



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNDL-S FFL

Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act). The landlord applied for a monetary order in the amount of \$1,958.23 for damages to the unit, site or property, to retain the tenants' security deposit and pet damage deposits (combined deposits) towards any amount owing, and to recover the cost of the filing fee.

The landlord and the tenants attended the teleconference hearing and gave affirmed testimony. The parties were advised of the hearing process and were given the opportunity to ask questions about the hearing process during the hearing. A summary of the testimony and evidence is provided below and includes only that which is relevant to the issues and findings. Words utilizing the singular shall also include the plural and vice versa where the context requires.

The tenants confirmed that the landlord served them with their application and documentary evidence and that they had the opportunity to review that evidence prior to the hearing. The tenants also confirmed that they did not serve the landlord with documentary evidence. As a result, and pursuant to Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 3.15 the tenants' documentary evidence was excluded in full as it was not served accordingly.

Preliminary and Procedural Matter

The parties confirmed their respective email addresses. The parties confirmed their understanding that the decision would be emailed to both parties.

Issues to be Decided

- Is the landlord entitled to a monetary order under the Act, and if so, in what amount?
- What should happen to the tenants' security deposit and pet damage deposit under the Act?
- Is the landlord entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

A copy of a tenancy agreement was submitted in evidence. A month-to-month tenancy began on September 1, 2019. Monthly rent was \$2,150 per month and was due on the first day of each month. The tenants paid a security deposit of \$1,075 and a pet damage deposit of \$1,075 (\$2,150 in combined deposits) at the start of the tenancy, which the landlord continues to hold.

The landlord's monetary claim of \$1,958.23 is comprised of the \$100 filing fee and the following below:

<i>Document Number</i>	<i>Receipt / Estimate From</i>	<i>For</i>	<i>Amount</i>
#1	Home Depot	Back splash tiles Materials	\$ 703.23 inc tax
#2	Kalm Services & Cleaning 4U	Cleaning services	\$ 441 inc tax
#3	Home Depot	Front Door - Materials only	\$ 546.56 inc tax
#4	Provided by tenant for replacement	Microwave	\$ 50
#5	Home Depot	Paint - material only	\$ 117.44 inc tax

The parties confirmed there was no incoming Condition Inspection Report (CIR) completed, which I will address later in this decision. Regarding the outgoing CIR, the landlord did not walk through the home with the tenants or provide the tenants the ability to sign/disagree with the outgoing CIR, which I will also address later in this decision.

The landlord did not submit any before photos in evidence for my consideration. In addition, item 4, the microwave, was removed by the landlord during the hearing and as a result, I will not consider item 4 further in this decision. The landlord described the rental as a full townhouse that was built in the 1980's.

Regarding item 1, the landlord has claimed \$703.23 for the cost to repair the kitchen backsplash tiles including materials and tax. The landlord testified that the kitchen was renovated in 2012. When discussing the amount, the landlord reduced the claim from \$703.23 to \$685.03 during the hearing, which I find does not prejudice the tenants as it is a lower claim versus a higher claim. The tenants admitted that they did drill into the kitchen backsplash without permission from the landlord to install a magnetic knife holder. Submitted in evidence was the measurements of the backsplash and a quote from Home Depot to replace the damaged tile. The landlord stated that the tile is still available so can be redone and is not as simple and trying to remove just the damaged portion.

Regarding item 2, the landlord has claimed \$441 to clean the rental unit. The landlord submitted colour photos that they claim were taken February 6, 2022. The tenancy ended on January 31, 2022, when the tenants vacated the rental unit. The landlord provided two quotes in evidence. The first quote is an email dated Feb 28, 2022 and indicates the following:

Thank you for your interest in Cleaning4U services
We will be more than happy to help.

Our rates are \$35 an hour per person. To fulfill your requirements it will take 3 cleaners, 4 hours, giving a total cost of \$420.00 +5% GST.

NOTE : if you want to add all the appliances inside deep cleaning it is an additional \$30.00

Brief idea of what we do -

- Clean exterior and inside for all kitchen appliances (Extra \$30.00)
- Clean all exterior and interior kitchen cabinets/ drawers and shelves as well as kitchen countertops and backsplash etc
- Pull out the fridge and vacuum all the debris trapped underneath the ground
- Remove all the lint from the lint traps inside the dryer and wipe the exterior of the washer and dryer.
- Bathroom area: toilets, counter top sink, mirror, vanity cabinets (exterior & interior) and bathtubs must be cleaned and disinfected
- Wipe down as many marks on walls as possible
- Wipe any dust collected on the floor baseboards
- All flooring inside the suite mopped and vacuumed after the unit is emptied (especially around kitchen and bathroom floor corners)
- Interior windows/window frames to be cleaned and all window blinds inside the unit to be wiped clean.
- Patio floor: sweep and mop (no scrubbing with water)

We are using a bactericidal/virucidal to clean and disinfect.

We supply all the equipment and supplies.

Payment method : Online (credit, debit, with a 2.99 % fee or paypal), e transfer and Cash.

Why Cleaning4U Services :

We are insured, licensed and bonded company

Safety is of paramount importance to us and our teams have been WHMIS certified and taken food safety courses, among other training.

Please let me know if this works for you.

To complete your booking or if you have any questions about our services then please give me a call or email us back anytime.

The second quote is a shorter email dated February 27, 2022 and indicates the following:

Hello Carolina. Thank you for contact us we will be happy to help you with cleaning services. Our rate is \$70 per hour for 2 cleaners.

The landlord did not supply a photo of the blinds.

The tenants' response to this item was that they feel they left the rental unit cleaner than when they moved in. The tenants deny smoking inside the rental unit or that anyone else smoked inside the rental unit. The tenants apologize for the dust but claim that the stain was there when they moved in.

Regarding item 3, the landlord has claimed \$546.56 for the materials only to repair a damaged front door where the tenants installed their own extra deadbolt without any permission from the landlord. The tenants confirmed that they did not have prior permission from the landlord before installing the deadbolt lock as a secondary lock on the front door. The landlord stated that the door will be replaced once they receive the funds from the tenant to do so. The landlord submitted an estimate of the door in the amount of \$546.56 dated March 2022 from Home Depot in support of the replacement cost of the front door. The tenants' response was that standard door locks are "weak" and that is was an oversight not to get prior permission for the deadbolt.

Regarding item 5, the landlord has claimed \$117.44 for the cost of paint to repaint damaged walls. The landlord presented many colour photos. One of the photos showed 7 holes in the living room downstairs and other others where there were 3 or 4 holes in the den area. Other holes were more minor in nature, which will be addressed later in this decision. The landlord testified that the rental unit was last repainted in 2017. The landlord clarified that they were not charging any labour for painting, and just the paint cost only. Submitted in evidence was a quote from Home Depot for 3 types of paint, which together total \$117.44.

The tenants' response to this item was that they filled as many holes as they could but the paint had congealed and that there were already a bunch of holes in the walls when they moved in. The landlord denied that there were holes when the tenants moved in and denied that they had left any paint behind as all paint was removed by the previous painter in 2017. The landlord found it confusing that the tenants would ask permission to paint bird baths and to plant daisies during the tenancy but did not get permission before drilling through backsplash tiles and installing a deadlock.

Analysis

Based on the documentary evidence presented, the testimony of the parties and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the Act. Accordingly, an applicant must prove the following:

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

In the matter before me, the landlord bears the burden of proof to prove all four parts of the above-noted test for damages or loss.

Regarding the lack of an incoming CIR, section 23 of the Act applies and requires that they must complete an incoming CIR together with the tenant and offer at least 2 opportunities to do so in accordance with the Regulations. Furthermore, the outgoing CIR is required pursuant to section 35 of the Act also in accordance with the Regulation and none of which was done in the matter before me as the document submitted does not comply with the Regulation requirements as the tenant was not asked to sign the CIR.

Item 1 - The landlord has claimed a reduced amount of \$685.03 during the hearing, which I find does not prejudice the tenants as it is a lower claim versus a higher claim. The tenants admitted that they did drill into the kitchen backsplash without permission from the landlord to install a magnetic knife holder.

I find the tenants had no authority to damage the kitchen backsplash, which I find to be negligent and unreasonable. Therefore, I find the tenants breached section 37(2)(1) of the Act, which required the tenants to leave the rental unit undamaged, except for reasonably wear and tear. I find that none of the backsplash damage is reasonable

wear and tear and therefore I apply no depreciation and I grant the landlord the full amount claimed of **\$685.03**.

Item 2 - The landlord has claimed \$441 to clean the rental unit. I find the tenants' testimony that they cleaned the rental unit to be inconsistent with the photo evidence, which shows a very dirty and dusty rental unit, that appears not to have been cleaned well at all. I also find the cleaning cost to be reasonable given the photo evidence and section 37(2)(a) of the Act requires the tenants to leave the rental unit reasonably clean and I find the tenants breached that section. Therefore, I grant the landlord the entire amount of \$441 as I find that significant cleaning was required.

Item 3 - The landlord has claimed \$546.56 for the materials only to repair a damaged front door where the tenants installed their own extra deadbolt without any permission from the landlord. The tenants confirmed that they did not have prior permission from the landlord before installing the deadbolt lock as a secondary lock on the front door. I find the tenants' response that standard door locks are "weak" to be unreasonable and that the tenants had no permission to damage or change the front door and as such, are liable for the entire cost as claimed. Therefore, I find the landlord has met the burden of proof and I award the landlord **\$546.56** as claimed. I apply no depreciation as the tenants damaged the original door and added a deadlock without permission. The tenants should have received prior written permission and failed to do so.

Item 4 – I find that most of the wall photos support normal wear and tear except for 3 or 4 photos and as such, I only award 50% of the paint cost claimed by the landlord, which I find is **\$58.72**. I dismiss any amount higher without leave to reapply, due to insufficient evidence.

As the landlord's claim was mostly successful, I grant the landlord the recovery of the cost of the filing fee in the amount of **\$100** pursuant to section 72 of the Act.

Based on the above, I find the landlord has established a total monetary claim of **\$1,831.31**. I find the tenants' combined deposits of \$2,150 have accrued \$9.07 in interest for a total of combined deposits including interest of \$2,159.07. Pursuant to sections 38 and 67 of the Act, I grant the landlord authorization to retain **\$1,831.31** from \$2,159.07 in full satisfaction of the landlord's monetary claim.

Pursuant to section 67 of the Act, I grant the tenants a monetary order for the pursuant to section 67 of the Act, for the balance owing by the landlord to the tenants for their combined deposit with interest balance in the amount of **\$327.76**.

Conclusion

The landlord's claim is mostly successful.

The landlord has established a total monetary claim of \$1,831.31. The landlord has been authorized to retain that amount from the combined deposits including interest, in full satisfaction of the landlord's monetary claim pursuant to sections 38 and 67 of the Act.

The tenants are granted a monetary order pursuant to section 67 of the Act, for the balance owing by the landlord to the tenants in the amount of \$327.76. Should the landlord fail to immediately return this amount, this order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision will be emailed to both parties. The monetary order will be emailed to the tenants only for service on the landlord.

The landlord is reminded that they can be held liable for all costs related to enforcement of the monetary order.

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: March 20, 2023

Residential Tenancy Branch