



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding Hugh & McKinnon Realty Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S, FFL

Introduction

The Landlord filed an Application for Dispute Resolution on November 3, 2022 seeking compensation for damage to the rental unit. Additionally, they seek 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 August 17, 2023. Both the Landlord and the Tenants (hereinafter the “Tenant”) attended the hearing. The Tenant confirmed they received the Notice of Dispute Resolution Proceeding from the Landlord, and they received the Landlord’s evidence via other former Tenants. The Tenant did not prepare evidence on their own for this hearing.

Issues to be Decided

Is the Landlord entitled to compensation for alleged damage in the rental unit, pursuant to s. 67 of the *Act*?

Is the Landlord entitled to recover the filing fee for this Application pursuant to s. 72 of the *Act*?

Background and Evidence

In their evidence, the Landlord presented a copy of the tenancy agreement they had in place with the Tenant. This showed the basic rent amount of \$1,319, payable monthly

on the first of each month. The Tenant paid a security deposit of \$650 at the start of the tenancy.

The Landlord provided a copy of a Condition Inspection Report they completed with the Tenant regarding the state of the rental unit at the start of the tenancy in 2019. The Landlord provided a completed Condition Inspection Report for the end of the tenancy date, October 1, 2022. The Report as of the end of this tenancy noted needed repairs to walls and trim, the need for cleaning on other walls and trim, a bed left behind, and “toe kicks in kitchen need repair.”

The Landlord described the issue of damages to the rental unit from their perspective in the hearing. They presented that the Tenant acknowledged damage in the rental unit, in the form of cleaning costs that came to \$627.88 in total. Part of the damage stems from an incident when the Tenant left the unit for a time in December 2021, turning the thermostat off, leading to pipes freezing and flooding. This was a restoration cost of \$630.

Aside from the specific flooding incident, the Landlord cited the Tenant having 6 people living in the rental unit as the cause of damage, being burns and marks on the walls. They mentioned the need for a patch on the carpet which was new in the rental unit when the Tenant moved in; however, the Landlord did not claim specifically for this.

In their evidence, the Landlord provided the following invoices for which they seek reimbursement, as stemming from this tenancy:

- an invoice for a restoration services firm, dated February 24, 2022, for \$630
- an invoice for painting (including patching areas, materials, labour), dated October 19, 2022, for \$777
- an invoice for carpet cleaning, dated October 11, 2022, for \$136.50
- an invoice for “move out clean”, dated October 13, 2022, for \$637.88

These total \$2,181.38, the amount that the Landlord seeks in compensation from the Tenant.

The Landlord provided a video showing the severity of the flooding incident, stemming from the Tenant not having adequate heat in the rental unit when they were away for an extended period of time. The Landlord presented an email from March 2022 in which the Tenant agreed to pay for a plumbing invoice. The Tenant presented that they paid the cost for the plumber at that time.

In the hearing, the Tenant presented that painting required at the end of the tenancy was “nothing major”. This amount of around \$600 for cleaning in the rental unit is “too much.” The Tenant stated they paid around \$900 for the costs associated with the flooring incident; however, the Landlord responded to say they received nothing additional from the Tenant.

The Tenant also recalled a specific discussion they had with a maintenance staff member at the end of the tenancy regarding painting. The instruction to the Tenant was to only “touch up” because all that was in place were just scratches.

Additionally, the Tenant recalled cleaning thoroughly at the end of the tenancy, involving cleaning and sweeping and mopping in the rental unit. They recalled the maintenance staff member granting them an additional three hours of cleaning time, and stated their satisfaction with the level of cleaning after that time.

Analysis

The *Act* s. 37 sets out that when a tenant vacates a rental unit, they must “leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear”.

In a dispute resolution proceeding, the 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 s. 7 and s. 67 of the *Act*.

To be successful in a claim for compensation for damage or loss an applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

In the hearing, the Landlord acknowledged they did not provide photos showing the need for cleaning within the rental unit. I find the Landlord did not provide sufficient evidence to show the need for more thorough cleaning at the end of the tenancy (*i.e.*,

something beyond reasonable wear and tear), nor the need for carpet cleaning, nor painting. I am not satisfied of the fact that a loss to the Landlord, in the form of a need for extra expenses for cleaning, carpet cleaning, or painting in the rental unit, exists; therefore, I dismiss these parts of the Landlord's claim.

I find the Landlord has shown, on a balance of probabilities, that the Tenant was responsible for the water flooding issue in the rental unit. The Landlord presented communication to the Tenant to show the Tenant left the heat off during an extended absence, and this caused an issue. The Landlord presented that the Tenant agreed to pay for a plumber at that time; the Tenant in the hearing stated they did pay that cost when required, and it was a significant amount.

I find it more likely than not that the incident required immediate restoration. The cost thereof was not recovered by the Landlord during the tenancy. I grant the Landlord compensation in the amount of \$630 as shown in the invoice dated February 24, 2022 from the restoration company they hired.

I find it was necessary for the Landlord to bring this Application to the Residential Tenancy Branch for resolution in the matter. The Landlord was successful in this Application; therefore, I grant reimbursement of the Application filing fee, at \$100.

The sum total of the award to the Landlord is \$730. The *Act* s.72(2) gives an arbitrator the authority to make a deduction from any deposit held by a landlord. The Landlord here established a claim of \$730. After setting off the security deposit amount of \$650, there is a balance owing of \$80. I am authorizing the Landlord to keep the security deposit amount in full, and grant a separate monetary order to the Landlord for the remaining amount of \$80. This is an application of s. 72(2)(b) of the *Act*.

Conclusion

Pursuant to s. 67 and s. 72 of the *Act*, I grant the Landlord a Monetary Order in the amount of \$80.00 for monetary loss. I provide the Landlord with this Order in the above terms, and they must serve the Tenant with **this Order** as soon as possible. Should the Tenant fail to comply with this Order, the Landlord may file this Order 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: August 22, 2023