



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Skyline Real Estate Holdings Inc. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes

MNDCL, MNDL, MNRL, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for a monetary claim of \$1,525.00 for unpaid rent; for compensation for damage caused by the Tenant, their pets or guests to the unit of \$2,075.00; for compensation of \$95.00 for monetary loss or other money owed; and to recover the \$100.00 cost of their Application filing fee.

The Tenants, M.J. and D. F., and an agent for the Landlord, J.B. ("Agent"), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenant and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

Preliminary and Procedural Matters

The Parties provided their email addresses at the outset of the hearing and confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

Issue(s) to be Decided

- Is the Landlord entitled to a monetary order, and if so, in what amount?
- Is the Landlord entitled to recovery of the Application filing fee?

Background and Evidence

The Parties agreed on the following, regarding the tenancy. The fixed term tenancy began on August 19, 2018, and was to run to August 31, 2019, with a monthly rent of \$1,525.00, due on the first day of each month. The Tenants paid a security deposit of \$742.50, and no pet damage deposit. The tenancy ended on June 30, 2019, after the Tenants attended the Landlord's office on May 31, 2019, to give notice of their intent to end the tenancy. The Landlord returned the Tenants' security deposit to them. The Tenants provided the Landlord with their forwarding address when asked via email on July 1, 2019. The Parties conducted a move-in condition inspection, and the Landlord did the move-out inspection, although the Tenants were not present for this. The rental unit is approximately one year old and has two bedrooms and two bathrooms.

The Landlord submitted a monetary order worksheet with their claims listed, as follows:

	Receipt/Estimate From	For	Amount
1	Landlord	Cleaning charges	\$375.00
2	Landlord	Full plaster, patch and paint	\$1,500.00
3	Landlord	Carpet cleaning	\$200.00
4	Landlord	Mail key deposit	\$75.00
5	Landlord	July 2019 rent	\$1,525.00
6	Landlord	NSF fee	\$20.00
		Total monetary order claim	\$3,695.00

#1 CLEANING CHARGES → \$375.00

The Agent said that the appliances were dirty at the end of the tenancy and that they had been brand new when the Tenants moved in. He said they billed the Tenants

\$25.00 per appliance to clean them, including the refrigerator, stove, washer, dryer, and dishwasher. The Agent said they also had to clean the floors, the cupboards, and the walls. He said there had to be another full cleaning once the repair work was done. The Agent said these cleaning costs are listed in the outgoing condition inspection report, and if something was clean, it's not in the equation. He said they charge \$25.00 per hour regardless of what the item is.

The Tenant, D.F., said: "I spent a solid day cleaning the fridge, stove, and dishwasher, so they wouldn't charge me. I wish I was present for the walk-through at the end, but no one tried to contact me to schedule the walk-through."

The move-out condition inspection report ("CIR") states that to clean the rental unit, it will take two people, four hours each.

The Agent said he cannot speak to the contact with the Tenants about the move-out CIR. He said the assistant resident manager took care of that. The Agent also said that the Tenants vacated after having given an incomplete notice. They moved and we were required to do that [inspection] immediately. He said: "They hadn't given a forwarding address. I can't speak to that manager and why he didn't schedule the inspection at the appropriate time. It was a fixed tenancy; they can't just walk out of the unit."

The Tenants said: "The Landlord needs to contact us to do the walk-through; we gave them our information when they asked us. Not getting a chance to do that sucks for us, because we would have done the walk-through. And when we gave our notice for June 30, they said everything was okay. They said there was something on our door re insufficient notice, but we didn't receive that. I went to the Landlord's office in mid-July and they didn't say anything about doing a walk-through, except that it was already done, without attempting to contact me in any way."

The Agent submitted photographs of the rental unit that he said were taken during the move-out condition inspection. The photographs are close-up shots of dirt and lint left in the laundry appliances, close-up shots of holes in the wall, a dirty window ledge, dirty carpets, a reasonably clean looking oven, clean rooms, a stain or dirt on the balcony and other photographs of indeterminate objects.

#2 PLASTER PATCH & PAINT → \$1,500.00

The Agent said that this is the amount quoted by a local contractor who was doing all of

this work for them. The Agent said the contractor told him that due to the matte paint in this unit, and the holes, dents, and scuffs, that it would require being patched and painted. The Agent said there was dirt and grime on the walls, and it would take \$1,500.00 worth of work to bring the unit to rent-ready -- in same state as when the Tenants took it over at the start of the tenancy. He said: "It was brand new at the start of the tenancy."

The Tenants asked how it could add up to \$1,500.00. They said there were four holes in the wall from a TV mount. The Tenant said: "Their pictures don't show damage, so it's hard to say there was damage. And we were not present for the walk-through." The Tenant added: "I didn't know we would be charged for putting up pictures on the walls. There's nothing in our agreement that said we couldn't put pictures up, which were most of the holes in the wall. It's not brand new anymore, so how could they make it brand new again?"

The Agent said:

As far as the holes, it's stated in the walk-through to all tenants: you're more than welcome to hang pictures, but you must return the walls to same state they were at the start of the tenancy – patching and painting and restoring it to a reasonable state of cleanliness and a rent-readiness. To compare it to other apartments – it was in a luxury state. As per the initial walk-through – everything states 'new'. It's a brand new, luxury-style condominium apartment building. We tell them when they move in. It was not left in rent-ready condition. I can understand one or two holes in the wall, if the rest is immaculate. This is not a discussion of that, so the expectation was to correct the damage.

The Agent said that he does not have receipts for this work, because it goes directly to the Landlord's internal accounting department.

#3 CARPET CLEANING → \$200.00

The Agent said that they require the carpets be shampooed, and a receipt provided. He said that they allow tenants to rent the equipment and do it themselves, but that it needs to be done for hygiene reasons. He said, otherwise the cost is \$200.00. The Tenants said they were fully expecting the Landlord to clean the carpets, so they accepted this charge.

#4 MAIL KEY DEPOSIT → \$75.00

The Agent said that the mail keys were not returned, and that Canada Post controls those locks, and they bill the Landlord for them. The Agent said that the locks had to be changed to avoid unauthorized access. "We use common mail boxes in the lobby, just outside the secure door. [Canada Post] locks it and gives us the keys to hand out."

The Tenants said the Landlord is charging them for two keys that they lost, but they said they only received one key, which they admitted having lost. There is no indication on the move-in CIR of how many mail or other keys the Tenants were given at the start of the tenancy.

#5 JULY 2019 RENT → \$1,525.00

The Agent said: "The Tenants' July rent cheque was "NSF" from the bank. He said: "They didn't pay it and it bounced. New tenants moved in, but not immediately. I don't have that number that would tell me when they moved in."

The Agent said the Landlord did not try to rent the unit early enough, because the Tenants did not give proper notice. He said: "With the amount of damage, painting and cleaning to be done, it was not immediately available. We didn't have someone move in immediately. Usually, it takes 15 days before they can move in." The Agent did not know if the rental unit was shown to any prospective tenants during June 2019.

The Tenants said: "We thought we were allowed to leave. There were no letters on the door or anything, so we left thinking we were okay to leave. Again, we didn't know it was insufficient notice. We didn't receive anything on the door, and they accepted our keys."

#6 NSF Fee → \$20.00

The Agent said that the rent was arranged to come out automatically by pre-authorized debit. "On July 3 we received notification that it didn't go through. The fee for this is stated as \$25.00 in the tenancy agreement, but it's in our system as \$20.00, so that's all we're going for."

The Tenants said they had to pay rent and security deposits at other locations. They said they assumed the Landlord would not charge them for another month's rent.

The Agent said that the tenancy agreement says what is considered sufficient notice and whether you're responsible or not for paying the rent. "If that's your last month, where was the rent going to come from? The terms of the lease weren't followed regarding proper notice."

The Tenant said: "We went to the front office and they said everything was sufficient, and now you're telling me that it wasn't. At the time, that's what we were told. I can't see anything in the lease saying that we didn't do it properly."

The Agent pointed to clause 3 of the tenancy agreement, which says the Tenants are required to pay rent until August 31, 2019; however, they vacated on June 30. The Agent said that the Tenants should have read their lease to know that you cannot end a fixed term tenancy early. The Tenant said: "I clearly asked how I could cancel my lease early" at the Landlord's office.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Section 32 of the Act states that tenants "...must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant." Section 37 states that tenants must leave the rental unit "reasonably clean and undamaged".

Policy Guideline #1 helps interpret these sections of the Act:

The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises), or for cleaning to bring the premises to a higher standard than that set out in the *Residential Tenancy Act* or *Manufactured Home Park Tenancy Act* (the Legislation).

Reasonable wear and tear refer to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. An arbitrator may determine whether or not repairs or maintenance are

required due to reasonable wear and tear or due to deliberate damage or neglect by the tenant. An arbitrator may also determine whether or not the condition of premises meets reasonable health, cleanliness and sanitary standards, which are not necessarily the standards of the arbitrator, the landlord or the tenant.

[emphasis added]

Pursuant to section 35 of the Act, a landlord and tenant must inspect the condition of the rental unit on or after the day the tenant ceases to occupy the rental unit, or on another mutually agreed day. Subsection 35(2) requires a landlord to offer a tenant “at least 2 opportunities, as prescribed, for the inspection.” “As prescribed” means as prescribed by regulation. Section 17(1) of the Regulation states that a landlord must offer a tenant a first opportunity to schedule the condition inspection by proposing one or more dates and times. Section 17(2) of the Regulation states that if the tenant is not available at the time offered for the first opportunity, that the landlord must propose a second opportunity to the tenant “by providing the tenant with a notice in the approved form.”

The “approved form” is RTB form #RTB-22 “Notice of Final Opportunity to Schedule a Condition Inspection”. A landlord is required to use this form to give the tenant a second opportunity to participate in the move-out condition inspection. The form sets out the Tenant’s name, the rental unit address, the landlord’s name, and the date on which the landlord proposes that the condition inspection be conducted, signed by the landlord.

If a landlord does not provide the tenant with this written notice of the second opportunity in the prescribed form, the landlord’s right to claim against deposit(s) for damage to the rental unit is extinguished pursuant to section 36(2)(a).

In the case before me, the Parties agreed that the Tenants gave the Landlord their forwarding address on July 1, 2019. They also agreed that the Landlord was aware in May 2019 that the Tenants were planning to move at the end of June 2019. I find that prior to the end of the tenancy, the Landlord had sufficient opportunity to arrange a move-out condition inspection with the Tenants when the unit was empty. However, there is insufficient evidence before me that the Landlord took this step.

Accordingly, I find that the Landlord has not complied with the Act in this regard, so they have extinguished their right to claim against the security deposit, pursuant to section 24 of the Act.

#1 CLEANING CHARGES → \$375.00

The Agent said that they charge \$25.00 per hour “regardless of what the item is”, which means that this cleaning job took 15 hours. The move-out CIR said that it would take two people four hours each to do the job, which I appreciate was an estimate; however, this would amount to \$200.00 for eight hours of cleaning or approximately half of the amount charged.

The Tenants were not present at the move-out condition inspection; therefore, they were unable to approve or comment on the Landlord’s review of the condition of the rental unit at the end of the tenancy. However, the Landlord supplied photographs that I find showed areas that a reasonable person would have cleaned, and other areas that looked reasonably clean. The Parties agreed that this is a two-bedroom, two-bathroom rental unit, with what appears to be a laundry room. Accordingly, I find that an appropriate amount of time to bring it to a reasonably clean condition, as required by the Act, would be five and a half hours. This is based on the number of rooms in the rental unit and the level of cleanliness illustrated in the Landlord’s photographs. I, therefore, award the Landlord **\$137.50** for this claim.

#2 PLASTER PATCH & PAINT → \$1,500.00

The Agent’s evidence is that the tenancy agreement requires tenants to “...return the walls to same state they were at the start of the tenancy – patching and painting and restoring it to a reasonable state of cleanliness and a rent-ready state.” However, in this situation, I find that this amounts to the Tenants being required to repair normal wear and tear.

I find that the Agent did not provide sufficient evidence that proved on a balance of probabilities that the Tenants left deep gouges or other damage to the rental unit, beyond normal wear and tear. Further, I find that the absence of an invoice setting out what was done over what period of time affects the reliability of the Landlord’s evidence in this regard.

I find that the Tenants used the premises in a reasonable fashion and were not responsible for returning the rental unit to a condition mirroring brand new. As such, I find that the Landlord has not provided sufficient evidence to support their claim in this category. I dismiss this claim without leave to reapply.

#3 CARPET CLEANING → \$200.00

The Parties agreed that this claim was reasonable, therefore, I award the Landlord **\$200.00** for carpet cleaning.

#4 MAIL KEY DEPOSIT → \$75.00

I find that the Landlord did not submit sufficient evidence of how many mail box keys they gave the Tenants, and the Tenants said they only received one key, which they admit to having lost. The Agent indicated that the Landlord sought compensation for the Tenants' having lost two keys; however, I find that it is more likely than not that the Tenants only had one mail key, for which they are responsible. Further, the Landlord did not submit evidence to support how much Canada Post charges for this service. As a result of the evidence before me, I award the Landlord with the recovery of half of this claim or **\$37.50**.

#5 JULY 2019 RENT → \$1,525.00

Section 45 of the Act sets out the means by which a Tenant must give notice to end a tenancy. Subsection (2) addresses fixed term tenancies:

Tenant's notice

45 (2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

...

(4) A notice to end a tenancy given under this section must comply with section 52 *[form and content of notice to end tenancy]*.

In the case before me, the Tenants said that they went to the Landlord's office to enquire about how to end their tenancy. However, a landlord is not responsible for

educating tenants about their rights and responsibilities under the Act. The Tenants could have called the RTB and/or read the Act and/or their tenancy agreement. I find that the Landlord provided insufficient evidence of trying to mitigate their losses by seeking other tenants as soon as possible. However, I also find that the Landlord would not have been able to rent the unit for July 1, 2019, given the cleaning needed in the unit. The tenancy was to run to August 31, 2019, and the Landlord is not claiming for August 2019; therefore, I find it more likely than not that they found someone to rent the unit for that month.

Based on the evidence before me overall in this matter, I award the Landlord recovery of July 2019 rent from the Tenants in the amount of **\$1,525.00**.

#6 NSF Fee → \$20.00

The Tenants acknowledged that they did not have sufficient funds in their account to cover the July rent for this rental unit. The *Residential Tenancy Act* Regulation sets out the allowable fees that can be charged by a landlord:

Non-refundable fees charged by landlord

7 (1) A landlord may charge any of the following non-refundable fees:

. . .

(d) subject to subsection (2), an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent;

. . .

(2) A landlord must not charge the fee described in paragraph (1) (d) or (e) unless the tenancy agreement provides for that fee.

In this case, clause 4(b)(i) of the tenancy agreement states:

If the Rent or any other sum owing to the Landlord is not honoured at the financial institution upon which it is drawn, the Tenant will pay to the Landlord, in respect of the dishonoured payment, the dishonoured payment charges charged to the Landlord, plus the \$25.00 fee for late rent, in addition to the sum owing.

The Agent said the tenancy agreement requires tenants to pay \$25.00 for this type of breach, "...but in our system it is \$20.00, therefore, that is all we're going for." Based on the evidence before me overall, I award the Landlord **\$20.00** for this category.

Summary/Set Off

	For	Award
1	Cleaning charges	\$137.50
2	Full plaster, patch and paint	\$0.00
3	Carpet cleaning	\$200.00
4	Mail key deposit	\$37.50
5	July 2019 rent	\$1,525.00
6	NSF fee	\$20.00
	Total monetary order claim	\$1,920.00

Based on the evidence before me, overall, I find the Landlord has provided sufficient evidence to warrant a monetary award of \$1,920.00. The Parties agreed that the Landlord paid the Tenants' security deposit back prior to the hearing; therefore, it is not available to set off against this award.

Given that the Landlord was predominantly successful in this matter, I also award the Landlord recovery of the \$100.00 cost of their Application filing fee. The Landlord is awarded a Monetary Order of **\$2,020.00**.

Conclusion

The Landlord's claim for compensation for damage or loss against the Tenants is successful in the amount of \$1,920.00. The Landlord is awarded recovery of the \$100.00 filing fee for this Application from the Tenants.

I grant the Landlord a Monetary Order under section 67 of the Act from the Tenants in the amount of **\$2,020.00**.

This Order must be served on the Tenants by the Landlord and may be filed in the

Provincial Court (Small Claims) 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: December 4, 2019

Residential Tenancy Branch