



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, MNSD, FF

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- a monetary order for damage to the rental unit pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover its filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed that the other was served with the notice of hearing package for each application for dispute via Canada Post Registered Mail. Both parties also confirmed receipt of the submitted documentary evidence via Canada Post Registered Mail. As both parties have attended and have confirmed receipt of the notice of hearing package(s) and the submitted documentary evidence via Canada Post Registered Mail, I am satisfied that both parties have been sufficiently served as per section 90 of the *Act*.

Preliminary Issue

The landlord's agent clarified that they would be relying upon the landlord's "Tenant Move Out Statement", signed November 6, 2017 which details the landlord's claims for \$3,840.00 instead of the Residential Tenancy Branch, Monetary Order Worksheet (#RTB-37) signed and dated November 22, 2017 for \$2,320.00.

During the hearing repeated attempts to ascertain the details of the tenant's monetary claim were unsuccessful. At times, the tenant provided conflicting and contradictory details of his monetary claim. As further time proved unsuccessful, the tenant's application was dismissed with leave to reapply. Leave to reapply is not an extension of any applicable limitation period.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for damage and recovery of the filing fee?
Is the landlord entitled to retain all or part of the security deposit?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the both the tenant's claim and the landlord's cross claim and my findings around each are set out below.

This tenancy began on April 7, 2016 on a fixed term tenancy ending on March 31, 2017 and then thereafter on a month-to-month basis as shown by the submitted copy of the signed tenancy agreement dated March 23, 2016. The monthly rent was \$750.00 payable on the 1st day of each month. A security deposit of \$375.00 was paid on March 23, 2016.

The landlord has provided a copy of a notice of rent increase which states in part that rent was increased to \$777.00 dated December 12, 2016 effective on April 1, 2017. The landlord also claims that the tenant provided notice to vacate the rental space on October 30, 2017 to be effective on November 30, 2017, but vacated the rental premises pre-maturely on November 4, 2017.

The landlord seeks a clarified monetary claim of \$3,840.00 which consists of:

\$1,180.00	Cleaning
\$40.00	Curtain Cleaning

\$400.00	Garbage Removal, Furniture and personal items
\$2,100.00	Estimate for Carpet Replacement
\$120.00	missing outlet faceplates and 1 burnt out bulb

The landlord claims that the tenant vacated the rental unit leaving it dirty, with damaged (stained) carpet, furniture and personal items abandoned and missing 10 outlet faceplates and 1 burnt out bulb.

The landlord has provided in support of these claims a copy of the completed condition inspection report dated April 7, 2016 and an incomplete condition inspection report for the move-out dated November 6, 2017. The landlord did not serve the tenant with a notice of a final opportunity to complete a condition inspection report for the move-out. The landlord completed the condition inspection report for the move-out in the absence of the tenant noting that the tenant had "skipped". The landlord has also submitted a copy of "Move Out Cleaning Checklist" which both parties confirmed the tenant received. This checklist provides all of the details to the tenant in the event the listed items are not "cleaned". The landlord also relies upon a copy of an estimate of \$2,320.00 for carpet replacement. The landlord stated that the \$40.00 claim for curtain cleaning was listed on the "Move Out Cleaning Checklist", but a review of "Windows-Screens-Patio Door Blinds-Drapes" shows a claim already made of \$75.00. I note there are no further items regarding curtain cleaning for \$40.00 listed on this checklist. The landlord failed to disclose any further details on this item of claim. The landlord stated that she was unable to provide any details of the \$400.00 garbage removal claim (i.e. Invoices/receipts) or how much time was spent removing the items or their disposition. The landlord did not provide any details of the \$120.00 monetary claim for the 10 missing outlet faceplates or the one burnt out bulb.

The tenant disputes these claims stating that originally notice was given to the landlord to vacate the premises on October 30, 2017 to end it on November 30, 2017. On November 4, 2017, the tenant claims that most of his belongings were removed and that he left his keys with the landlord by sliding it under the resident manager's door. The tenant claims that the landlord was notified that he had left his keys as he was afraid of losing them and that he would return to pick up his belongings and clean the rental prior to November 30, 2017. The tenant claims that he discovered that all of his belongings were gone and did not return or contact the landlord. The tenants confirmed that no cleaning was done as the landlord had removed all of his remaining belongings without notice. The tenant claims that the landlord failed to properly store his personal belongings. The tenant also claims that the curtains were washed by him and re-hung a little "wrinkled". The tenant also argues that the carpets were stained upon the

beginning of his tenancy as noted in the completed condition inspection report for the move-in. The tenant stated that a bag of outlet faceplates were left in the corner of the dining room as per the submitted photograph.

The landlord disputed the tenant's claims that no notification was given that the tenant would return to claim his belongings and clean the rental space prior to November 30, 2017.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

In this case, I accept the affirmed testimony of both parties and find on a balance of probabilities that the landlord has established that the tenant vacated the rental premises without further communications on November 4, 2017 leaving it dirty with his personal belongings and furniture. I find that the tenancy ended on November 4, 2017 as no further communications were made by the tenant to the landlord. The tenant confirmed in his direct testimony that he slid the keys under the resident manager's door on November 4, 2017 without further communications. The landlord relied upon a voicemail left on November 8, 2017 which states in part that the tenant indicated that he had moved out, the rent was paid for November and that it should cover the cost of the cleaning and garbage removal. The actual voice message was not provided.

The landlord has established a claim for cleaning based upon the standard move out cleaning checklist which the tenant confirmed receiving. This is supported by the 57 photographs provided by the landlord in conjunction with the incomplete condition inspection report for the move-out dated November 6, 2017. The tenant confirmed that no cleaning was performed except for the curtains.

However, I find that the landlord has failed to establish a claim for the following items:

\$40.00	Curtain Cleaning
\$400.00	Garbage Removal, Furniture and personal items
\$2,100.00	Estimate for Carpet Replacement
\$120.00	missing outlet faceplates and 1 burnt out bulb

On the above noted list, I noted that the \$40.00 curtain cleaning claim was disputed by the tenant. The landlord was also unable to provide any supporting evidence that the curtains were left dirty. The landlord's own incomplete condition inspection report for the move-out dated November 6, 2017 notes only "F" for the living room and master bedroom with no explanation for what "F" references. Using the landlord's report a grading of "C" would be required for cleaning to determine if it was necessary. No other indications are noted.

The landlord's claim for garbage removal is in reference to removal of the tenant's personal belongings, however, the landlord has failed to provide any details of how long it took or what expenses were incurred to total the \$400.00 claim. The landlord only stated that it was for their time.

The landlord's claim for the estimated carpet replacement is dismissed. The tenant having disputed this claim noted that the completed condition inspection report for the move-in dated April 7, 2017 identifies stains throughout the carpeting. The landlord confirmed these details, but was unable to provide any details distinguishing the staining of the carpets that the landlord claims the tenant was responsible. I also note that the landlord provided undisputed testimony that the carpet was replaced in December 2017, but for unknown reasons rely upon an estimate (dated November 20, 2017) for the hearing 6 months later.

On the landlord's claim of \$120.00 for 10 missing outlet faceplates and 1 burnt out lightbulb, I find has failed. Although the landlord has provided numerous photographs of missing outlet faceplates, no monetary details have been provided by the landlord for these costs, except a notation in the estimate for the carpet replacement of \$120.00. This portion of the landlord's claim is dismissed.

The landlord has established a total monetary claim of \$1,180.00. The landlord having been partially successful is entitled to recovery of the \$100.00 filing fee. In offsetting this claim, I authorize the landlord to retain the \$375.00 security deposit in partial satisfaction of the claim.

Conclusion

The landlord is granted a monetary order for \$905.00.

This order must be served upon the tenant. Should the tenant fail to comply with the order, the 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: July 04, 2018

Residential Tenancy Branch