



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

File No: 859333

DECISION

Dispute Codes: MND FF

Introduction

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

- and a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

As the parties were in attendance I confirmed that there were no issues with service of the landlord's application for dispute resolution ('application') and evidence. In accordance with sections 88 and 89 of the Act, I find that the tenant was duly served with the landlord's application and evidence. The tenant did not submit written evidence for this hearing.

Issue(s) to be Decided

Is the landlord entitled to compensation for damage to the rental unit?

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

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This month-to-month tenancy began on June 15, 2009, with monthly rent set at \$1,750.00. The landlord collected a security deposit in the amount of \$875.00 for this tenancy. The tenant moved out on May 1, 2016.

The landlord provided the following list of damages for his monetary claim:

Item	Amount
Repair of Sliding Mirror Door	\$429.51
Cleaning	105.00
Painting & Wall Repairs	1,500.00
Repairs to Shower Floor Tiles	1,260.00
Strata Chargeback for Garbage left upon move-out	190.58
Carpet Replacement	288.69
Recovery of Filing Fee for this Application	100.00
Total Monetary Order Requested	\$3,873.78

The landlord testified that apartment was brand new when the tenant had moved in, and no inspections were done at the beginning and end of the tenancy. The landlord provided in evidence colour photos to support his claim as listed above, as well invoices, estimates, and receipts.

The landlord testified that nothing was cleaned upon move-out. The landlord submitted some photos to support his claim showing the inside of the oven and the blinds. The landlord provided in evidence a letter from the strata council notifying him of the charge for the tenant's failure to properly dispose of their garbage.

The landlord testified that the tenant had also damaged the mirrored door, which contained a crack. The tiles on the shower floor were also damaged, and needed to be replaced. The walls throughout the entire apartment was marked up and scratched, and required new paint and the carpet in the bedroom required replacement due to the damage left by the tenant. The landlord submitted photos of these damaged areas.

The tenant testified in this hearing that no inspections were done, and that the damage that the landlord claimed was "done a week after I left". The tenant disputes causing any of the damage in the suite. The tenant testified that the tile in the bathroom was damaged due to poor workmanship and the result of the showerhead falling, which was never fixed during the tenancy. The tenant further testified that the closet door did not work properly, and had fallen and cracked as a result.

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. The landlord provided a very detailed summary of the damages caused by the tenant, which was supported by colour photos, receipts, estimates, and invoices.

The tenant did not dispute that there was damage to the suite, but he did argue that these damages occurred “a week after” this tenancy. Despite this testimony of the tenant that these damages had occurred after the tenancy had ended, the tenant provided conflicting testimony in the hearing that the shower tiles and mirrored doors were damaged during this tenancy, citing unsatisfactory workmanship. The tenant did not submit any correspondence to the landlord requesting repairs to these two items despite him being aware of the damage, nor did the tenant provide sufficient evidence to support his claim that the workmanship was unsatisfactory.

Although the landlord did not perform any move-in or move-out inspections, it was undisputed that the suite was brand new in 2009. I find the tenant provided conflicting testimony about when the damages had occurred, which brings into question the reliability of his testimony. I find that the photographic and documentary evidence provided by the landlord supports the sworn testimony of the landlord that on a balance of probabilities that these damages had occurred during this tenancy. I find that the landlord provided sufficient evidence to show that the tenant did not take reasonable care and attention to clean the suite upon move-out, or leave the suite in undamaged condition. On this basis, I find that the landlord is entitled to compensation for the tenant’s failure to comply with section 37(2)(a) of the *Act*.

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 damages

claimed by the landlord. As per this policy, the useful life of interior paint is four years. As the unit was brand new upon move-in, and the tenant resided there for almost seven years, I find that the interior painting has exceeded its useful life. Accordingly, this portion of the landlord's monetary claim is dismissed.

As per the policy, the useful life of carpet is 10 years. At the end of the tenancy the carpet had approximately 3 years of useful life left. The approximate prorated value of the remainder of the useful life of the carpet is \$86.61 ($\$288.69/120 \times 36$). Accordingly, I find the landlord is entitled to \$86.61 for the replacement of the bedroom carpet.

As per the policy, the useful life of floor tile is 10 years. At the end of the tenancy the floor tile in the shower had approximately 3 years of useful life left. The approximate prorated value of the remainder of the useful life of the tile is \$378.00 ($\$1,260.00/120 \times 36$). Accordingly, I find the landlord is entitled to \$378.00 for the repair of the floor tile in the shower.

As per the policy, the useful life of a door is 20 years. At the end of the tenancy the in the closet door had approximately 13 years of useful life left. The approximate prorated value of the remainder of the useful life of the closet door is \$279.18 ($\$429.51/240 \times 156$). Accordingly, I find the landlord is entitled to \$279.18 for the repair of the closet door.

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

Conclusion

I issue a monetary Order in the amount of \$1,139.57 in the landlord's favour under the following terms which allows a monetary award for damage caused by the tenant, as well as for recovery of the filing fee for this application.

Item	Amount
Repair of Sliding Mirror Door	\$279.18
Cleaning	105.00
Repairs to Shower Floor Tiles	378.00
Strata Chargeback for Garbage left upon move-out	190.58
Carpet Replacement	86.81
Recovery of Filing Fee for this Application	100.00
Total Monetary Order	\$1,139.57

The landlord is provided with this Order in the above terms and the tenant must be served with a copy of 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 28, 2017

Residential Tenancy Branch