Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Parties	File No.	Codes:
(Landlord) H.G.	310063208	MNDCL-S, FFL
(Tenant) Y.H.L.	310079199	MNSDS-DR, FFT

Introduction

This hearing dealt with cross applications for Dispute Resolution under the *Residential Tenancy Act* ("Act") by the Parties.

The Landlord filed claims for:

- $798.63 compensation for damage caused by the tenant, their pets or guests to the unit or property – holding the pet or security deposit; and
- recovery of the $100.00 application filing fee.

The Tenants filed claims for:

- $3,724.95 for monetary loss or other money owed; and
- recovery of the $100.00 application filing fee.

The Tenant and her translator, A.T., and the Landlord and her translator, A.Y., appeared at the teleconference hearing and gave affirmed testimony. The hearing time was delayed by the need to translate all statements throughout the hearing.

I explained the hearing process to the Parties and gave them an opportunity to ask questions about it. During the hearing, the Tenant and the Landlord were given the opportunity to provide their evidence orally and respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure, but only the evidence relevant to the issues and findings in this matter are described in this decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

Preliminary and Procedural Matters

The Landlord provided the Parties' email addresses in her Application, and they confirmed these addresses in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

Issue(s) to be Decided

- Is the Landlord entitled to a Monetary Order, and if so, in what amount?
- Is the Landlord entitled to recovery of the Application filing fee?
- Is the Tenant entitled to a Monetary Order, and if so, in what amount?
- Is the Tenant entitled to recovery of the $100.00 Application filing fee?

Background and Evidence

The Parties agreed that the fixed term tenancy began on August 1, 2018, ran to July 31, 2019, and then operated on a month-to-month basis. They agreed that the Tenant was required by the tenancy agreement to pay the Landlord a monthly rent of $3,600.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of $1,800.00, and no pet damage deposit. They agreed that they did not conduct an inspection of the condition of the rental unit at the start or end of the tenancy.

The Parties agreed that the tenancy ended when the Tenant vacated the rental unit on June 30, 2021. The Tenant indicated in the hearing that she mailed the Landlord her forwarding address soon after she vacated. However, in the Tenant's documentary evidence, she indicates that she served the forwarding address to the Landlord via registered mail sent on February 5, 2022.

LANDLORD'S CLAIM → $798.63

#1 UTILITIES → $148.63

The Landlord explained this claim, as follows: "It's based on [electricity] and gas bills. The upper floor's whole utility cost is 70%; we decided verbally at the beginning of the tenancy."

The Tenant agreed that this was the arrangement between the Parties. The Landlord said she always attached all of the utilities bills for the Tenant and calculated the total amount owing. She said the amount claimed was calculated after the tenancy for the months in question.

The Tenant said she opposed the Landlord's claim, because it was not calculated from the bills' final numbers, but on the Landlord's estimate.

The Landlord said:

> I sent her the last of the [utilities] bills, but they are issued every two months. By the middle of July, we did not have the most up-to-date bills, so the amount claimed for June 15 – June 30 was estimated.

The Landlord said she did not yet have an up-to-date billing for this time period.

The Tenant said:

> When we moved out on June 30, she took pictures of the hydro and gas numbers on the house and sent it to them, so they should not have estimated and they should have waited for the bill.

I note the tenancy agreement indicates on page 2 of 6 that the rent does not include electricity or heat, and therefore, I find that the Tenant is responsible for these costs; however, the Parties agreed that the Tenant was responsible for 70% of these costs, not the entire amount, pursuant to a verbal agreement between the Parties at the start of the tenancy.

When I asked the Landlord if she submitted copies of the utilities bills owing, she said that they might be in the chats she submitted into evidence. I was unable to find any utilities bills in the Landlord's evidence.

#2 CLEANING → $650.00

The Landlord said that she found the cleaning company online, and: “I called several by the end of the day, and mostly were busy moving out. These had time to do it.”

I asked about why she needed to have the rental unit cleaned, and the Landlord said: “The carpet was not washed. She has stayed in unit for three years, and windows not cleaned, and bathroom not cleaned. Covid.”

The Tenant’s translator said: “She said no, that she cleaned as much as she could.”

The Landlord said she did the cleaning, herself. She referred me to photographs of the condition of the rental unit at the end of the tenancy. Most of the photographs are of windows, the frames and window sills. There are some photographs of the bathroom, too, although, from the photographs and videos, it looks reasonably clean throughout.

The Tenant’s translator said:

> She just wants to say that the cleaning they were talking about - the outside of the front door and the window sills outside and inside as well - it was already cleaned; and if they didn’t like how we cleaned it that they could have told us again.

The Landlord said the following about the cleaning process:

> One person said it would be around 20 hours. The place is 2000 square feet. They gave an estimate and I cleaned it and billed for that much.

The Landlord submitted a video of the bathroom to show that it was not cleaned; however, I find that it looked reasonably clean, except for the window frame being somewhat dirty.

The Landlord also submitted photographs to demonstrate the uncleanliness of the residential property after the tenancy ended. These photographs included:

- 25 photos of dirty window frames;
- one somewhat dirty window sill;
- base of toilet dirty;
- smudged mirror in upper floor bathroom; and

- front porch could have been cleaner.

The Landlord submitted an estimate she received from a cleaner, who would charge $650.00. The Landlord used this amount, although there is no evidence before me that she is a professional cleaner, and with no details of how long it took or how much was charged per hour.

TENANT'S CLAIM → $3,724.95

The Tenant explained her claim, as follows:

> Our claim was that they didn't give us the full security deposit back. And if they wanted to subtract a certain amount for the cleaning, they should have given us a written agreement before deducting it. We called the RTB and they told us we were able to ask for double the deposit, and any previous filing fees from our previous hearing that we first did, and any postage or mail cost.

The Parties agreed that the Landlord returned $1,001.37 of the $1,800.00 security deposit. The Landlord submitted a list of the costs she said amounted to the balance of the security deposit not returned. These are made up of the amounts the Landlord claimed in her Application - $148.63 for utility costs, and $650.00 for cleaning costs.

The Tenant explained the amount she claimed as follows:

Double the original deposit →	$3,600.00
Previous filing fee	100.00
Mailing costs	11.36
Previous mailing costs	13.59
Sub-total	$3,724.95
Less the amount returned	1,001.37
Total	$2,723.58

The Landlord's response related to her own claims:

> I reminded her about those cleaning things and guidelines from the RTB website. I reminded her a week earlier for the guideline for the cleaning. She didn't reply, but she said she would get everything.

The Landlord had no comments about the Tenant's claims, otherwise.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Before the Parties testified, I let them know how I analyze the evidence presented to me. I said that a party who applies for compensation against another party has the burden of proving their claim on a balance of probabilities. Policy Guideline 16 sets out a four-part test that an applicant must prove in establishing a monetary claim. In this case, each Party, as applicant, must prove:

1. That the Other Party violated the Act, regulations, or tenancy agreement;
2. That the violation caused you to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That you did what was reasonable to minimize the damage or loss.

("Test")

LANDLORD'S CLAIM → $798.63

#1 UTILITIES → $148.63

I find from the evidence before me, that the Tenant was responsible for paying 70% of the electricity and heating bills in the residential property. However, the Landlord did not provide any utilities bills showing the amounts owing for the relevant periods of the tenancy. As such, I find that the Landlord has not fulfilled her burden of proof on a balance of probabilities to establish the value of the claim. The Landlord said that she still does not have the bill for the time period in question, which raises questions in my mind, since the tenancy ended over a hear ago. However, as this is her claim, I find that the Landlord was premature in applying for this claim. Based on the evidence before me, I dismiss this claim without leave to reapply, pursuant to section 62 of the Act.

#2 CLEANING → $650.00

Section 32 of the Act states that tenants "…must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant." Section 37 states that tenants must leave the rental unit "reasonably clean and undamaged".

Policy Guideline #1 helps interpret sections 32 and 37 of the Act:

> The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises), or for cleaning to bring the premises to a higher standard than that set out in the *Residential Tenancy Act* or *Manufactured Home Park Tenancy Act* (the Legislation).
>
> Reasonable wear and tear refer 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.
>
> [emphasis added]

Given my experience as an Arbitrator, I have observed that a common rate for cleaning is $30.00 per hour. The cleaning charge of $650.00 would have required the cleaners to have worked for over 21 hours, cleaning mainly window frames, the base of the toilet, a smudgy mirror, and a window sill.

Based on the Landlord's video and photographs, I find that the residential property was reasonably clean at the end of the tenancy, aside from dirty window frames. Based on common sense and ordinary human experience, I find that the Landlord has over-charged the Tenant for this claim. I find that it is more likely than not that it would have taken no more than three hours for one person to clean the parts of the residential property that were not sufficiently clean at the end of the tenancy – mainly the window frames.

As there were no photographs of carpeting, I have not included compensation for carpet cleaning.

Based on the evidence before me, overall, I **award the Landlord** with **$90.00** for this claim, pursuant to section 67 of the Act, which is from three hours of cleaning at $30.00 per hour.

TENANT'S CLAIM → $3,724.95

The Tenant applied for the return of her security deposit; she did not apply for compensation related to a previous filing fee or mailing costs. Regardless, filing fees should be claimed at the time they are incurred, not in later, unrelated proceedings. Further, postage costs associated with the dispute resolution process are not recoverable under the Act. As such, I find that the Tenant's claim is related solely to recovery of the security deposit.

Section 38 of the Act states that a landlord must do one of two things at the end of the tenancy. Within 15 days of the later of the end of the tenancy and receiving the tenant's forwarding address in writing, the landlord must: (i) repay any security deposit and/or pet damage deposit; or (ii) apply for dispute resolution claiming against the security deposit and/or pet damage deposit. If the Landlord does not do one of these actions within this timeframe, the landlord is liable to pay double the security and/or pet damage deposit(s) pursuant to section 38 (6) of the Act.

The tenancy ended on June 30, 2021; however, the Tenant did not provide her forwarding address to the Landlord until she sent it by registered mail on February 5, 2022. Section 90 of the Act states that a document sent by registered mail is deemed received by the other party on the fifth day after it is mailed. As such, I find that the forwarding address was deemed received by the Landlord on February 10, 2022. Accordingly, the Landlord had until February 25 to return the security deposit or apply for dispute resolution to claim against it.

The Landlord returned part of the security deposit and applied for dispute resolution on February 13, 2022. Therefore, I find the Landlord complied with their obligations under section 38 (1) of the Act, and section 38 (6) does not apply in this case. The security deposit will not be doubled in calculating what should be returned.

The Tenant's security deposit was $1,800.00, and the Landlord returned $1,001.37 of this amount. I find that the Landlord is required to return the entire security deposit, unless she has an Order from the Director allowing her to retain these amounts. I award the Tenant the remaining amount of the unpaid security deposit of **$798.63** from the Landlord pursuant to section 67 of the Act.

Summary and Offset

The Landlord was awarded **$90.00** in her claim and the Tenant was awarded **$798.63** in

her claim. As neither Party was completely successful in her claim, I decline to award either Party with recovery of her **$100.00** application filing fee from the other Party.

Accordingly, after balancing the awards against each other, I grant the Tenant a **Monetary Order** from the Landlord of **$708.63**, pursuant to section 67 of the Act.

Conclusion

The Parties are each partially successful in their respective applications. The Landlord provided sufficient evidence to prove her claims on a balance of probabilities to the amount of **$90.00**. The Tenant provided sufficient evidence to prove her claims on a balance of probabilities to the amount of **$798.63**. Neither Party is awarded recovery of her $100.00 application filing fee from the other Party.

I grant the Tenant a **Monetary Order** from the Landlord of **$708.63**. This Order must be served on the Landlord by the Tenant and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: October 20, 2022

Residential Tenancy Branch