



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR MND MNDC MNSD FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the Act") for:

- a monetary order for unpaid rent, damage and loss as a result of this tenancy 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; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend. The landlord was given full opportunity to be heard, to present evidence and to make submissions. The landlord provided evidence (a Canada Post receipt and tracking number) that the Application for Dispute Resolution hearing package was served to the tenant by registered mail on August 17, 2015. The landlord provided undisputed sworn testimony that all materials submitted for this hearing were provided to the tenant by registered mail on this date. I accept that the tenant was deemed served with the Application for Dispute Resolution hearing package by August 22, 2015.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent and for damage arising out of this tenancy?

Is the landlord entitled to retain all or a portion of the tenant's security deposit towards any monetary award?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Preliminary Matter: Amount Sought by Landlord

The landlord's application sought a monetary award in the amount of \$3427.00 including \$2272.00 for unpaid rent. The landlord testified that, at a previous Residential Tenancy Branch hearing on July 22, 2015, the tenant and the landlord reached a settlement. That settlement

included an agreement that the tenant would vacate the rental unit by August 1, 2015 and that the tenant would pay the landlord \$2272.00 in unpaid rent. The landlord testified that, as per the settlement agreement, the tenant vacated the rental unit but failed to pay any of the outstanding rent. While a monetary order was issued by the arbitrator at that time, I will include that amount in the monetary award issued as a result of this hearing. The previous monetary order dated July 22, 2015 is null and void as a result of this inclusion.

Background and Evidence

The landlord gave evidence that the residential tenancy agreement began on July 2010. As a result of a settlement agreement at a previous hearing, the tenancy ended on August 1, 2015. The landlord testified that he continued to hold the \$910.00 security deposit paid by the tenant on July 1, 2010.

The landlord has applied for a monetary order for damage and financial loss as a result of this tenancy. The landlord testified that a move-out condition inspection was arranged with the tenant for August 4, 2015 but that the tenant did not attend at that time. The landlord testified that he made several attempts, by text and by phone to contact the tenant and reschedule the inspection but he received no response from the tenant. The landlord testified that, after attempts to reschedule a move-out condition inspection with the tenant failed, he conducted a move-out inspection and completed a condition inspection report without the tenant present. The landlord submitted a copy of a one page condition inspection report from move-in and a one page condition inspection report from move-out. That report indicated that the unit was in good condition at the outset of the tenancy and generally damaged/unclean at the end of the tenancy after the tenant had vacated the rental unit.

The landlord submitted photographic evidence for this hearing to show that the suite was both damaged and unclean at the end of the tenancy. Those photographs illustrated;

- broken items left discarded on the patio of the rental unit;
- very dirty and stained carpets;
- missing pieces of track lighting;
- holes in walls where, the landlord testified, the tenant had erected shelving;
- an unclean oven and countertop as well as refrigerator.

The landlord submitted an invoice dated August 10, 2015. The landlord's sworn, undisputed testimony is that the contractor hired provided a quote for all work required cleaning and repairing the rental unit. The total amount of the invoice is \$1155.00. The invoice indicates that \$500.00 was charged for "general cleanup and carpet shampoo" and \$600.00 was charged for damaged wall repair and repaint. The invoice provided no further breakdown of the costs for the work done within the rental unit.

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.

The landlord applied for compensation for; carpet cleaning; move-out cleaning; wall repair; and repainting the rental unit. The landlord testified, with a condition inspection report and photographic evidence, to show the lack of cleanliness of the unit at move-out. I find that the landlord has provided evidence that the unit required cleanup at the end of the tenancy and that there was some damage to the walls. I find that the tenant was responsible for not leaving the rental unit neat and clean at the end of tenancy. Therefore, the tenant should bear a reasonable cost for cleanup of the rental unit.

Pursuant to paragraph 59(2)(b), an application of dispute resolution must include the full particulars of the dispute that is to be the subject of the dispute resolution proceedings. I find that the landlord's details of his financial were minimal. As such, I relied on the landlord's sworn and undisputed testimony to provide further details of the appropriate monetary award.

This tenancy began in July 2010 and continued for 5 years. The *Residential Tenancy Act*, its guidelines and the specific residential tenancy agreement with respect to this tenancy indicate a requirement that the tenant clean the carpets at the end of this tenancy. The landlord provided sufficient evidence that he was required to and did shampoo the carpets at a cost of approximately \$250.00. Therefore, I find the landlord is entitled to recover \$250.00 for carpet shampooing/cleaning.

The landlord testified that there were a multitude of holes in the walls. He testified that the tenant had affixed a shelving unit that had to be taken down. The landlord's photographic evidence supported his sworn and undisputed testimony, showing approximately 8-10 holes in one area of one wall. While the landlord has shown that the tenant left some minor damage (in holes in the wall) to the unit, I note that Residential Tenancy Policy Guideline No. 1 states that,

... The tenant is responsible for washing scuff marks, finger prints, etc. off the walls unless the texture of the wall prohibited wiping...

Nail Holes:

1. Most tenants will put up pictures in their unit. The landlord may set rules as to how this can be done e.g. no adhesive hangers or only picture hook nails may be used. If the tenant follows the landlord's reasonable instructions for hanging and removing

pictures/mirrors/wall hangings/ceiling hooks, it is not considered damage and he or she is not responsible for filling the holes or the cost of filling the holes.

2. The tenant must pay for repairing walls where there are an excessive number of nail holes, or large nails, or screws or tape have been used and left wall damage.
3. The tenant is responsible for all deliberate or negligent damage to the walls.

I find that the landlord is not entitled to the cost for any repairs necessary to the walls of the rental unit, given that the Residential Tenancy Policy Guideline does not hold the tenant liable for filling holes, particularly when they are not excessive.

The landlord testified that this rental condominium is approximately 10 years old and has had previous tenants. He testified that the unit was in good condition at the start of this 5 year tenancy. The landlord testified that no renovations had been done prior to this tenancy although it was tidy and the carpets had been cleaned. A tenant is responsible under the *Act* to leave a rental unit neat and clean. Given that the photographic evidence of the landlord proved that the tenant had not left the unit neat and clean, I find the landlord is entitled to \$250.00 for cleaning and junk disposal at the end of the tenancy.

The Residential Tenancy Policy Guideline No. 40 also addresses painting. The guideline provides that painting should be undertaken approximately every 4 years. As the tenant resided in the rental unit beyond 4 years and the landlord testified that the unit was not painted during the tenancy, I find the landlord is not entitled to recover the cost of painting the unit in order to re-rent it.

The landlord is entitled to a monetary order as follows;

Item	Amount
Rental Arrears/Previous monetary order	\$2272.00
Rental unit move-out clean	250.00
Carpet Cleaning	250.00
Less Security Deposit	-910.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	\$1912.00

The landlord testified that he continues to hold a security deposit of \$910.00 plus any interest from July 1, 2010 to the date of this decision for this tenancy. I will allow the landlord to retain the security deposit *plus any interest* in partial satisfaction of the monetary award. There is no interest payable for this time period.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$50.00 filing fee paid for this application.

Conclusion

I allow the landlord to retain \$550.00 of the tenant's security deposit and, in accordance with the Residential Tenancy Act, return the remaining \$360.00 to the tenant.

Rental Arrears/Previous monetary order	\$2272.00
Rental unit move-out clean	250.00
Carpet cleaning	250.00
Less Security Deposit	-910.00
Recovery of Filing Fee for this application	50.00
Total Monetary Award	\$1912.00

The landlord is provided with formal Orders in the above terms. Should the tenant(s) fail to comply with these Orders, these Orders may be filed and enforced as Orders of the Provincial Court of British Columbia.

The previous monetary order issued to the landlord and dated July 22, 2015 is null and void.

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 29, 2015

Residential Tenancy Branch

