



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD MNDC FF

Introduction

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

- a Monetary Order for damage or loss under the tenancy agreement, pursuant to section 67 of the *Act*;
- an Order to retain the security or pet deposit pursuant to section 38 of the *Act*, and
- a return of the filing fee pursuant to section 72 of the *Act*.

Both the tenant and the landlord appeared at the hearing. The tenant was represented at the hearing by her counsel, T.B. ("counsel"), while the corporate landlord was represented by property general manager, A.W. (the "landlord"). Both parties were given a full opportunity to be heard, call witnesses, present sworn testimony and make submissions.

The landlord explained that the Landlord's Application for Dispute Resolution (Landlord's Application) and evidentiary package was sent to the tenant individually by Canada Post Registered Mail on February 17, 2017. A Canada Post tracking number and receipt was provided at the hearing. Pursuant to sections 88, 89 & 90 of the *Act*, the tenant is found to have been served with these documents on February 23, 2017, five days after their posting.

Following discussions between the parties, the landlord agreed to amend the Monetary Order to \$6,650.00. Pursuant to section 64 of the *Act*, I amend the landlord's application for a Monetary Order from \$9,710.40 to \$6,650.00.

Preliminary Issue – Request for Adjournment

Following opening remarks, counsel for the tenant requested an adjournment. Counsel explained that he sought this adjournment because the Landlord's Application for Dispute named only his client, J.A.S., as a respondent. Counsel stated that the other named person on the tenancy agreement, C.S., had evidence to be submitted, so that it

was inequitable for the landlord to name only one tenant in proceedings. He questioned whether the landlord could seek damages against only J.A.S.

The landlord strongly objected to this application for an adjournment.

Residential Tenancy Branch Rules of Procedure provides guidance on the criteria that must be considered for granting an adjournment. Rule 7.9 explains, “Without restricting the authority of the arbitrator to consider other factors, the arbitrator will consider the following when allowing or disallowing a party’s request for an adjournment.”

- the oral or written submissions of the parties;
- the likelihood of the adjournment resulting in a resolution;
- the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment;
- whether the adjournment is required to provide a fair opportunity for a party to be heard; and
- the possible prejudice to each party.

After considering counsel’s submissions, I declined to adjourn the matter. *Residential Tenancy Policy Guideline #13* clarifies the rights and responsibilities relating to multiple tenants renting premises under one tenancy agreement. This *Guideline* notes that, “Co-tenants are jointly and severally liable for any debts or damages relating to the tenancy. This means that the landlord can recover the full amount of rent, utilities or any damages from all or any one of the tenants. The responsibility falls to the tenants to apportion amongst themselves the amount owing to the landlord.”

An examination of the Residential Tenancy Agreement, the Authorization for Consumer Pre-Authorization Debit Plan, and Application for Tenancy entered into evidence by the tenant, demonstrates that both C.S., and J.A.S., signed documents agreeing to be bound by the terms of the above named agreements. I find therefore, that J.A.S., has standing to be the only person named in the Landlord’s Application for Dispute, that an adjournment would not prevent J.A.S. from having a fair opportunity to be heard, and would possibly prejudice the landlord by subjecting them to an unnecessary further delay of the proceedings. In making this determination, I note that Tenant J.A.S. arranged for co-tenant C.S. to attend this hearing as a witness to ensure that input from him was available in my consideration of the landlord’s application.

Issue(s) to be Decided

Is the landlord entitled to a Monetary Order for damage or loss under the tenancy agreement?

Can the landlord retain the tenant's security deposit?

Can the landlord recover the filing fee from the tenant?

Background and Evidence

Testimony and a copy of the Residential Tenancy agreement were presented to the hearing by the landlord that this was a fixed term tenancy signed between tenants J.A.S., her son C.S., and the named corporate landlord. The tenancy was set to run from December 1, 2015 to November 30, 2016. The parties reached a mutual agreement terminating the tenancy in May 2016. Rent was \$1,100.00 per month and a security deposit of \$550.00 continues to be held by the landlord.

The landlord explained that he originally sought a Monetary Order of \$9,710.40. He said this figure represented repairs and cleaning that were required in the suite following the tenant moving out.

Specifically, and as highlighted in his Monetary Order Worksheet, the landlord sought to recover:

Item	Amount
Removal of items from suite	\$1,680.00
Biohazardous Scene Clean	1,272.34
Suite Cleaning	144.38
Suite Cleaning (8hrs @\$45.00/hour)	360.00
Shampoo hallway carpet	420.00
Paint Suite	850.00
Repair door jamb	294.00
Replace flooring	5,139.68
Less Security Deposit	(-550.00)
Total =	\$9,610.40

Counsel for the tenant disputed this figure, highlighting a document in the landlord's evidentiary package marked as 'Move Out Statement' which demonstrated a figure of

\$6,650.00. As mentioned previously, counsel questioned whether his client should be responsible for damage done by her co-tenant C.S.

This 'Move Out Statement' shows the following charges:

Item	Amount
Trauma Scene Clean Up	\$1,272.34
Carpet Cleaning	420.00
Suite Cleaning	144.38
Flooring replacement	5,139.68
Door Repair	294.00
Hazard Clean Up	1,680.00
Security Deposit Credit	(-550.00)
Adj Move Out Chargeback	(-1,750.40)
Total =	\$6,650.00

Following discussions between the parties, the landlord conceded that the figure cited in his application for dispute resolution was an oversight, that the corporate landlord had absorbed \$1,340.40 worth of repairs, and agreed that the figure of \$6,650.00 better represented his claim.

As part of his evidentiary package, the landlord submitted a condition inspection report that was concluded at the end of the tenancy and signed by co-tenant, C.S. The landlord argued that this document established that co-tenant, C.S. had agreed to surrender the security deposit for this tenancy, and to pay other damages of \$6,650.00.

C.S. provided testimony acknowledging that he signed this document, but detailed that he was given a \$500.00 cheque and was told by a person named "Brandon" that the suite would be renovated and he should not worry about the \$6,650.00 figure contained in the report. He expressed confusion as to why the landlord continued to pursue his mother, J.A.S. for money, as he said it was his understanding that their obligations to the landlord were complete.

Counsel for tenant J.A.S., questioned the figure cited in the document, and questioned whether the repairs undertaken were necessary. Specifically, counsel took issue with the costs associated with two separate cleaning agencies performing work, and with the necessity of replacing the floor versus simply cleaning it. Furthermore he disputed

whether new paint was required in the hallway and whether it was necessary to replace the door jamb.

Over the course of the hearing, the landlord argued that the repair works carried out were both necessary and agreed to by co-tenant, C.S. following the conclusion of the tenancy.

The landlord explained that the rental unit and neighbouring hallway had been left in a very dangerous state due to the presence of drug paraphernalia, a significant quantity of blood that C.S. had lost during a traumatic accident and the overall untidy state in which the rental unit had been left. The landlord explained that two separate cleaning crews were required because it is the corporate landlord's policy not to allow its in-house cleaning team to handle biological hazards such as blood and drug paraphernalia. In addition, the landlord explained that attempts were made to clean the carpets in the hallway; however, these attempts proved fruitless due to the large amount of blood that was lost by C.S. and replacement was deemed the only option after the landlord consulted with flooring and cleaning professionals.

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

The landlord has made an amended application to recover a monetary award of \$6,650.00 and to retain the security deposit from the tenant. It is apparent that a very sad set of events led to the end of this tenancy. The fact remains however, that J.A.S. is jointly and severally liable for any debts or damages relating to the tenancy, meaning the landlord can recover a monetary award from all or any one of the tenants. The responsibility falls to the tenants to apportion amongst themselves the amount owing to the landlord.

Tenant C.S., signed a move-out inspection where he agreed to surrender the security deposit and agreed that a balance of \$6,650.00 was to be paid to the landlord. He claims that he did not understand the documents presented to him; however he presented no allegations of duress or undue influence. Ultimately, it is the tenants' responsibility to make relevant inquiries into the contracts they sign. It was apparent from the evidence that tenant C.S. enjoys the support of both of his parents, and it is possible that steps could have been taken to ensure that C.S. was aware of the repercussions associated with signing such a document. I find that the landlord has suffered a loss as a result of the tenants' actions related to the tenancy and the landlord has demonstrated actual loss and expenses to rectify the damage. The landlord is therefore entitled to a monetary award. As tenant J.A.S. was a signatory to the tenancy agreement she is jointly and severally liable for damages stemming from the tenancy and commits entered into by her son, co-tenant C.S.

During the course of the hearing, counsel for the tenant sought to determine whether certain repairs were necessary given the age and character of the apartment. The *Residential Tenancy Policy Guideline #40* provides direction on determining the general useful life of building elements. This guideline notes that, "Useful life is the expected lifetime, or the acceptable period of use, of an item under normal circumstances."

Counsel questioned the necessity of having the walls repainted, and the door jamb and carpets replaced.

Using *Policy Guideline #40* to determine exactly how much money the landlord should be compensated for her loss, I will examine the useful life of the objects in relation to the time at which they were replaced.

As per *Residential Tenancy Policy Guideline #40*, the useful life of interior paint is 4 years (or 48 months). During the hearing the landlord stated that the walls were painted "before 2015." Using January 2015 as a benchmark, the walls would be 17 months into their useful life when the tenant vacated the rental property. Therefore, I find the landlord is entitled to a monetary award of 65% of the cost of this \$850.00 paint work requested. I allow the landlord to recover \$552.50 for painting expenses.

According to the *Residential Tenancy Policy Guideline #40*, the useful life of carpets and blinds is 10 years. The landlord testified that the carpets were replaced approximately "15 years ago." The carpet was therefore approximately 15 years old when the tenant moved out in May 2016 and had 0% of its life expectancy left before the landlord would have had to replace it. I find that the landlord cannot recover any

amount of money save for their cleaning costs, associated with the replacement of the carpet.

The final item which must be examined in light of *Residential Tenancy Policy Guideline #40* is the door jamb. The *Guideline* notes that a door has a useful life of 20 years. The landlord explained that the doors were original to the building, and were therefore installed “around 1965 or 1970.” The door was therefore at least 46 years old. The door therefore had 0% of its life expectancy left before the landlord would have had to replace it. I find that the landlord cannot recover any amount of money associated with the replacement of the door jamb.

The landlord has applied for a Monetary Order associated with significant cleaning that was required in the rental unit following the tenant, C.S.’ departure from the suite. Based on the photography and oral testimony submitted, I find that this cleaning was both necessary and justified. The landlord can therefore recover the entire amount associated with his cleaning expenses.

As the landlord was partially successful in his application, he may recover the filing fee related to this application. Using the offsetting provisions contained in section 72 of the *Act* the landlord may apply the entire amount of the security deposit against the monetary award given.

Conclusion

I issue a Monetary Order of \$3,619.22 in favour of the landlord for the following items:

Item	Amount
Trauma Scene Clean Up	\$1,272.34
Carpet Cleaning	420.00
Suite Cleaning	144.38
Hazard Clean Up	1,680.00
Return of Filing Fee	100.00
Painting of suite	552.50
Less Security Deposit	(-550.00)
Total =	\$3,619.22

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: August 11, 2017

Residential Tenancy Branch