



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF MND MNDC MNSD SS

Introduction

This hearing was convened in response to an application by the landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

- a Monetary Order pursuant to section 67 of the *Act*;
- to retain the security deposit for damage or loss under the *Act*; and
- a return of the Filing Fee pursuant section 72 of the *Act*.

Both the landlord and the tenant appeared at the hearing. The tenant confirmed receipt of the landlord’s application for dispute resolution and evidentiary package by way of Canada Post Registered Mail on February 15, 2017. I find that the tenant was duly served with the landlord’s application and evidentiary package in accordance with sections 88 and 89 of the *Act*.

The landlord confirmed that he mistakenly indicated on his application for dispute resolution that he was seeking to serve the documents in a different way than required by the *Act*. The landlord stated that he was not seeking this order. Pursuant to section 64 of the *Act* the landlord’s application will be amended to reflect this change.

Issue(s) to be Decided

Is the landlord entitled to a Monetary Order for damage or loss suffered as a result of the tenancy?

Can the landlord retain the tenant’s security deposit?

Is the landlord entitled to a return of the filing fee?

Background and Evidence

Both the landlord and the tenant provided testimony that this tenancy began on March 1, 2010 and ended on December 30, 2016. Rent was \$2,400.00 per month and a security deposit of \$1,050.00 continues to be held by the landlord.

The landlord explained that he was seeking a Monetary Order of \$21,287.58. He explained that this figure represented the cost of repairs that were required to return the apartment to an acceptable state of repair following the tenancy.

Specifically, the landlord sought the following amounts:

Items	Amount
Painting	\$3,990.00
Hardwood Floor and Replacement	10,489.50
Marble and Stone restoration	1,425.00
Cabinet repair	2,782.50
Cleaning (\$30.00/hr x 10 hours)	300.00
Loss of Rent due to damage	1,300.00
Canada Post and printing	85.71
Time spent to gather quotes (\$40.00/hr x 12 hours)	480.00
Shower handle replacement and Pot lights	254.56
Return of Filing Fee	100.00
Total =	\$21,207.27

It should be noted that the difference between the amount sought in the Monetary Order by the landlord and the amount listed on the table above reflects a calculation of GST that the landlord included with the Marble and Stone restoration. The price noted in the table above is based on an invoice submitted to the hearing as part of the landlord's evidentiary package.

Based on evidence provided by the tenant and the landlord's testimony it was determined that the building in which the rental unit is located was completed on February 17, 2009. The landlord explained that he took possession of the rental unit in February 2009 and lived in the unit for approximately 2 to 3 months. Following this brief occupation of the unit, in 2009, the landlord rented the suite for 4 months to some tenants. On March 1, 2010 tenant, T.K. took possession of the rental unit. No condition inspection report was completed by the parties at the outset of the tenancy. In November 2016, the parties performed a condition inspection of the rental unit together. A copy of the back dated condition inspection report was submitted to the hearing as part of the landlord's evidentiary package. It notes that following the conclusion of the tenancy, the tenant agreed to allow the landlord to retain \$1,000.00 from his security deposit. The report details numerous issues that were identified by the landlord as requiring repairs following the conclusion of the tenancy.

The landlord testified that the rental unit was nearly brand new when the tenant took possession of it in March 2010.

During the course of the hearing, the tenant acknowledged that some damage had occurred to the rental unit while he was in possession of it. Specifically, the tenant cited the damage done to the hardwood floor, as well as the damage done to the cabinets. The tenant questioned the extent to which the other repairs were necessary and noted that some of the repairs cited by the landlord can be attributed to normal wear and tear. He questioned whether some of the damages for which the landlord is seeking compensation can be attributed to his occupation.

The landlord disputed the argument that the damage to the rental unit consisted of “normal wear and tear” noting that the tenant operated a commercial film company out of the apartment, and as a result, the apartment often housed heavy duty film equipment. As evidence of his expenses and the scope of the repairs required, the landlord produced detailed invoices, along with photos displaying damage to the rental unit.

Analysis

During the hearing the tenant acknowledged that some damage had arisen in the rental unit because of his occupation. He explained that the parties had attempted to resolve their grievances in an informal manner and that he had agreed to surrender his security deposit as a sign of good faith.

Section 38(4) notes that, “A landlord may retain an amount from a security deposit or a pet damage deposit if, at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant.” As part of the landlord’s evidentiary package a copy of the back dated condition inspection report signed by the tenant at the conclusion of the tenancy demonstrates that the tenant agreed in writing to surrender his security deposit. This document along with the tenant’s testimony, and a document marked, “Respondent’s (T.K.) Defence #858765” submitted as part of the tenant’s evidentiary package establishes that the tenant granted the landlord permission to retain his security deposit. The document in “Respondent’s (T.K.) Defence #858765” states, “Even after we decided on arbitration I was still trying to leave on good terms by giving him my damage deposit.” For the above cited reasons, I find that the tenant had agreed to surrender his security deposit to the landlord in satisfaction for some of the damage done to the rental unit.

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. In this case, the onus is on the landlord to prove his entitlement to a claim for a monetary award.

The landlord is seeking a Monetary Order of \$21,287.58 in reflection of the costs associated with repairing damage purported to have been a result of the tenant's occupation of the rental unit. The landlord is also seeking to retain the security deposit in reflection of the loss he has suffered as a result of the tenancy.

The tenant questioned whether all of the repairs were necessary and explained that some of the damage to the unit should be attributed to regular wear and tear. *Residential Tenancy Policy Guideline #1* expands on this issue of "normal wear and tear" and notes, "The tenant must maintain 'reasonable health, cleanliness and sanitary standards' throughout the rental unit or site. The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that started. 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 guests."

Guideline #1 continues by stating that, "A tenant is not required to make repairs for reasonable wear and tear" which is defined as being the "natural deterioration that occurs due to ageing and other natural forces, where the tenant has used the premises in a reasonable fashion."

When questions of normal wear and tear are raised by a party, *Residential Tenancy Policy Guideline #40* provides direction for determining the useful life of building elements. This guideline notes the following useful life of the following items listed by the landlord:

- Hardwood Floor = 20 years
- Cabinets = 25 years
- Drywall = 20 years
- Paint (interior) = 4 years

- Light Fixtures = 15 years
- Faucets = 15 years
- Tile = 10 years

During the hearing the tenant acknowledged that his actions in storing film equipment went beyond normal wear and tear and he admitted to damaging the cabinets, I will therefore allow the landlord to recover the entire amount of \$2,782.50 sought for these repairs. I now turn my attention to the useful life of the paint, the hardwood floor and the marble and stone restoration.

The landlord is seeking \$3,990.00 to have the drywall and paint in the apartment replaced. The quote of \$3,990.00 which was submitted to the hearing as part of the landlord's evidentiary package contained no breakdown of individual costs associated with the required drywall or paint repairs. I will therefore divide the figure in half and focus on the items individually, as if each cost \$1,995.00 to undertake.

As per *Residential Tenancy Policy Guideline #40*, the useful life of interior paint is 4 years (or 48 months). If the unit was painted in February 2009 when the landlord took possession of the rental unit, the useful life of that initial paint job had expired by the end of this tenancy. Therefore, I find the landlord is not entitled to a return of any money sought in relation to the painting that is required.

The useful life of drywall is 20 years (or 240 months). If the drywall was new in February 2009 when the landlord took possession of the rental unit, it was 83 months into its useful life at the time of the end of the tenancy in December 2016. There remained 65.5% of its life expectancy left before the landlord would have had to repair the drywall in the rental unit. Therefore, I find the landlord is entitled to a monetary award equivalent to 65.5% of the \$1,995.00 being sought. I find the landlord can recover \$1,306.73 for damage to the drywall.

As mentioned previously, the tenant confirmed that his storing of film equipment contributed to the damage associated with the hardwood floor and the cabinets; however, while the tenant accepted that damage to the cabinets was his fault, he explained that some of the repairs for which the landlord was seeking compensation were the result of normal wear and tear. The tenant argued that the hardwood floor was only damaged in certain small sections, while the landlord contended that the entire floor needed to be replaced.

The useful life of hardwood floors is 20 years (or 240 months). If the hardwood floors were new in February 2009 when the landlord took possession of the rental unit, they were 83 months into their useful life at the time of the end of the tenancy in December 2016. There remained 65.5% of their life expectancy left before the landlord would have had to replace them. Therefore, I find the landlord is entitled to a monetary award equivalent to 65.5% of the \$10,489.50 being sought. I find the landlord can recover \$6,870.62 for damage to the hardwood floors. Photographic evidence submitted to the hearing as part of the landlord's evidentiary package; along with a professional quote for repairs demonstrate that a portion of the apartment required extensive flooring restoration. Furthermore, evidence and testimony were presented at the hearing describing the type of heavy equipment that was being stored in the rental unit. I find that the storage of such equipment went beyond "reasonable wear and tear" and the apartment requires 280 s/f of floor replacement as identified by the quote submitted to the hearing.

No policy guideline exists for marble and stone restoration; however, one does exist for tiles. Examining the details of the invoice, it is apparent that the nature of the repairs being sought by the landlord is in respect to tile and tile work and is simply titled 'marble and stone restoration' by the company contacted to perform the repair work. I will therefore use the useful life of tiles in considering the landlord's monetary award. The useful life of tile is 10 years (or 120 months). If the tile and grout were new in February 2009 when the landlord took possession of the rental unit, they were 83 months into their useful life at the time of the end of the tenancy in December 2016. There remained 31% of their life expectancy left before the landlord would have had to replace them. Therefore, I find the landlord is entitled to a monetary award equivalent to 31% of the \$1,425.00 being sought. I find the landlord can recover \$441.75 for damage to the tiles and grout, identified in the invoice submitted with the landlord's application as a claim for marble and stone restoration.

During the course of the hearing, the tenant explained that the shower handle had broken off at some point during the tenancy. Not wanting to disturb the landlord, the tenant continued to use the shower despite this broken handle. The landlord produced a photo of a replacement shower handle displaying a price of \$193.00. The useful life of a faucet is stated in *Residential Tenancy Policy Guideline #40* as being 15 years (or 180 months). If the shower was new in February 2009 when the landlord took possession of the rental unit, it was 83 months into its useful life at the time of the end of the tenancy in December 2016. There remained 54% of its life expectancy left before the landlord would have had to replace it. Therefore, I find the landlord is entitled to a monetary award equivalent to 54% of the \$193.00 being sought. I find the landlord can recover \$104.22 for damage to the shower handle.

Finally, the landlord is seeking \$61.56 for the replacement of four “puck” lights. The landlord submitted a photo as part of his evidentiary package demonstrating that these lights sell for \$15.39 per light. *Residential Tenancy Policy Guideline #1* states in the section marked as ‘Light Bulbs and Fuses’ that “the tenant is responsible for replacing light bulbs in his or her premises during the tenancy.” The landlord can therefore recover the \$61.56 sought for the replacement of these “puck” lights.

In addition to the above described items, the landlord is seeking \$1,300.00 in loss of rent due to the damages that required repair, along with \$865.71 in miscellaneous costs and a return of the \$100.00 filing fee.

The landlord explained that he was unable to re-rent the apartment until January 15, 2017 due to the amount of damage and the number of repairs that were required in the unit and that the . Section 32 of the *Act* states that, “A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access...A tenant of a rental unit 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.”

Residential Policy Guideline #5 provides some clarity to Section 32 noting, “the party seeking damages [must] show that reasonable efforts were made to reduce or prevent the loss claimed. The arbitrator may require evidence such as receipts and estimates for repairs or advertising receipts to prove mitigation.” I find it reasonable to conclude that the scope of the work for which estimates have been provided demonstrates that the landlord would require a significant amount of time to repair the rental unit. I therefore allow the landlord to recover unpaid rent for the half month for which the landlord is seeking compensation.

The landlord has submitted a claim for \$865.71 in miscellaneous costs. These include the costs of cleaning the apartment on his own, compensation for time he has spent gathering materials for the rental unit and printing and postage costs that he has incurred putting these materials together. I find that many of the aspects of this portion of the landlord’s application to be expenses related to the day-to-day operation of running a rental property. The filing fee is a reflection of some of these costs and I decline to award the landlord compensation for money sought in relation to work he has performed regarding business associated with the unit. As I am satisfied that the tenant did not leave the rental unit reasonably clean at the end of this tenancy, I allow the landlord a monetary award of \$300.00 to compensate the landlord for cleaning that was

required in the rental unit. I also allow the landlord to recover the \$100.00 filing fee from the tenant.

Conclusion

I issue a Monetary Order of \$12,217.38 in favour of the landlord as follows:

Item	Amount
Cabinet repair	\$2,782.50
Damage to the drywall	1,306.73
Hardwood Floors	6,870.62
Loss of Rent for half of January 2017	1,300.00
Tile and Grout	441.75
Shower handle	104.22
Lights	61.56
Cleaning Fee	300.00
Recovery of Filing Fee	100.00
Less Security Deposit	(-1,050.00)
Total =	\$12,217.38

I issue this Monetary Order in the landlord's favour in the amount of \$12,217.38 against the tenant. The landlord is provided with a Monetary Order in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant 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 *Residential Tenancy Act*.

Dated: July 10, 2017

Residential Tenancy Branch