



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, FF (Landlord's Application)
CNL, FF, MNDC, MT, O, OLC (Tenant's Application)

Introduction

This hearing convened as a result of cross applications. In the Landlord's Application for Dispute Resolution, filed January 2, 2017, the Landlord requested Monetary Compensation for damage to the rental unit and to recover the filing fee. In the Tenant's Application, filed June 5, 2017, she sought an Order canceling a 2 Month Notice to End Tenancy for Landlord's Use, recovery of the filing fee, monetary compensation from the Landlord, more time to make her application to dispute the Notice, other unspecified relief and an Order that the Landlord comply with the *Act*.

The hearing was conducted by teleconference on June 26, 2017 and continued on September 7, 2017. Both parties called into the hearings and were given a full opportunity to be heard, to present their affirmed testimony, to present their evidence orally and in written and documentary form, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter

On her Application for Dispute Resolution the Tenant indicated that she sought to cancel a 2 Month Notice to End Tenancy for Landlord's Use as well as more time, pursuant to section 66(1) to make such an application. The Tenant confirmed that she vacated the rental unit such that such relief was no longer applicable.

During the Tenant's testimony on September 7, 2017 she confirmed that she did not receive a formal 2 Month Notice to End Tenancy for Landlord's Use, rather she received an email from the Landlord dated November 1, 2016. She acknowledged that because she did not receive a formal 2 Month Notice, that she was not entitled to claim compensation pursuant to section 51 of the *Residential Tenancy Act*. She further confirmed at the continuation that she did not have any evidence that the Landlord re-rented the unit rather than occupying it and that she wished to withdraw her claim in this regard.

Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenant for damages to the rental unit?
2. Is the Tenant entitled to monetary compensation from the Landlord for loss of income?
3. Should either party recover the filing fee?

Background and Evidence

The Landlord testified that the tenancy began January 1, 2016. Monthly rent was \$1,500.00 per month. The Tenant paid a security deposit in the amount of \$750.00.

The Landlord stated that the Tenant moved out December 15, 2016.

The Landlord stated that the security deposit was dealt with during a previous arbitration and claimed initially that she was authorized to retain the security deposit. A review of the two previous files confirms that the security deposit was not dealt with in any previous hearing. When I informed the Landlord of this she stated that she believed we were going to deal with the security deposit in this hearing. As noted, neither party made a claim against the security deposit. During the hearing on September 7, 2017 the Tenant confirmed she agreed the Landlord could retain her security deposit towards an outstanding utility account.

The Landlord filed a Monetary Orders Worksheet wherein she claimed compensation for the following:

Cost to repair mural	\$400.00
Paint for bathroom	\$120.00
Painting	\$300.00
Cost to replace countertop	\$380.00
TOTAL	\$1,200.00

The Landlord stated that she has a Disney® mural in three walls of the living area as she considered opening a child care facility in her home at one time; she claimed that the muralist came into the rental unit and painted the mural on the wall at a cost of \$3,500.00.

The Landlord stated that the Tenant damaged the mural as she applied some sort of window treatment to the window trim on the wall with one of the murals. The Landlord also stated that there were also pin holes in the mural, as well as larger holes where the Tenant had installed an internet modem.

In the communication between the parties, the Landlord asked the Tenant to find the muralist to repair the mural.

The Landlord stated that she was able to find the muralist who originally painted the mural and he quoted her \$400.00 to repair the mural. Introduced in evidence was a text message from the muralist, M., to the Landlord confirming this amount. The Landlord testified that she hired M. to do the repair and subsequently sent an e-transfer of this amount to the artist.

The Landlord testified that the entire rental unit was painted a soft yellow in March of 2015 such that at the time the tenancy ended the paint was only 1.5 years old.

The Landlord also sought compensation for the \$120.00 cost to paint the bathroom. She provided photos of the bathroom which showed the Tenant had painted the walls a blue green colour. The Landlord testified that this was done without the Landlord's knowledge or consent. The Landlord submitted in evidence 14 photos of the bathroom including some which suggest that the Tenant failed to tape off the trim such that the trim also had to be repainted.

The Landlord testified that she paid a painter \$300.00 to repaint the rental unit, including the entire foyer. The Landlord provided 10 photos in evidence showing damage to the rental unit walls in the area she claimed was repainted. She also provided a quote from the painter confirming the cost of this work.

The Landlord also sought the sum of \$380.00 for the cost to replace the countertop including labour and materials. The Landlord submitted in evidence photos of the cracked countertop.

The Landlord stated that the countertop was replaced in March of 2015 such that it was also only 1.5 years old at the time the tenancy ended.

The Tenant testified as follows. She confirmed that she operated a licensed family day care in the rental unit. She stated that the workers from her internet service provider damaged the wall when they anchored the modem. She acknowledged that she was responsible for the cost to repair the mural. She stated that she attempted to call the muralist to repair the mural and when she was unsuccessful reaching him, she asked her father to do the work (as he is an artist). She stated that while she was responsible for the repair, she dispute the amount charged by the Landlord as she claims she could have done the work more inexpensively.

The Tenant stated that she asked and received from the Landlord permission to paint the bathroom blue. She stated that at the end of the tenancy she asked the Landlord for the paint swatch so she could paint the bathroom back to the original yellow; she claimed that because the Landlord did not provide her the paint swatch she was not able to paint it back.

In response to the Landlord's claim for painting costs for the remainder of the rental unit, the Tenant reiterated that she asked for the paint swatch in order to repaint the walls. She stated that of November 2, 2016 she still did not have the paint swatch as noted in one of her emails provided in evidence.

In response to the Landlord's claim for the cost to replace the countertop, the Tenant stated that it was not cracked when she moved out. She provided photos of the countertop in evidence; however, those photos were not visible to me during the June 26, 2017 hearing. I confirm I granted the Tenant permission to resubmit her photos in a digital format to both the Landlord and the Branch. I further confirm that I received those photos prior to the continuation of the hearing of this matter and considered them in making this Decision.

In support of her claim for loss of income, the Tenant confirmed that she discussed with the Landlord her intention to operate a business out of the rental unit. She further stated that when she obtained business insurance she required a letter from the

Landlord confirming her permission for the Tenant to operate such a business. She conceded that this letter was not included in her evidence submission. The Tenant acknowledged that the tenancy agreement did not include any mention of the Tenant operating a business in the rental unit.

The Landlord replied to the Tenant's submissions as follows. She confirmed she did not give the Tenant permission to paint the rental unit. She acknowledged that the Tenant offered to repaint the unit back to the original colour and that she "never got around to" giving the Tenant the paint swatch to facilitate the Tenant painting the unit the appropriate colour.

The Tenant confirmed that she owed the Landlord money for unpaid utilities and as such she agreed the Landlord could retain the security deposit towards the unpaid utilities.

In reply to the Tenant's submissions with respect to the countertop the Landlord stated that the countertop was not damaged at the start of the tenancy as claimed by the Tenant as noted on the move in condition inspection report. The Landlord also noted that the Tenant failed to attend the move out condition inspection.

Analysis

As the Landlord filed her claim first I will deal with her claim first.

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Landlord has the burden of proof to prove their claim.

Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

The condition in which a Tenant should leave the rental unit at the end of the tenancy is defined in section 37 of the *Act* as follows:

37 (2) When a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Normal wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- proof that the damage or loss exists;
- proof that the damage or loss occurred due to the actions or neglect of the responding party in violation of the Act or agreement;
- proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

I find, based on the evidence before me, the testimony of the parties and on a balance of probabilities as follows.

I find the Tenant, or persons hired by the Tenant, damaged the mural in the rental unit. While it may have been possible for the Tenant's father to repair the mural, I find it reasonable that the Landlord would have wanted the original artist to make this repair, due to the mural being an original work. I therefore award the Landlord the **\$400.00** claimed.

Residential Tenancy Branch Policy Guideline 1—Landlord & Tenant Responsibility for Residential Premises provides as follows:

RENOVATIONS AND CHANGES TO RENTAL UNIT

1. Any changes to the rental unit and/or residential property not explicitly consented to by the landlord must be returned to the original condition.
2. If the tenant does not return the rental unit and/or residential property to its original condition before vacating, the landlord may return the rental unit and/or residential property to its original condition and claim the costs against the tenant. Where the landlord chooses not to return the unit or property to its original condition, the landlord may claim the amount by which the value of the premises falls short of the value it would otherwise have had.

While the Tenant alleges the Landlord allowed her to paint the rental unit, the Landlord disputes this claim. "Explicit consent" must be proven, and as the Tenant failed to submit any evidence to support her claim that the Landlord explicitly consented (such as email communication confirming the Landlord's agreement) to this painting I find that the Tenant has failed to prove she had permission to paint the rental.

Residential Tenancy Branch Policy Guideline 40—Useful Life of Building Elements provides in part as follows:

When applied to damage(s) caused by a tenant, the tenant's guests or the tenant's pets, the arbitrator may consider the useful life of a building element and the age of the item. Landlords should provide evidence showing the age of the item at the time of replacement and the cost of the replacement building item. That evidence may be in the form of work orders, invoices or other documentary evidence.

If the arbitrator finds that a landlord makes repairs to a rental unit due to damage caused by the tenant, the arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant's responsibility for the cost or replacement.

Policy Guideline 40 also provides a table setting out the useful life of most building elements. The Landlord claimed compensation in the amount of \$420.00 for the cost to repaint the rental unit. She testified that the rental unit had been painted approximately 1.5 years prior to the end of the tenancy. *Policy Guideline 40* provides that interior paint has a useful life of four years. Accordingly, I discount the Landlord's claim of \$420.00 by 37.5% and award her \$262.50 for the discounted cost.

The photos submitted in evidence show a crack in the countertop originating from an area where the counter appears to have been cut to accommodate a shelf. This photo suggests the damage occurred during installation, or at least began as a small crack when the shelf was installed. I find it unlikely the Tenant caused this damage and I therefore dismiss the Landlord's claim for related compensation.

The Tenant conceded that the tenancy agreement did not include any mention of the Tenant operating a business in the rental unit. While it may be the case that the parties discussed the Tenant's intention to operate a business, I find that any related losses are not recoverable under the *Act*.

As the Landlord has been substantially successful, I award her recovery of the **\$100.00** filing fee.

Conclusion

The Tenant withdrew her claims for compensation pursuant to section 51 of the *Act*. The Tenant's claim for loss of income is dismissed.

The Landlord is entitled to the sum of \$762.50 calculated as follows;

Cost to repair mural	\$400.00
discounted cost to paint bathroom	\$75.00
discounted cost to paint other areas of rental unit	\$187.50
filing fee	\$100.00
TOTAL AWARDED	\$762.50

The Landlord may retain the Tenant's **\$750.00** security deposit as partial payment of the amount awarded and is granted a Monetary Order for the **\$12.50** balance due. This Order must be served on the Tenant and may be filed and enforced in the B.C. Provincial Court (Small Claims Division) as an Order of that Court. 5

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: October 6, 2017

Residential Tenancy Branch