



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNDL-S, FFL
 MNSDB-DR

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “Act”). The matter was set for a conference call.

The Landlord’s Application for Dispute Resolution was made on August 29, 2023. The Landlord applied for a monetary order for unpaid rent, a monetary order for losses due to the tenancy, permission to retain the security deposit and to recover the filing fee.

The Tenant’s Application for Dispute Resolution was made on September 11, 2023. The Tenant applied for the return of their security deposit, compensation under the *Act*.

Both the Landlord and the Tenant attended the hearing and were each affirmed to be truthful in their testimony. The Tenants and the Landlord were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

Based on the submissions before me, I find that the Landlord's evidence was served to the Tenant in accordance with section 88 of the Act. Based on the submissions before me, I find that the Tenant's evidence was not served to the Landlord in accordance with section 88 of the Act.

I have reviewed all the evidence and testimony before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter – Tenant’s Notice of Dispute Resolution Proceeding and Evidence

During the hearing, the Tenant testified that they had not served the Landlord with the Notice of hearing documents for their application.

Section 59 of the *Act* and the Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing within three days of the Notice of Dispute Resolution Proceeding Package being made available to the applicant by the Residential Tenancy Branch.

I accept the submission of the Tenant and find that the Landlord had not been duly served in accordance with section 3.1 of the Residential Tenancy Branch rules of procedure. Therefore, I dismiss the Tenant's application with leave to reapply.

Preliminary Matter – Landlord Application Amendments

During the hearing, the Landlord withdrew their claims for additional carpet cleaning, in the amount of \$77.50, consisting of \$4.25 for carpet deodorizer, \$33.25 for carpet cleaner, and \$40.00 for carpet cleaning.

The Tenant did not dispute the landlord's request to withdraw these items from their claim.

As the Tenant did not dispute the Landlord's request, I grant the Landlord's request to reduce their claim for a Monetary Order for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement to \$540.16.

Issues to be Decided

- Is the Landlord entitled to monetary order for unpaid rent?
- Is the Landlord entitled to monetary compensation for damages under the *Act*?
- Is the Landlord entitled to retain the security deposit and pet damage deposit in partial satisfaction of the claim?

Background and Evidence

I have reviewed all evidence, including the testimony of the parties, but will refer only to what I find relevant for my decision.

The tenancy agreement recorded that this tenancy began on April 15, 2021, as a fixed term tenancy that rolled into a month to month after the first year. The parties agreed that the rent in the amount of \$1,501.19 was to be paid by the 15th day of each month and that the Tenant had paid a security deposit of \$725.00 and a pet damage deposit of \$725.00 at the outset of the tenancy. The Landlord submitted a copy of the tenancy agreement into documentary evidence.

The parties agreed that this tenancy ended on August 15, 2023, the date the Tenant moved out of the rental unit.

The parties agreed that the Tenant owes the Landlord \$726.38 in unpaid rent for August 2022.

The Landlord submitted that the Tenant left the rental unit uncleaned at the end of the tenancy and that they are claiming for \$540.16 in cleaning costs, consisting of \$256.16 for professional carpet cleaning, \$14.00 for light bulbs, \$60.00 for window blind cleaning, \$80.00 oven cleaning and 80.00 for general cleaning. The Landlord submitted a copy of the move-out inspection and 10 pictures of the rental unit into documentary evidence.

The Tenant agreed that they did not clean the window blinds, the carpets, or the oven at the end of this tenancy and that there were a few blown light bulbs but that they did do most of the cleaning. The Tenant agrees that they owe the Landlord \$410.16, for professional carpet cleaning in the amount of \$256.16, \$14.00 for replacement light bulbs, \$60.00 for window blind cleaning, \$80.00 for oven cleaning but that the rent of the rental unit was reasonably clean. The Tenant submitted that they do not agree to the Landlord's request for costs of \$80.00 for general cleaning.

Analysis

Based on the above, testimony and evidence, and on a balance of probabilities, I find as follows:

Are the Landlords entitled to a Monetary Order for unpaid rent and utilities?

I accept the agreed-upon testimony of these parties that the Tenant did not pay the full rent for August 2023 as required by their tenancy agreement.

Rules about payment and non-payment of rent

26 (1) *A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations, or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

I find that the Tenant breached section 26 of the *Act* when they did not pay the full rent in accordance with the tenancy agreement. I find that the Landlord has established an entitlement to recover the outstanding rent for the month of August 2023. Therefore, I grant the Landlord their requested amount of **\$726.38** in outstanding rent for August 2023, for this tenancy.

Is the Landlord entitled to a Monetary Order for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement?

Awards for compensation due to damage are provided for under sections 7 and 67 of the *Act*. A party that makes an application for monetary compensation against another party has the burden to prove their claim. The Residential Tenancy Policy Guideline #16 Compensation for Damage or Loss provides guidance on how an applicant must prove their claim. The policy guide states the following:

“The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To determine whether compensation is due, the arbitrator may determine whether:

- A party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- Loss or damage has resulted from this non-compliance;
- The party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- The party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

The Landlord is claiming for the recovery of their costs to clean the rental unit at the end of the tenancy in the amount of \$540.16, consisting of \$256.16 for professional carpet cleaning, \$14.00 for light bulbs, \$60.00 for window blind cleaning, \$80.00 oven cleaning and 80.00 for general cleaning.

During the hearing the Tenant agreed that they had not cleaned the carpets, the window blinds, or the oven and that they had left several lightbulbs blown in the rental unit at the end of this tenancy. As the Tenant agreed that these items were not cleaned at the end of this tenancy, I award the Landlord their request amount of **\$410.16**, consisting of \$256.16 for professional carpet cleaning, \$14.00 for replacement light bulbs, \$60.00 window blind cleaning, \$80.00 oven cleaning.

However, the parties to this dispute provided conflicting verbal testimony regarding the need for the \$60.00 in general cleaning that the Landlord has applied for in these proceedings. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim, in this case, that is the Landlord.

I have reviewed all of the evidence submitted by the Landlord and I find that there is insufficient evidence before me to substantiate the Landlord's claim for an additional \$60.00 in general cleaning for the rental unit at the end of this tenancy. Therefore, I dismiss the Landlord's claim for \$60.00 in compensation for general cleaning of the rental unit.

Is the Landlord entitled to recover the filing fee for this application from the Tenants?

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As it has been determined in this decision that the Landlord has been successful in their application, I find that the Landlord is entitled to the recovery of the **\$100.00** filing fee paid for their application.

Overall, I award the Landlord \$1,236.54, consisting of, \$726.38 in unpaid rent, \$256.16 in carpet cleaning, \$14.00 for light bulbs, 60.00 for blind washing, \$80.00 for oven cleaning, and \$100.00 in the recovery of their filling fee.

Is the Landlord entitled to retain all or a portion of the Tenant's security deposit in partial satisfaction of the monetary award requested?

I grant the Landlord permission to retain the \$1,236.54 from the deposits for this tenancy in full satisfaction of the amounts awarded in this decision.

I order the Landlord to return the remaining \$213.46 in deposits they continue to hold for this tenancy to the Tenant within 15 days of the date of this decision.

In order to enforce this order, I grant the Tenant a monetary award in the amount of \$213.46, consisting of the return of the \$725.00 security deposit and the \$725.00 for this tenancy, less the \$1,236.54 awarded to the Landlord in this decision.

Conclusion

I grant the Tenant a Monetary Order in the amount of **\$213.46**. The Tenant is provided with this Order in the above terms and the Landlord must be served with **this Order** as soon as possible. Should the Landlord fail to comply with this Order, this Order may be 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: November 14, 2023

Residential Tenancy Branch