures, to which the Tenant replied the Landlord should have taken that measure at the start of the tenancy as well. The Landlord in that meeting noted more incidental stains, and according to the Tenant came out from the bedroom after noticing an odour, then notifying "the office" to which the "office" replied that "it's okay it will go away." The Tenant recalled the Landlord calculating amounts owing directly on the Condition Inspection Report form, making errors on that form. The Tenant's signature appears on the form to indicate they "agree that this report fairly represents the condition of the rental unit."

The Landlord recalled that the Tenant was present at the meeting on January 31, 2022. The "office" in question – being the property management company – did not instruct them to ignore the odour they found in the bedroom. They did not calculate any sum for more incidental cleaning matters that are noted in the report; however, other items are added on that document.

The Landlord's submission

The Landlord described the nature of their claim in the hearing. In essence, the tenancy agreement notes the rental unit was non-smoking, and the Tenant breached that individual piece in the agreement. This caused damage and a need for cleaning to the extent that the Landlord could not rent after this tenancy ended. The Landlord incurred costs for cleaning and other maintenance after this Tenant moved out.

The Landlord called their own cleaning company, who estimated around 3 hours for wall cleaning, as indicated immediately in the final meeting in the report for \$125.96. When the Tenant did not agree to pay for extra cleaning because of an odour, the Landlord tried to contact a contractor for painting of the whole rental unit and carpet replacement; this was 3 days after the final inspection meeting.

On February 1 (via email as shown in their evidence) the Landlord informed the Tenant that “the cleaners can’t get the smell out” and they were using the “damage deposit” (i.e., security deposit) to “do a single coat of pain[t].” The Tenant responded to say, “landlord can not and not allowed to make changes or apply additional charges to the tenant” and they had painted parts of the rental unit after the start of the tenancy.

The Landlord contacted a company who attended on February 22 and February 26 for extra cleaning. This company did not charge the Landlord because they were not satisfied with the results. The Landlord also paid for carpet cleaning again on February 28. This company was “satisfied with results” but upon showings to prospective tenants, the unit still had an odour and the Landlord thought about painting again to combat the odour noticed by others. It was not until May 15 that they found a new tenant for the rental unit.

On their Application, the Landlord provided a requested amount of \$10,000. They noted this was the “cost to get rid of the extreme smoking smell from the unit caused by the tenants who has been probably smoking inside the unit for a long time.” They requested new coats of paint to the walls and ceiling and a professional cleaning.

On a Monetary Order Worksheet (dated September 5, 2022) the Landlord provided an amount for the carpet cleaning (\$149.52, verified with an invoice dated March 1, 2022) and “changing carpets and painting walls” (\$5,223.75). The Landlord obtained a quote for this work, as they described in the hearing.

In their evidence, the Landlord also included:

- a message from the showing agent noting the number of showings they had in January-February with “half of my viewers were really concern about the serious smell of cigarettes”, copying a potential tenant’s query on availability that noted the “smoke smell and mess”

- their communication with the owner about the need to repaint “to take some action to get rid of the smell” seeking approval for paint
- proof of the remnant odour from a specialty cleaning firm (21 pages, spanning approximately over one month of emails) for their work on February 24 – 26. The Landlord replied to this firm on March 17 to advise “[the rental unit] still has the slight smell of cigarette”. By April 6 the Landlord advised the chemical agent smell had dissipated and the odour returned.

The Tenant's response

The Tenant provided a written response, summarizing their basic point that the move-out inspection was completed, and the “office” confirmed there was no charge for the odour. They debate the accuracy of whether an odour was actually present. The Tenant also cited the rental unit as being in a 15-year-old building, and “not in perfect, spotless condition” when the tenancy started. Upon the start of the tenancy, the Tenant painted all the walls, cleaned the carpet, and called a cleaning company to clean the blinds.

Prior to their move out, the Tenant had approximately one week to attend to all cleaning necessities before they vacated. This was “Everything we cleaned top to bottom.” They described the Landlord commenting on “the smell of smoke in the bedroom” to which they replied they had never smoked there. The Landlord called to the main management office and the office stated there was no charge for the smell because the smell would dissipate. They received a call the next day and the Landlord stated the need for application of “one very light coat of paint in the master bedroom” and secondary bedroom. They stated the Landlord’s obligation to paint for a new tenant and they disagreed with the Landlord’s proposal for an extra charge.

The Tenant made the submission that the Landlord did not provide any of the over 100 pictures” they took during the final inspection meeting. Additionally, they felt they were already overcharged for the cleaning of 2 water stains and a lightbulb, despite signing the Condition Inspection Report agreeing to those charges.

In a review of the timeline, the Tenant submitted that the Landlord did not mitigate the loss to them by dealing with the situation in a shorter amount of time, with carpet cleaning coming one month, and then some other wall maintenance. This larger

amount of around \$5,000 represents work that the Landlord did not actually do before renting again to new tenants in April.

The Tenant also clarified that other family members would not allow them to smoke in the rental unit; therefore, they did not do so during the tenancy.

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.

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 entailed some work on their own for which they were not reimbursed; however, I find it more likely than not that there was no complete odour-free rental unit at the start of the tenancy.
- 2 I am not satisfied the level of the Landlord's claim for \$5,223.75 set out on their worksheet represents necessary work to restore to the unit to its original state, with no photos or other evidence to substantiate the need for carpet replacement and painting of all the walls in the rental unit. This amount, as an estimate, is not verified as coming from a contractor and there is no record of that amount in the Landlord's evidence. I also find that is not the Landlord mitigating their damages, coming some months after the end of the tenancy when the other imprecise method were used along the way. The Landlord has not proven on a balance of probabilities that an odour is attributable to the Tenant exclusively. I dismiss this piece of the Landlord's claim for this reason.

- 3 Similar to the point above, I am not sure why the carpet cleaning occurred one month after the end of the tenancy if the odour was persistent as the Landlord submits. I grant no cost for the cost of the carpet cleaning to the Landlord for this reason; I am not satisfied that a damage or loss exists in the form of persistent odour, and this was not identified by the Landlord immediately on the Condition Inspection Report at the time of the final meeting with the Tenant. The Condition Inspection Report reads: “smell of smoke should go away.”
- 4 Though the Landlord indicated certain amounts on the Condition Inspection Report initially – to which the Tenant agreed – they did not list these as part of their claim for compensation. I find they are not pursuing those costs even though known to them, for tangible items requiring cleaning, at the end of the tenancy. I here make no concession for those items because the Landlord did not specify this in their claims.

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. There is no justification for the large amount claimed by the Landlord for carpet replacement and painting throughout the rental unit.

In total, I find the Landlord has not established the validity of any piece of their claim in this hearing. I order the return of the full security deposit to the Tenant and grant a Monetary Order to the Tenant for that full amount.

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

Conclusion

Pursuant to s. 38 of the *Act*, I grant the Tenant a Monetary Order in the amount of \$1,697.50 for the security deposit. I provide this Monetary Order in the above terms and they must service the Monetary Order to the Landlord as soon as possible. Should the Landlord fail to comply with the 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: October 17, 2022

Residential Tenancy Branch