



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNSD FF

Introduction

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

- 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, pursuant to section 72

While the landlord's agent, OM ('landlord'), attended the hearing by way of conference call, the tenant did not. The landlord's agent was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord's agent testified that the tenant was served with the landlord's application for dispute resolution hearing package and evidence on March 9, 2017 by way of registered mail. A Canada Post tracking number was provided during the hearing. In accordance with sections 88, 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's application and evidence on March 14, 2017, five days after its registered mailing.

The landlord's agent confirmed that the spelling of the landlord's business name was correct in this application as the spelling differed from the previous decision dated January 19, 2017.

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Issue(s) to be Decided

Is the landlord entitled to retain all or a portion of the tenant's security deposit in satisfaction of their monetary claim?

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

Background and Evidence

This fixed-term tenancy began on December 9, 2014, with monthly rent set at \$900.00. The landlord still holds a \$425.00 security deposit. The tenant moved out on February

28, 2017, after the landlord obtained an Order of Possession for unpaid rent from an Adjudicator after a Direct Request Proceeding was held on January 19, 2017.

The landlord applied to retain the \$425.00 security deposit in partial satisfaction of the \$474.35 monetary claim below:

Item	Amount
Broken Light Fixture in Kitchen	\$154.35
Carpet Cleaning	105.00
Suite Cleaning	45.00
Painting & Repairs	150.00
Drapery Cleaning	20.00
Total Monetary Order Requested	\$474.35

The landlord testified that the kitchen and bathroom in the rental suite were brand new when the tenant had moved into the 30 year old rental suite in 2014. The landlord testified that due to the nature in which this tenancy ended, whereby the police were in attendance to assist in enforcing the Order of Possession granted to the landlord, the tenant failed to leave the rental suite in clean and undamaged condition.

The landlord testified that a move-out inspection was completed, but the tenant refused to sign it. A copy of the inspection report, as well as supporting invoices and receipts, were included in the landlord's evidence in support of the above monetary claim. The landlord testified that the carpets were cleaned, and walls painted, before the beginning of this tenancy.

Analysis

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

Section 37(2)(a) of the *Act* stipulates that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. I find that the landlord provided sufficient evidence to show that the tenant did not take reasonable care and attention when vacating the suite. I find that the landlord complied with sections 23 and 35 of the *Act* by performing condition inspection

reports for both the move-in and move-out. I also find that the landlord supported their claims with receipts and invoices. Accordingly, I find the landlord is entitled to compensation for these damages.

Section 40 of the *Residential Tenancy Policy Guideline* speaks to the useful life of an item. I will use this guideline to assess the remainder of the useful life of the interior painting and ceiling fixture in the kitchen. As per this policy, the useful life of interior paint is four years. The rental unit was repainted before the tenant moved in and therefore at the end of the tenancy had approximately 1 year and 10 months of useful life left. The approximate prorated value of the remainder of the useful life of the interior painting is \$68.75. ($\$150.00/48 \times 22$). Accordingly, I find the landlord is entitled to \$68.75 for the painting and wall repairs.

As per the policy, the useful life of a light fixture is 15 years. The landlord testified that the kitchen was redone, and brand new at the beginning of this tenancy. Therefore at the end of the tenancy the fixture had 12 years and 10 months of useful life left. The approximate prorated value of the remainder of the useful life of the fixture is \$132.06 ($\$154.35/180 \times 154$). Accordingly, I find the landlord is entitled to \$132.06 for the kitchen ceiling fixture.

Based on the landlord's undisputed sworn testimony and written evidence, I issue a monetary award of \$105.00 for the carpet cleaning, \$45.00 for suite cleaning and \$20.00 for drapery cleaning.

The landlord is granted a monetary claim of \$370.81 for the tenant's failure to comply with section 37(2)(a) of the *Act*.

I find that the landlord's Application has merit and that the landlord is entitled to recover the fee for filing this Application.

In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain a portion of the tenant's security deposit plus applicable interest in partial satisfaction of the monetary claim. Over the period of this tenancy, no interest is payable on the security deposit.

Conclusion

I issue a Monetary Order in the amount of \$45.81 in the landlord's favour under the following terms which allows the landlord to retain the security deposit in satisfaction of the monetary claim for damages, plus recover the \$100.00 filing fee for this application.

Item	Amount
Broken Light Fixture in Kitchen (prorated)	\$132.06
Carpet Cleaning	105.00
Suite Cleaning	45.00
Painting & Repairs (prorated)	68.75
Drapery Cleaning	20.00
Filing Fee	100.00
Less Security Deposit	-425.00
Total Monetary Order	\$45.81

The landlord is provided with this Order in the above terms and the tenant(s) must be served with a copy of this Order as soon as possible. Should the tenants 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 8, 2017

Residential Tenancy Branch