



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S MNDL-S FFL

Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* ("the Act") for: a monetary order for damage to the rental unit, and 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 from the tenant pursuant to section 72.

The tenant/respondent did not attend this hearing, although I waited until 2:00 p.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 1:30 p.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord/applicant and I were the only ones who had called into this teleconference. The landlords' representative ("the landlord") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, and to make submissions.

The landlord testified that she served the tenant with the landlords' Application for Dispute Resolution ("ADR") by registered mail on October 21, 2017. The landlord testified that additional evidence, with invoices and a monetary worksheet as well as an application to amend the original amount sought by the landlord at this hearing, were sent to the tenant by registered mail on May 2, 2018. The landlord submitted receipts and a Canada Post tracking number as proof of both registered mailings. Given the undisputed testimony of the landlord and the landlord's supporting documentary evidence, I find that the tenant was deemed served with the landlords' original ADR including Notice of this hearing date on October 26, 2017 - 5 days after its registered mailing in accordance with section 89 and 90 of the Act. I also find that the tenant was deemed served with the landlords' additional evidence by registered mail on May 7, 2018 - 5 days after the registered mailing in accordance with section 88 and 90 of the Act.

Issue(s) to be Decided

Are the landlords entitled to a monetary order for damage to the rental unit, and for money owed or compensation for damage or loss (cleaning, repairs and replacement of items not returned at the end of the tenancy)?

Are the landlords entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The landlord's representative (referred to as "the landlord" throughout this decision) testified that this tenancy began in October 2015. At that time, the tenant paid a \$1550.00 security deposit. The monthly rental amount, at the end of the tenancy was \$3189.00. The landlord testified that the tenant vacated the rental unit on or about September 30, 2017. The landlord testified that, after the tenant vacated the rental unit and attended the condition inspection, providing her forwarding address, the tenant "just disappeared", leaving a significant amount of belongings, damage and cleaning to do in the unit. The landlord testified that the landlords continue to hold the tenant's \$1550.00 security deposit and sought to retain it towards a monetary order for damage to the unit and other related losses.

The landlord submitted a copy of the residential tenancy agreement as well as the condition inspection report for move-in and move-out. The landlord testified that the tenant was present for the move-in report. The landlord testified that she had to call the tenant several times before she was able to arrange and have the tenant attend for a condition inspection at move-out. She testified that the move-out inspection took place on October 1, 2017 even though the tenant had still not removed all of her belongings or cleaned the rental unit sufficiently. She testified that, at that time, the tenant provided her forwarding address to the landlord.

The landlords' representative referred to the documentary evidence submitted on behalf of the landlords and provided testimony that the unit was re-rented by November 1, 2017. The landlords' representative testified that the condition of the rental unit and the need for repeated attempts to arrange the condition inspection with the tenant resulted in the landlord being unable to re-rent the rental unit in October 2017. The landlords applied to retain \$3189.00 in October 2017 rental loss. The landlord described a variety of efforts to attempt to re-rent the unit prior November 1, 2017 including advertising online, within the building and to other properties. However, the landlords were unable to secure a tenant prior to November 2017.

“General repairs” referred to on the landlord’s monetary order worksheet included; damaged mirror door, door, trims, ceilings, trims, walls as well as cleaning of the blinds, sliding shower door and garburator. The general repairs also included replacing missing painting the front door and unclogging the sink. The landlord submitted photographs documenting each repair required. As well, the landlord submitted an invoice listing the following items addressed with a total amount paid of \$6772.50:

- supply & install new closet door & mirror
- remove all blinds
- remove all light fixtures
- cover all windows, cabinets and floors for repair and painting
- repair all wall damages, prime all patch areas
- paint ceiling (had stains evident in photographs)
- paint all doors, casing, and baseboards
- paint all walls
- uncover surfaces and reinstall fixtures
- clean up to move-in ready condition
- waste removal.

On October 16, 2017, the landlords applied for a monetary order against the tenant. The landlord provided a monetary worksheet providing a breakdown of the monetary amount the landlords sought to recover from the tenant,

Item	Amount
Strata Fines (4 fines)	\$688.25
Fob replacement (\$150.00)	150.00
Visitor parking pass replacement (\$50.00)	50.00
Re-keying front entrance door (\$117.60)	117.60
Blinds cleaning (\$677.53)	677.53
Extra move-out cleaning of unit (\$345.00)	345.00
General repairs (see list below)	6772.50
Loss of rent during repairs (1 month)	3200.00
Canada Post registered mail	40.80
Recovery of Filing Fee for this Application	100.00
Total Monetary Order sought by Landlord	\$12141.68

I note that the landlords’ application indicated a total monetary order sought of \$12, 021.00 however the amount above is a result of a calculation of the items provided by the landlords.

The landlord sought to recover the filing fee for this application and to retain the tenant's security deposit towards the amount above.

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 (in this case, the landlords) bears the burden of proof.

The landlords must prove the existence of the damage/loss. I find that the landlords have proven damage and loss as a result of this tenancy by virtue of the provision of the condition inspection report that accurately reflects his testimony and indicates that the tenant took part in the move-out condition inspection.

The landlords must prove that the damage/loss stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Again, the condition inspection report is clear and, according to Residential Tenancy Regulation No. 21 as laid out below, the condition inspection report is the best evidence of the condition of the unit unless proven.

Evidentiary weight of a condition inspection report

- 21** In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

The landlords must also provide evidence that can verify the actual monetary amount of the loss/damage. I find that the landlords have provided evidence with respect to monetary amount of each item— with the invoices for all work done within a reasonable time period of the end of this tenancy. The landlords' invoices and photographic evidence provide corroboration of the details of the condition inspection report. I note that, while the tenant did not attend this hearing, she did attend for the condition inspection at move-out and signed the report. When signing, the tenant wrote, "this unit was not in perfect condition so I maintained it to the best of my ability..." I note that the tenant signed off on the move-in inspection and did not attend to dispute this application by the landlord despite having been served with the Notice of Hearing.

I find that the landlords proved, with invoice and condition inspection report as well as undisputed testimony that the walls required patch work and painting at the end of the tenancy that were beyond regular wear and tear over the course of the tenancy. The tenant resided in the rental unit for over 2 years. The photographs show that the walls were stained and damaged as a result of fire, stickers and other similar items attached to wall and then removed in a manner that left damage. Residential Tenancy Policy Guideline No. 40 recommends re-painting the interior of a unit every 4 years. The landlord would have been required to paint in approximately 2 years. However, as a result of the neglect of the rental unit by the tenant and damage as a result of actions of the tenant (including but not limited to stains on the ceiling), I find that the landlords are entitled to recover 75% of the costs for repairs to the walls. I find that the damage to the unit as a result of negligence and neglect require the tenant to pay a larger portion of the painting and repairs than would have usually be required. The landlords are therefore entitled to recover \$5079.37 for the items listed under 'general repairs'.

I find that the landlords proved, with invoice and condition inspection report as well as undisputed testimony that the unit, particularly the appliances, required extensive cleaning at the end of the tenancy. I accept the landlord's undisputed testimony at this hearing that the unit was very unclean. The photographic evidence supports her testimony. Therefore, I find that the landlords are entitled to recover \$345.00 for extra cleaning of the rental unit.

I find, based on the landlord's testimony and the evidence submitted for this hearing including the photographic evidence as well as the condition inspection report, that the landlord is also entitled to recover the cost of blinds cleaning. I accept the testimony of the landlord in attendance at this hearing that there was a large number of windows (and therefore blinds) in the rental unit as it was a corner unit with a view. I also acknowledge that the residential tenancy agreement requires the tenant to clean the blinds at the end of the tenancy. Therefore, I find that the landlords are entitled to \$677.53 – the cost of cleaning the blinds.

I find that the landlords have proved, with invoice and condition inspection report, that the front door required rekeying at the end of the tenancy. The landlords provided photographic evidence to support this repair as well as a notation in the condition inspection report. I accept the invoice submitted by the landlords reflecting an amount of \$117.60 to rekey the front lock.

I find that the landlords have proven that the tenant did not return the fob for entrance to the unit or the visitor parking pass. Both these items were noted on the condition

inspection report as unreturned. I accept the undisputed testimony of the landlord (at this hearing) that, despite repeated requests, the tenant had not returned either item as of the date of this hearing. Therefore I find that the landlords are entitled to \$50.00 for a visitor parking pass and \$150.00 for a fob replacement.

I find that the landlords are entitled to recover the cost of the strata fines that she incurred during her tenancy. The 4 fines were all provided as evidence for this hearing, dated during the duration of the tenancy and reference actions against the by-laws by the tenant. The landlords submitted copies of the strata infractions letters as well as the total account as of the date of this hearing. The invoice indicates 'outstanding'. I find that the landlord is entitled to \$688.25. in strata fines.

I accept the testimony of the landlord at this hearing supported by the documentary evidence submitted to show that the unit was re-rented by November 1, 2017. I also accept the testimony of the landlord that the condition of the rental unit and the need for repeated attempts to arrange the condition inspection with the tenant resulted in the landlord being unable to re-rent the rental unit in the month of October 2017. Therefore, I find that the landlord took sufficient steps to attempt to re-rent the unit. I find that the landlords are entitled to \$3189.00 in rental loss.

In accordance with section 72, I find that the landlords are entitled to retain the tenant's \$1550.00 security deposit towards the monetary amount below. As the landlords were successful in this application, I find that the landlords are also entitled to recover the \$100.00 filing fee for this application.

Item	Amount
Strata Fines (4 fines)	\$688.25
Fob replacement	150.00
Visitor parking pass replacement	50.00
Re-keying front entrance door	117.60
Blinds cleaning	677.53
Extra move-out cleaning of unit	345.00
General repairs (75% of amount sought)	5079.37
Loss of rent during repairs (1 month)	3189.00
Less Security Deposit	-1550.00
Recovery of Filing Fee for this Application	100.00
Total Monetary Order to Landlords	\$8846.75

Conclusion

I grant the landlords a monetary order in the amount of \$8846.75.

The landlords are provided with this 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: June 4, 2018

Residential Tenancy Branch