



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNDL-S, FFL

Introduction

The Landlord filed an Application for Dispute Resolution (the “Application”) on July 14, 2022 seeking compensation for damage in the rental unit, and the filing fee.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on April 6, 2023. Both the Landlord (*i.e.*, their agent) and the Tenant (via a family member) attended the hearing.

Preliminary Matter – parties’ service of evidence

The Tenant confirmed they received the Notice of Dispute Resolution Proceeding in July 2022, and evidence as provided by the Landlord in March 2023.

The Landlord took issue with the Tenant not provided three separate packages of evidence for each named Landlord. Given that an agent for the Landlord made the Application and handled all aspects of this dispute, I find no issue with the Tenancy providing evidence in this manner and there is no prejudice to the Landlord.

Issue(s) to be Decided

- Is the Landlord entitled to monetary compensation for 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

The Landlord provided a copy of the tenancy agreement in their evidence. This shows the tenancy started between the prior Landlord and the Tenant on July 1, 2021, set for a one-year fixed term to end on July 1, 2022. The rent amount was \$1,200, and the Tenant paid a security deposit of \$600.

The Landlord in the original agreement was the Tenant's family member. This same family member is the person who represented the Tenant in this hearing. The current Landlord (*i.e.*, the Applicant here) purchased the rental unit in December 2021, with the sale closed on March 14, 2022. The current Landlord chose to adopt the tenancy agreement at that time.

The Tenant then later decided to end the tenancy with proper notice to the Landlord. The final date of this tenancy was June 30, 2022 as indicated by the Landlord on their Application. The Tenant's notice to the Landlord appears in the Landlord's evidence. Both parties acknowledged the Tenant's reference to the security deposit amount of \$800 was an error in that document.

Another family member of the Tenant met with the Landlord on June 30, 2022 to complete a final inspection of the rental unit. The Tenant had retained a copy of the condition inspection report from their move in; at the time of the final inspection, the Landlord did not have a copy of that document. That family member completed the inspection with the Landlord and returned the keys for the rental unit to the Landlord at that time.

This particular family member provided a statement into evidence, dated March 24, 2023. They noted 5 hours they spent cleaning the rental unit prior to the inspection. The unit was "exceptionally clean". At the time the Landlord did not mention the need for extra cleaning or other defects. When discussion turned to the return of the security deposit, the Landlord "noticed a bit of wear to the cabinets" and stated they would check with the owner. This family member also set out that any weeds in the yard would have been "minimal", and potted plants were removed at the end of the tenancy.

The Landlord provided this completed final Condition Inspection Report. This noted some kitchen cabinet wear on edges, a cracked living room and bedroom window blinds' slats bent, the need for carpet cleaning. This copy bears the Tenant's family

member's signature on the final page, and a forwarding address, with the report dated June 30, 2022.

The Landlord made their Application at the Residential Tenancy Branch on July 14, 2022. They listed miscellaneous cleaning for dirty walls (\$160), carpet cleaning (\$157), flower beds' weeding patio pressure wash (\$400), and window covering replacement (\$350). The Landlord also listed "major patch and paint" (\$2,500), and flooring replacement (\$3,000). This was as emailed to the Tenant's representative who attended the move-out condition inspection meeting, sent on July 14.

The Landlord provided photos of blinds in the rental unit, showing some bent slats.

In the interim, the Landlord had work completed. Their provided invoice dated July 1, 2022 shows the following work:

- clean carpet: \$150 for two rooms
- house cleaning: \$160 for four hours
- pressure wash patio: \$200 for two hours
- weeding flower bed: \$100
- replace blinds and install new slats: \$200
- materials: \$152.99

On a completed "Monetary Order Worksheet" dated March 20, 2023, the Landlord listed the amount of \$962.99. In the hearing they acknowledged they did not add the GST amount from the invoice, and stated they tried to lower costs as much as possible. The Tenant amended their Application on March 21, 2023 to show this amount.

The Tenant's basic response to the Landlord's Application and evidence is that any damage to the rental unit, as perceived by the Landlord, was caused by a prior tenancy. The Tenant's agent in the hearing was the Landlord at that time.

The Tenant forwarded evidence to the Landlord in this matter on March 9, 2023, containing the following:

- The Tenant's agent (who was present in the hearing) listing that they were the Landlord at the home from July 2017 to March 2022, thus "fully aware of any/all deficiencies with the property". The blinds were "in poor condition due to creasing, bends and some had limited functionality" in July 2017. The Tenant's agent did not change the window coverings. As well, the concrete patio had

“permanent stains and permanent marking on the surface” when purchased in July 2017. These points are set out in the move-in condition report they prepared at the start of this tenancy, completed as the Landlord with their family member as the Tenant.

- A former Tenant’s statement in which that former Tenant states that “all the blinds in this unit were bent and or damaged prior to and during my entire tenancy,” and “there were multiple permanent stains on the back 10x10 cement patio.” This was as observed when the moved in to the rental unit in October 2019. The Tenant also provided the previous tenancy agreement from this former tenant.
- With reference to the Tenant’s tenancy agreement, there was no specific responsibility for landscaping by the Tenant.
- With reference to the inspection report, there are upon move-in noted pre-existing conditions”.

In the hearing, the Tenant noted the Landlord’s lack of evidence for anything at the end of the tenancy except for blinds. The previous tenant in their statement noted blinds were bent. Additionally, anything to do with weeds was “incidental”. They stated categorically: there as “no damage, and no uncleanliness” and cleaning was not imposed on the Tenant by the tenancy agreement.

Analysis

The *Act* s. 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 all the keys and other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

To be successful in a claim for compensation for damage or loss the 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.

From the evidence and testimony of the parties, I find there is no solid proof from the Landlord of the need for additional cleaning or other types of damage in the rental unit at the end of this tenancy. The most important element is proving that a damage or loss exists, and the Landlord did not bring this individual point to fruition with proof of the need for cleaning or damage. There are no photos showing damage or need for other special cleaning as at the end of this tenancy.

On the individual point of blinds, I find the evidence provided by the Landlord does not show substantial damage. With the specific point about bent slats or other issues with the blinds noted in the condition inspection report for the start of the tenancy, I find that the blinds were not pristine at the start of the tenancy. The blinds are noted as “creased” at the start of the tenancy, as specified in the report. I cannot attribute this directly to the Tenant.

For other items, the Landlord did not provide proof that a damage or loss exists. I give the Landlord’s statements and evidence of work completed (in the form of the invoice) less weight against what the Tenant provided, being a statement from the former landlord, a statement from an earlier former tenant, and reference to the condition inspection report completed at the start of the tenancy.

I appreciate this put the Landlord in a difficult position in assessing the condition of the rental unit as at the end of the tenancy without knowing of the move-in report. Even though the Landlord substantially reduced their initial claim, I cannot conclude that any issues in the rental unit were not present at the start of the tenancy. I find there is insufficient evidence to support that the Tenant breached the *Act* or the tenancy agreement in leaving the rental unit in any state worse than what it was at the start of the tenancy.

I dismiss the Landlord’s claim in its entirety, and order the return of the security deposit, in full, to the Tenant. As a measure of surety in this matter, I grant the Tenant a Monetary Order for that amount.

Conclusion

Pursuant to s. 38 of the *Act*, I grant the Tenant a Monetary Order in the amount of \$600 for the return of the security deposit. I provide this Monetary Order in the above terms and the Tenant must serve the Monetary Order to the Landlord as soon as possible. Should the Landlord fail to comply with the Monetary Order, the Tenant may file it 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: April 10, 2023

Residential Tenancy Branch