



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

A matter regarding W. V. FALCUS & ASSOCIATES (1977)  
LTD. and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDL-S, FFL  
                              MNSD, MNETC, FFT

### **Introduction**

This hearing dealt with the landlord's Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for:

- Compensation for damage caused to the rental unit during the tenancy by the tenant, their pets, or their guests;
- Retention of the security deposit; and
- Recovery of the filing fee.

This hearing also dealt with the tenant's Application for Dispute Resolution under the Act for:

- Compensation under section 51(2) of the Act because they were served with a notice to end tenancy for landlord's use of the property and the landlord failed to use the property as required;
- The return of all or a part of the security deposit; and
- Recovery of the filing fee.

Tenant MG. and occupant C.T. attended the hearing for the tenant.

Agents K.E. and C.G. attended the hearing for the landlord.

### **Service of Notice of Dispute Resolution Proceeding (Proceeding Package)**

The parties acknowledged receipt of each other's Proceeding Package. No concerns about service were raised. I therefore found the parties duly served for the purposes of the Act and the Rules of Procedure and the hearing of both applications proceeded as scheduled.

## **Service of Evidence**

The parties acknowledged receipt of each other's documentary evidence. No concerns about service were raised. I therefore found the parties duly served for the purposes of the Act and the Rules of Procedure and the documentary evidence before me from both parties was accepted for consideration.

## **Preliminary Matters**

The parties agreed that the tenant was not served with a notice to end tenancy for landlord's use of property under section 49 of the Act. As a result, the tenant's claim for compensation under section 51(2) of the Act was dismissed without leave to reapply.

## **Issues to be Decided**

Is the landlord entitled to compensation for damage caused to the rental unit during the tenancy by the tenant, their pets, or their guests?

Is the landlord entitled to retention of the security deposit?

Is the landlord entitled to recovery of the filing fee?

Is the tenant entitled to the return of all or a part of the security deposit?

Is the tenant entitled to recovery of the filing fee?

## **Background and Evidence**

The parties agreed that:

- A \$975.00 security deposit was paid by the tenant, which is still held in trust by the landlord;
- the tenancy ended on September 30, 2022;
- the tenant sent their forwarding address to the landlord in writing, and it was received on November 4, 2022;
- a move-out condition inspection was completed with agents for the landlord and C.T. on October 5, 2022;
- sections 38(3) and 38(4) of the Act do not apply;
- a move-in condition inspection was completed with agents for the landlord and the tenant on April 28, 2021;

- copies of the condition inspection reports were provided to the tenant;
- \$400.00 is owed by the tenant to the landlord for drape and carpet cleaning; and
- \$7.69 is owed by the tenant to the landlord for replacement of a burnt-out lightbulb.

Despite the above, the parties disagreed about whether the landlord was entitled to \$210.00 in cleaning costs and \$1,769.75 in painting costs. The tenant and occupant argued that the rental unit was left reasonably clean at the end of the tenancy. The agents disagreed. The agents stated that there were also over 90 holes in the walls and smoke damage, resulting in the need to have the rental unit painted at a cost of \$1,769.25. The tenant and occupant argued that this is ridiculous, as the property is over 100 years old, was not painted recently by the landlord, was not damaged by them as they used damage-free picture hangers, and the walls had damage at the start of the tenancy as shown in the move-in condition inspection report. When asked, the agents stated that they did not know when the rental unit was last painted.

Both parties submitted significant documentary evidence for my consideration in support of their positions.

## **Analysis**

### **Is the landlord entitled to compensation for damage caused to the rental unit during the tenancy by the tenant, their pets, or their guests?**

Section 7 of the Act states that if a landlord or tenant does not comply with the Act, the regulations, or their tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 32(3) of the Act states that a tenant 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(2) of the Act states when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Under section 67 of the Act, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. In this case, to prove a loss, the landlord must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;

2. Proof that the damage or loss occurred due to the actions or neglect of the tenant in violation of the Act, Regulation, or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the landlord followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

The parties agreed that the tenant owes the landlord \$400.00 for carpet and blind cleaning and \$7.69 for the replacement of a light bulb, and I am satisfied that these amounts are owed for a liability or obligation of the tenant under the Act, regulations, or tenancy agreement. As a result, I grant the landlord recovery of these amounts.

Although the landlord sought \$210.00 in cleaning costs, and submitted an invoice for this amount from a cleaning company, for the following reasons I dismiss their claim for recovery of this amount without leave to reapply. While the landlord submitted photographs of the rental unit to demonstrate that it was not left reasonably clean, I am satisfied based on videos taken and submitted by the occupant C.T. that these photographs were taken prior to the move-out condition inspection. In C.T.'s video, many things shown in the landlord's photographs are gone, such as food in the freezer and furniture. In C.T.'s videos the rental unit also looks bare, save for a desk, a rolled-up carpet, and some patio furniture, and reasonably clean. As a result, I find it more likely than not that these photographs were taken prior to the move-out condition inspection and prior to the videos taken by C.T. As a result, I prefer the videos submitted by C.T. and find them to be a more accurate representation of the state of the rental unit at or just prior to, the time of the move-out condition inspection.

As the rental unit looks reasonably clean in C.T.'s videos, and the standard of cleanliness is not a white glove test, I therefore find that the rental unit was left reasonably clean at the end of the tenancy. I therefore dismiss the landlord's claim for recovery of \$210.00 in cleaning costs without leave to reapply.

I also dismiss the landlord's claim for painting costs. The parties disputed whether the tenant or occupant(s) had damaged the walls, and I have already found above that the landlord's photographs are not an accurate representation of the state of cleanliness and repair of the rental unit at the time of the move-out condition inspections. The move-in condition inspection notes damage to several walls and I note that the tenancy was over one year in length. I also find no significant or notable damage to be shown in the videos from C.T., which I find to be the best and most accurate representation before me of the state of the rental unit at the end of the tenancy. As a result, I am not satisfied that the rental unit was damaged during the tenancy or that any damage that did occur goes beyond what would be considered reasonable wear and tear under the Act and Residential Tenancy Policy Guideline (Policy Guideline) #1.

Further to this, the paint in the rental unit is clearly dated, and the agents could not tell me when the rental unit was last painted. Policy Guideline #41 states that the useful life

of interior paint is 4 years. As the agents submitted nothing to satisfy me that the rental unit was painted within the 4 years preceding the end of the tenancy, and could not even tell me when it was last painted, I therefore find that I cannot be satisfied that it required painting due to damage from the tenants or smoking, rather than normal deterioration over time due to age. As a result, I also dismiss their claim for recovery of painting costs without leave to reapply.

**Is the landlord entitled to recovery of the filing fee?**

As the landlord was partially successful, I grant them recovery of the \$100.00 filing fee pursuant to section 71(2) of the Act.

**Is the tenant entitled to recovery of the filing fee?**

As the tenant was partially successful in their application for the return of all or a part of their security deposit, as set out below, I grant them recovery of the \$100.00 filing fee pursuant to section 71(2) of the Act.

**Is the landlord entitled to retention of the security deposit? And if not, is the tenant entitled to the return of all or a part of it?**

I am satisfied that:

- the tenancy ended on September 30, 2022;
- a move-out condition inspection was completed with the landlord and an agent for the tenant on October 5, 2022;
- the tenant sent the landlord their forwarding address in writing on the Residential Tenancy Branch (Branch) form on November 2, 2022; and
- the landlord received the forwarding address in writing on November 4, 2022.

Based on the above, and as the landlord filed their application seeking retention of the security deposit on November 17, 2022, I therefore find that they complied with section 38(1) of the Act. Based on the documentary evidence before me, most specifically the condition inspection reports, and the testimony of the parties, I also find that neither party extinguished their rights in relation to the deposit. As a result, I find that the landlord was entitled to claim against the security deposit, which they did on time, and that the doubling provision set out under section 38(6) of the Act does not apply.

As set out above, I find that the landlord is entitled to \$507.69. I have also found that the tenant is entitled to \$100.00. Pursuant to Policy Guideline #17, I have set off the amounts owed by one party to the other and find that the landlord is still owed \$407.69. I also find that the landlord holds a security deposit in the amount of \$990.11, which represents a base security deposit amount of \$975.00, plus \$15.11 in interest.

Dated: October 16, 2023