



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNSD

Introduction

This hearing dealt with the Tenants' application under the *Residential Tenancy Act* (the "Act") for:

- a Monetary Order of \$200.00 for the Tenants' monetary loss or money owed by the Landlord pursuant to section 67; and
- recovery of \$1,426.03 of the Tenants' security deposit and/or pet damage deposit pursuant to section 38.

The Landlord's agent TY and one of the Tenants, PK, attend this hearing. They were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

All attendees were advised that the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure") prohibit unauthorized recordings of dispute resolution hearings.

Preliminary Matter – Change of Landlord

This application initially listed TY as the landlord and respondent. PK testified that the Tenants did not know that TY is not the landlord until the Tenants and the Landlord had a series of hearings last year in a previous proceeding (the "Previous Proceeding"), the file number for which is referenced on the cover page of this decision.

I have reviewed the records of the Residential Tenancy Branch and find that TY had attended all three hearings associated with the Previous Proceeding as the Landlord's agent (without the Landlord being present). TY testified under oath that the Landlord is

aware of this current dispute and that TY is authorized to represent the Landlord in this hearing.

Based on the parties' testimonies and by their consent, I have substituted TY with the Landlord as the landlord and respondent on this application.

Preliminary Matter – Service of Dispute Resolution Documents

The parties did not raise any issues with respect to service of documents for dispute resolution. TY confirmed that the Tenants' notice of dispute resolution proceeding package (the "NDRP Package") was received via registered mail. PK explained that he is only relying on the parties' tenancy agreement as documentary evidence. Based on the foregoing, I find the Landlord to have been sufficiently served with the NDRP Package and the tenancy agreement pursuant to section 71(2)(c) of the Act.

PK acknowledged receipt of the Landlord's documentary evidence, which consists of a written statement prepared by TY. I find the Tenants to be served with the Landlord's documentary evidence in accordance with section 88 of the Act.

Preliminary Matter – Dismissal of Tenants' Claim to Recover Security Deposit

The parties agreed that the Tenants have already been granted a Monetary Order in the Previous Proceeding for the return of \$1,426.03 of their security deposit. PK further confirmed that the Landlord has already repaid this amount to the Tenants.

I find the issue of the return of the Tenants' security deposit to be *res judicata* (a matter already decided). Accordingly, I dismiss the Tenants' claim under this part without leave to re-apply.

Issue to be Decided

Are the Tenants entitled to \$200.00 from the Landlord as compensation for monetary loss or other money owed?

Background and Evidence

This tenancy commenced on May 1, 2021 and ended on August 31, 2021.

In the Previous Proceeding, the Landlord had applied for monetary compensation from the Tenants and to keep the security deposit for items such as unpaid utilities and damage to the rental unit. The parties had a hearing on April 28, 2022, which resulted in a decision dated April 29, 2022 (the “Original Decision”) and a Monetary Order granting the return of part of the Tenants’ security deposit.

The Landlord applied for review consideration of the Original Decision and Monetary Order, for which a new hearing was granted on May 19, 2022. The parties reconvened for the new hearing on August 11, 2022 and December 16, 2022, which resulted in a final decision dated December 17, 2022 (the “Final Decision”). The arbitrator in the Final Decision determined that the Original Decision and Monetary Order are to be upheld.

During this hearing, PK submitted that the tenancy agreement contained an explicit requirement for the Tenants to pay a \$200.00 non-refundable cleaning fee before moving into the rental unit. PK testified that the Tenants paid the \$200.00 cleaning fee to the Landlord together with their security deposit.

PK testified that there were no complaints about the cleanliness of the rental unit when the Tenants moved out. PK testified that there was no finding of damage to the rental unit in the Previous Proceeding, and the Tenants had agreed to pay some of the utility bills.

PK submitted that the Act does not allow for landlords to charge a cleaning fee as a non-refundable fee. PK argued that the practice of Airbnbs charging cleaning fees referenced in TY’s written statement is irrelevant because the parties’ tenancy was conducted under the Act.

PK referred to clause 3 of the parties’ tenancy agreement, which contains “additional information” as follows:

Tenant pays \$200 move in fees and \$250 move out cleaning fees. Move out on the last day at 11am. [sic]

PK stated that he might have paid \$250.00 for cleaning fees instead of \$200.00.

In response, TY testified that the rental company agent who prepared the tenancy agreement wrote it wrong and that it should have been \$250.00 for move-in and move-

out fees, plus \$200.00 for cleaning fees. TY confirmed that the Landlord received the \$200.00 cleaning fees from the Tenants.

TY argued that it was reasonable for the Landlord to charge this cleaning fee as many different rental companies do so. TY testified that the rental unit had been rented furnished, so it was necessary to hire professional cleaners upon the Tenants' move out.

TY testified that the Landlord had hired cleaners to clean the rental unit and the cost was more than \$200.00. In her written submissions, TY explained that professional cleaners were needed to wash and replace mattress and duvet covers, pillowcases, couch sheets, and cushion covers, and were also needed to clean the carpet, wooden flooring, bathroom, and kitchen.

In her written submissions, TY suggested that the matter of the \$200.00 cleaning fee was already resolved in the Original Decision.

PK submitted that the \$200.00 cleaning fee was not dealt with substantively in the Original Decision or the Final Decision. PK testified that he had asked the arbitrator who wrote the Final Decision to have this application brought forward, but the arbitrator had declined that request.

Analysis

Having reviewed the Original Decision and the Final Decision, I do not find either decision to have substantively dealt with the Tenants' claim for recovery of the \$200.00 cleaning fee that they had paid to the Landlord. As such, I do not find the Tenants to be barred from making this claim in this application.

Section 7 of the regulations states:

Non-refundable fees charged by landlord

7(1) A landlord may charge any of the following non-refundable fees:

- (a) direct cost of replacing keys or other access devices;
- (b) direct cost of additional keys or other access devices requested by the tenant;
- (c) a service fee charged by a financial institution to the landlord for the return of a tenant's cheque;

- (d) subject to subsection (2), an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent;
 - (e) subject to subsection (2), a fee that does not exceed the greater of \$15 and 3% of the monthly rent for the tenant moving between rental units within the residential property, if the tenant requested the move;
 - (f) a move-in or move-out fee charged by a strata corporation to the landlord;
 - (g) a fee for services or facilities requested by the tenant, if those services or facilities are not required to be provided under the tenancy agreement.
- (2) A landlord must not charge the fee described in paragraph (1) (d) or (e) unless the tenancy agreement provides for that fee.

Under section 7(1)(g) of the regulations, a landlord may charge a fee for services or facilities requested by the tenant, if those services or facilities are not required to be provided under the tenancy agreement. However, I find there is insufficient evidence before me to suggest that the Tenants had requested the Landlord to provide cleaning services upon the Tenants' move out.

I conclude that section 7(1) of the regulations does not permit the Landlord to charge the non-refundable cleaning fee charged to the Tenants in this case.

I note TY's argument that it is "reasonable" to charge cleaning fees. Section 37(2) of the Act states that a tenant must leave the rental unit "reasonably clean" and "undamaged except for reasonable wear and tear". If a tenant does not comply with this section, the landlord may apply to be compensated for the landlord's cleaning or repair costs. In my view, where there is no breach by a tenant of this section, it is up to a landlord to set the amount of rent charged and to treat the cost of any additional cleaning beyond the standard required by the Act as a cost of doing business.

I further note TY's argument regarding the practices of other short-term rental companies. I agree with the Tenants' submission that what the other companies do is not relevant, since the Act may not apply to those rentals. For example, section 4(e) of the Act states that the Act does not apply to living accommodation occupied as "vacation or travel accommodation".

Section 2(1) of the Act states that the Act applies to tenancy agreements, rental units, and other residential property. Where the Act does apply, section 5 of the Act states:

This Act cannot be avoided

5(1) Landlords and tenants may not avoid or contract out of this Act or the regulations.

(2) Any attempt to avoid or contract out of this Act or the regulations is of no effect.

In this case, I find clause 3 of the tenancy agreement suggests that the cleaning fee to be paid is \$250.00. However, I accept TY's testimony that the agent may have made a mistake and that in any event, the Landlord had accepted only \$200.00 from the Tenants for a cleaning fee. I find this explanation to be consistent with the amount sought by the Tenants as stated on their application. I find the Tenants have not filed any amendment application to increase the amount sought.

Section 67 of the Act states:

Director's orders: compensation for damage or loss

67 Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Based on the evidence before me, I am satisfied that the Tenants have suffered loss in the amount of \$200.00 due to the Landlord not complying with section 7 of the regulations, which does not permit the Landlord to charge a \$200.00 non-refundable cleaning fee.

Accordingly and pursuant to section 67 of the Act, I order the Landlord to pay \$200.00 to the Tenants as reimbursement of the cleaning fee charged.

Conclusion

The Tenants' claim to recover \$1,426.03 of their security deposit is dismissed without leave to re-apply.

The Tenants' claim to recover \$200.00 from the Landlord for the cleaning fee is granted. Pursuant to section 67 of the Act, I grant the Tenants a Monetary Order in the amount of **\$200.00**. This Order may be served on the Landlord, 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 *Residential Tenancy Act*.

Dated: January 20, 2023

Residential Tenancy Branch