Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **MNDL-S, FFL**

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- a monetary order for damage to the rental unit in the amount of $1,232.86 pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant attended the hearing. The landlord was represented at the hearing by its property manager ("**CA**"). Both were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

CA testified, and the tenant confirmed, that the landlord served the tenant with the notice of dispute resolution package and supporting documentary evidence. The tenant testified, and CA confirmed, that the tenant served the landlord with their documentary evidence. I find that all parties have been served the required documents in accordance with the Act.

Preliminary Issue – Reduction of landlord's claim and tenant's consent

At the outside of the hearing, CA advised me that the landlord has reduced the amount it is seeking to recover from the tenant to $979.24. Additionally, of this amount, the tenant agreed to pay $162.86, representing an NSF fee and the cost of re-keying the rental unit. Accordingly, I order the tenant to pay the landlord this amount.

As such, the balance of this decision will relate to the landlord's application for repair and cleaning costs in the amount of $816.38.

Issues to be Decided

Is the landlord entitled to:

1) a monetary order for $816.38;
2) recover the filing fee; and
3) retain the security deposit in partial satisfaction of the monetary orders made?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into a written tenancy agreement starting August 1, 2016. Monthly rent was $1,846. The tenant paid the landlord a security deposit of $825, which the landlord continues to hold in trust for the tenant.

The tenant vacated the rental unit on March 31, 2022. The tenant provided his forwarding address to the landlord via email on April 18, 2022, which CA acknowledged receiving. The landlord made this application May 3, 2022.

The parties scheduled a move-out condition inspection to occur on May 31, 2022, which CA, the tenant, and the tenant's sister attended. The parties' accounts of this inspection differ significantly.

1. CA's testimony

CA testified he started the inspection and quickly became overwhelmed by the poor condition of the rental unit. He testified that the rental unit was in the worst condition he has ever seen a rental unit be in. He testified that he asked the tenant and his sister to leave and that he would complete the inspection without them, and told them he would email them a copy of the move-out condition inspection report for the tenant's signature.

CA testified that in the tenant's absence, he completed the move-out condition inspection. He testified that the rental unit was in a "truly disgusting state" and that "every square inch" was "disgusting and dirty". He later clarified that this was hyperbolic, and some square inches were not dirty, but that for the most part the rental unit was in a very poor state.

The cabinets and walls were greasy, the tenant left a flytrap up that was covered in flies, the floors and blinds were dirty. He testified that the transition strip between the kitchen and living room had broken off and the wall was damaged were the tenant had installed guitar hooks.

The landlord submitted photographs into evidence which show a small amount of dirt on the stovetop, stains on the backs of cabinet doors and on interior shelves, cracked tiles, a damaged stove control panel, water damaged cabinets beneath the sink, a missing cover for a light fixture, missing electrical outlet cover, dirty exhaust fans, stains on the walls, a bathroom counter-top with a portion of the vinyl surface missing, scratches and dents in the walls, and a dirty microwave.

CA testified that he completed the move out inspection and sent the tenant an email summarizing the condition of the rental unit and attaching photos on April 25, 2022. He sent the completed move-out condition inspection report to the tenant for his signature on May 2, 2022.

CA stated that the landlord hired a cleaner to clean the rental unit at a cost of $509.25. The landlord submitted an invoice which indicates that the cleaner performed the following services for the following amounts between 9:00 am and 10:00 pm:

1) Residential clean - $165
2) Extras:
    a. Balcony sweep - $20
    b. Deep Clean - $125
    c. Move-in/move-out clean - $125
    d. (3) Interior windows - $30
    e. (1) Sliding door interior window clean - $20

Additionally, the landlord sent its maintenance man to the rental unit to install a new transition strip, replace light bulbs, clean two bathroom exhaust fans, remove a wire shelf installed by the tenant, repair the bathroom outlet, and repair the damaged bathroom countertop. The landlord submitted an invoice for this work of $307.13, calculated at 4.5 hours of work at $65/hour plus GST.

The landlord did not make any monetary claim in connection to the other damage set out above.

1. Tenant's testimony

The tenant testified that the rental unit was in reasonable condition and in a reasonable state of cleanliness at the end of the tenancy. He testified that CA did not give any indication that the condition of the rental unit was poor, or that he was overwhelmed. He did not understand CA to be temporarily pausing the move-out inspection so the tenant could leave, but rather understood the inspection was completed when he left.

CA advised him that he would be sending the completed move-out condition inspection report to him via email at a later date. The tenant stated that he did not receive a copy of the move-out report for his signature.

The tenant stated that when he attended the move-out inspection, he had cleaning products on hand to address any issues the landlord might have raised. As CA did not raise any, he understood that CA was satisfied with the level of cleanliness.

The tenant submitted letters from two friends of his who stated that they helped the tenant clean the rental unit prior to the end of the tenancy. One tenant stated that "some areas … we obvious missed" but that the rental unit was otherwise "very clean". Another wrote that she cleaned all the floors, laundry area, windows, and windowsills.

The tenant submitted a letter from a former co-tenant who lived at the rental unit between 2016 and 2019. She wrote that the transition strip had "been previously broken and repaired roughly by gluing the broken off section back to the floor tile. It was already in a semi broken state when we moved in." She wrote that upon moving into the rental unit there were many small screw holes in the drywall, and that the walls are generally scuffed and in need of a new paint job. She wrote that the outlet cover which was missing from the bathroom was cracked when she moved in and at the stove control panel is cracked and peeling when she moved in, and continued to deteriorate through normal use over the course of the tenancy.

The tenant submitted a letter from his sister who lived in the rental unit from October 2019 to February 2021. She confirmed the prior occupant's statement about the transition strip and microwave handle. She wrote that she assisted in cleaning the rental unit and swept the balcony and cleaned the floors. She stated that the rental unit was in a "state of high cleanliness (with the small exceptions noted below)". This included a mounting bracket still attached to the wall and broken microwave. She wrote that CA roughly pulled the mounting bracket from the wall which damaged the drywall and caused debris to fall on the floor. She also stated that CA attempted to open the microwave door with a pair of pliers but was unable to. She was present at the move out inspection and that CA did not point out any deficiencies in the cleaning that the tenant and his friends had done prior to the move out inspection.

The tenant submitted several photos taken the day of the move out inspection. These photos show elements of the rental unit to be clean and undamaged. The areas shown in the photos do not encompass the entirety of the rental unit, and do not appear to include any photographs of the damaged portions with the rental unit which are depicted in the landlord's photographs.

The tenant argued that any damage to the rental unit was the result of ordinary wear and tear. While he conceded that some portions of the rental unit may not have been adequately cleaned (such as the interior of some of the cabinets), he argued that as the landlord did not request that he clean these areas when the move out inspection occurred, the landlord should be precluded from recovering the cleaning cost.

Additionally, the tenant argued that as the landlord did not provide him with a signed copy of the move out condition inspection report to sign, so this extinguishes the landlord's right to claim against the security deposit and entitles the landlord to double to amount of the security deposit.

Analysis

Section 37 of the Act states:

> **Leaving the rental unit at the end of a tenancy**

37(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

Rule of Procedure 6.6 states:

6.6 The standard of proof and onus of proof

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application.

So, the landlord must prove it is more likely than not that the tenant failed to leave the rental unit reasonably clean and undamaged at the end of the tenancy.

Based on the evidence presented at the hearing, I cannot conclude that, at the end of the tenancy, the rental unit was in such a condition that it could reasonably be described as “filthy” or “disgusting”. The photographs submitted by the tenant depict a reasonably clean and undamaged rental unit. The landlord’s photos show some parts of the rental unit are unclean. However, there is no overlap between the landlord’s and the tenant’s photos. From this, I conclude that the rental unit was in mostly reasonably clean condition, with some exceptions. The interior of certain cabinets were dirty. At least one wall had grease stains. I find that it was necessary for the landlord to undertake some amount of cleaning in order to bring the rental unit to the level of “reasonably clean” as specified in section 37 of the Act.

I assign no weight to the condition of the rental unit described by the move-out condition inspection report, as the tenant was not present when it was completed.

Based on the letters entered into evidence, I find that the tenant and two of his friends spent a great deal of time cleaning the rental unit prior to the end of the tenancy. This cleaning was not perfect, and some parts of the rental unit were overlooked.

I do not find that simply because the tenant was willing to do additional cleaning at the move out inspection precludes the landlord from recovering any amount for the cost of cleaning the rental unit. I do not think it unreasonable for the landlord to want to engage someone other than the tenant to clean the rental unit, if the tenant’s initial effort cleaning the rental unit was not satisfactory.

I note that the cleaning invoice provided by the landlord sets out additional cleaning work as “deep clean” and “move-in/move-out clean”. It may be that the rental unit required additional cleaning to bring it up to a level of cleanliness that the landlord

believed made it suitable for re-renting. However, this high standard is not the standard that tenants are held to at the end of a tenancy.

In the circumstances, I find that $86.63, representing 50% of the base charge the landlord incurred for the cleaners ($165.00 ÷ 2 = $82.50; $82.50 plus 5% GST = $86.63) is an appropriate amount for amount of cleaning required to bring the rental unit up to a reasonable standard of cleanliness.

The landlord did not provide any photographic proof that the balcony was not swept, or that the windows were dirty. As such, I am not satisfied that these charges were required and decline to order the tenant pay any amount for their cleaning.

Based on the photographs submitted into evidence, I accept that the transition strip between the kitchen and living was damaged, the portion of the vinyl vanity countertop had become detached, an outlet cover was missing, and the tenant left a wire shelf attached to the bathroom wall.

On review of the evidence and after considering the testimony of the parties, I find that it is more likely than not that the damage to the transition strip amounts to more than ordinary wear and tear. If the strip was glued on as part of a previous repair, it was glued securely enough to last multiple years. I find it more likely than not that the tenant (or someone he permitted into the rental unit) acted (probably unintentionally) to dislodge the strip.

I do, however, find that the damage to the vinyl vanity cover damage amounts to ordinary wear and tear. Given the age of the counter, the method of construction, and its location in a high use area, I find that such damage is not unreasonable. I do not find that the tenant is responsible for paying for the cost of those repairs.

I do not find that the balance of the work set out on the maintenance invoice is damage resulting from ordinary wear and tear. The tenant must pay for the repair to this damage.

The maintenance invoice does not provide a breakdown of how much each task cost. I find that a 33% reduction to the total amount is sufficient to reflect my finding that the vanity repair is not compensable. As such, I order the tenant to pay the landlord $205.78 ($307.13 x 67% = $205.78).

In total, I order the tenant to pay the landlord $455.27, as follows:

Damage to rental unit	$205.78
Cleaning costs	$86.63
Keys and NSF fee (by consent)	$162.86
	$455.27

Security Deposit Doubling

The tenant argued that since the move-out condition inspection report was not completed properly and was not given to him to sign, the landlord's right to make an application against the security deposit is extinguished, and that he is entitled to an amount equal to double the security deposit.

Section 35 of the Act, in part, states:

> **Condition inspection: end of tenancy**
> 35(1) The landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit
> (a) on or after the day the tenant ceases to occupy the rental unit, or
> (b) on another mutually agreed day.
> […]
> (3) The landlord must complete a condition inspection report in accordance with the regulations.
> (4) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.
>
> [emphasis added]

Section 18(1) of the *Residential Tenancy Regulation* (the "**Regulation**") states:

> **Condition inspection report**
> **18**(1) The landlord must give the tenant a copy of the signed condition inspection report
> […]
> (b) of an inspection made under section 35 of the Act, promptly and in any event within 15 days after the later of
> (i) the date the condition inspection is completed, and
> (ii) the date the landlord receives the tenant's forwarding address in writing.

The parties disagree as to whether the landlord provided the tenant with a copy of the move-out inspection report to sign. However, it is not necessary for me to reconcile this discrepancy, as, if I accept the landlord's testimony as true, I would find that he failed to inspect the rental unit *together* with the tenant (in breach of section 35(1) of the Act). And if I accept the tenant's testimony as true, I would find that the landlord failed to give the tenant a copy of the move-out report within 15 days of receiving his forwarding address (in breach of section 18(1) of the Regulation).

Under either of these outcomes, I would find that the landlord's right to claim against the security deposit is extinguished pursuant to section 36(2) of the Act, as he either did not

conduct an inspection in accordance with the Act or did not sent the inspection report to the tenant in accordance with the Regulation.

RTB Policy Guideline 17 states:

> B. SECURITY DEPOSIT
> 9. A landlord who has lost the right to claim against the security deposit for damage to the rental unit, as set out in paragraph 7, retains the following rights:
> • to obtain the tenant's consent to deduct from the deposit any monies owing for other than damage to the rental unit;
> • to file a claim against the deposit for any monies owing for other than damage to the rental unit;
> • to deduct from the deposit an arbitrator's order outstanding at the end of the tenancy; and
> • to file a monetary claim for damages arising out of the tenancy, including damage to the rental unit.
>
> 10. The landlord has 15 days, from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to return the security deposit plus interest to the tenant, reach written agreement with the tenant to keep some or all of the security deposit, or make an application for dispute resolution claiming against the deposit.
>
> 11. If the landlord does not return or file for dispute resolution to retain the deposit within fifteen days, and does not have the tenant's agreement to keep the deposit, the landlord must pay the tenant double the amount of the deposit
>
> […]
>
> C. RETURN OR RETENTION OF SECURITY DEPOSIT THROUGH DISPUTE RESOLUTION
>
> 3. Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit:
> • if the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant's forwarding address is received in writing;
> • if the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act;
> […]

This second bullet point in section C.3 of the Policy Guideline appears to contradict the second bullet point of section B.9. In order to make these two bullet points accord, I find it is necessary to interpret the second bullet point of C.3 as follows:

> if the landlord has claimed ***only*** against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act;

If such an insertion was not read into the Policy Guideline (which I note, are non-binding on arbitrators), circumstances could arise where a party could make a valid claim against a security deposit without risk of running afoul of the doubling provision referenced in section C.3, but engage the doubling provision by making an additional claim compensation for damages to the rental unit. Such a result would be absurd.

Although the landlord's claim is drafted as a one for compensation for damage to the rental unit, the landlord's application is, in substance, one for compensation for damage to the rental unit and for compensation for loss incurred as a result of the tenant's breach of the Act. Specifically, for the cleaning costs incurred as a result of the tenant's breach of section 37 of the Act (set out above).

The inclusion of this monetary claim (and the monetary claim for the tenant consented to at the start of hearing) cause the application to not be a claim for solely compensation for damage to the rental unit. As such, I do not find it appropriate to order that the landlord pay the tenant an amount equal to double the security deposit.

Pursuant to section 72(1) of the Act, as the landlord has been partially successful in the application, he may recover half of the filing fee ($50) from the tenant.

Conclusion

Pursuant to sections 67 and 72 of the Act, I order that the tenant pay the landlord $505.27, representing the following:

Damage to rental unit	$205.78
Cleaning costs	$86.63
Keys and NSF fee (by consent)	$162.86
Filing fee (50%)	$50.00
	$505.27

Pursuant to section 72(2) of the Act, the landlord may deduct this amount from the security deposit.

Pursuant to the RTB Deposit Interest Calculator, the security deposit has accrued $1.98 in interest from the start of the tenancy to the date of this decision.

The landlord must return the balance of the security deposit and the interest accrued ($321.71) to the tenant. I have attached a monetary order to this effect.

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: February 14, 2023

Residential Tenancy Branch