



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, MNDL-S, FFL

Introduction

The landlord filed an Application for Dispute Resolution (the “Application”) on October 7, 2020 seeking an order for monetary compensation for unpaid utilities, and for damage they allege was caused by the tenant. Additionally, they applied for reimbursement of the Application filing fee. The matter proceeded by way of a hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the “Act”) on January 26, 2021.

Both parties attended the conference call hearing. I explained the process and both parties had the opportunity to ask questions and present oral testimony during the hearing.

The tenant confirmed they received the landlord’s prepared documentary evidence. The landlord provided they provided this directly to the tenant by attaching it to the door of the tenant’s current address. The landlord also confirmed their receipt of the evidence prepared by the tenant. In the hearing, I confirmed that each party’s evidence was submitted to the Residential Tenancy Branch for my reference.

Issue(s) to be Decided

- Is the landlord entitled to a monetary order for recovery of utilities and/or compensation for damage pursuant to section 67 of the *Act*?
- Is the landlord entitled to recover the filing fee for this Application pursuant to section 72 of the *Act*?

Background and Evidence

I have reviewed all written submissions and evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this section.

The tenant provided a copy of the tenancy agreement. Both parties verified the relevant terms therein. The tenant originally moved into the unit in 2013, and the agreement provided was the one renewed in 2018. This shows the tenant paid a security deposit of \$425 and a pet damage deposit of \$425 in 2013. The agreement also specifies: "Plus ½ utilities" in addition to the base amount of rent at \$954.27.

The final day of the tenancy was September 30, 2020. On this date, the parties had a move-out inspection meeting. According to the tenant, the landlord wanted them to pay for new flooring, and wanted to keep the security deposit for this reason. The tenant stated they were willing to pay for cleaning, but not new flooring, being the kitchen linoleum and living room carpet. The landlord states the meeting ended abruptly, with the tenant leaving before signing the Condition Inspection Report.

The landlord provided a copy of this Condition Inspection Report, as a reference for the condition of the unit at both the start and end of tenancy. In their submission, they stated: "report shows no significant damage to kitchen/dining/living room floors when tenant took residency."

The landlord presented a list to describe what is depicted in photos that they submitted for review. In the landlord's submission these show:

- permanent linoleum damage to large kitchen area because of rug taped to floor
- dining room linoleum damage from another area rug that caused yellow dis-coloring and black tape
- "rusty holes" (35) and long deep cuts in carpet in living room carpet from tenant heavy furniture
- living room carpet damage from cat scratching.

They presented a receipt to show \$4,616.50 they paid. This is due to "upgrade flooring to laminate for future selling purposes."

Also: "We estimate it would have cost at least \$1,875.00 to replace new linoleum to kitchen dining rooms and new carpets to living room." This is a portion of the cost, where the landlord stated the cost of replacement of the flooring and carpet – merely a replacement with standard

linoleum used, not an upgrade – would make it “reasonable that cost would be \$2,000 in today’s market.”

The landlord provided that the carpet in the living room is “not that old” and was probably put in just before 2013, at the start of the tenancy it was in good condition. They stated it was their estimate that the flooring was replaced, changed at the time when a prior tenant did it between 2010 and 2013.

The tenant responded by saying they “don’t want to be unreasonable”. They acknowledged the cat damage and stated they were “perfectly willing to pay” for that. They provided two videos that depict the “move out video kitchen” and “move out video living room.” In the hearing, the tenant described these videos as showing “minor flaws in carpet and paint/scratches”. This reveals the “well-used condition.”

In their January 1, 2021 statement, they stated: “[The landlord] is now attempting to get me to pay thousands for normal wear and tear for the unit I occupied for 7 years.” The tenant provided more detail on the final meeting they had with the landlord, specifically with regard to the carpet and floor:

- dents made in the carpet were there because of furniture in place for 7 years
- they did research on how to properly clean linoleum and purchased cleaning items
- they were “completely willing to have that cleaning time deducted” – and: “I misjudged how long it would take me to completely clean out the unit so I was completely willing to pay for the time to do what I had not done.”
- they attempted to inform the landlord on how to completely clean the floor, using instructions they found through research
- they informed the landlord that “[they were] not paying for 7 years worth of wear and tear.”

The landlord presented copies of their evidence showing remaining amounts for utilities. These total \$125.34. For a \$25 amount of water in their Application, the landlord clarified in the hearing the actual amount was \$27.77. This brings the total to \$128.11. The tenant made no objection to this amount in the hearing and stated they “never had any intention of not paying.”

The landlord also presented their request for \$50 for cleaning the oven. This was 2 hours of their own time, for which they set \$25 per hour. The tenant responded that they were perfectly willing to cover this.

Analysis

In the hearing the tenant accepted the validity of the landlord's claim for repayment of utilities owing. Additionally, I find they accepted the cost of cleaning the oven. I so award the landlord these amounts as claimed, totalling \$178.11.

The *Act* section 37(2) requires a tenant, when vacating a rental unit, to leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and give the landlord keys and other means of access.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide enough 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.

As set out above, the landlord claims for replacement of the equivalent value of a standard linoleum and carpet replacement. They estimated this cost to be \$1,875. To determine the landlord's eligibility for compensation here, I carefully examine the evidence they present for each item, to establish whether they have met the burden of proof.

The tenant provided comprehensive videos showing the kitchen floors and the living room carpet. The kitchen floor has "discoloration". On this, I accept the tenant's evidence that they purchased the required cleaning products and made the effort to apply the correct method to clean the discoloration. They described in their written submission – which the landlord did not refute – was that there was no attempt made to clean the linoleum, and no application of a prescribed method that they researched.

At the same time, I find the tenant acknowledged that there was some amount of cleaning yet to be done, targeting the linoleum where discolored. It is unknown how this extra cleaning would have improved the appearance of the linoleum; however, I accept the tenant's acknowledgement that they were "completely willing to pay for the time to do what I had not done." I give weight to the tenant's statement that they purchased products and actually researched how best to tackle linoleum stains.

Applying the landlord's rate per hour from the time they added to clean the oven, I award the landlord \$50 for each of the two areas of linoleum needing further cleaning. This is \$100 for extra cleaning not undertaken by the tenant by the time they left on the final day of the tenancy. I attribute any other need for linoleum replacement to wear and tear where the linoleum was in place for quite some time.

I approach the issue of carpeting in a twofold manner: one piece is the cat scratches in one separate area; the other is the setting of furniture over quite some time that left impressions in the carpet.

For the scratches in the carpet, I find the tenant freely admitted that their cat was the cause. This is damage caused by a pet, which is properly covered by the pet damage deposit. While this does constitute damage, I find it contributes toward the need for carpet replacement; however, it is by no means exclusively the cause of the need for replacement. From my review of the landlord's photo and the video from the tenant, I find the cat damage is in one small discrete area. This is not a matter of the cat destroying the whole carpet. For this damage caused by a pet, I grant the landlord an award of \$100, a nominal payment toward a carpet replacement. This amount is an estimate merely of the small area of noticeable damage in the carpet.

I accept the tenant's evidence that the furniture in the living room was in place for the entirety of the tenancy for seven years. From my review of the photo and video, this naturally left impressions in the carpet. I attribute this to wear and tear over the longer term of the tenancy and not through wilful damage or neglect of the tenant. There is no evidence of a requirement in place for the periodic shifting of furniture as a condition of the tenancy to otherwise alleviate what occurs naturally with carpet bearing the weight of furniture. I find these impressions, as shown clearly in the landlord's photo, are due to wear and tear and there is no amount to the landlord for this.

Furthermore, the landlord's own estimate was that carpet was in place for quite some time. This is an estimate of approximately ten years. I find this approaches the end of the useful life of this carpeting, in use day-to-day within a tenancy lasting seven years.

The tenant undertook to clean the carpet, as shown in the video they provided. Minus the discrete area of cat damage, I find the tenant has left the carpet relatively clean, and otherwise undamaged except for reasonable wear and tear.

As the landlord is partially successful in their claim, I find the landlord is entitled to \$50 toward recompense of the Application filing fee.

On their Application, the landlord specified they wish to retain the security deposit and pet damage deposits. They have the right to make a claim against these deposits, within the timeframes allowed in the *Act*. The landlord is holding the amount of \$850 in total. I grant the landlord \$428.11 to them for the above amounts. This leaves \$421.89 that the landlord shall return to the tenant. This is an application of section 72(2)(b) of the *Act*.

Conclusion

I provide the tenant a Monetary Order in the amount of \$421.89 for compensation set out above. This is to give effect to my order that the balance of the deposit amounts be returned.

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 *Act*.

Dated: January 27, 2021

Residential Tenancy Branch