



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNDL-S/FFL

Introduction

On May 6, 2018, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) requesting a Monetary Order for Damage to the rental unit and to deduct the cost of repairs and cleaning from the security deposit, and to recover the cost of the Filing Fee. The matter was set for a participatory hearing via conference call.

The Landlord and Tenant attended the hearing and provided affirmed testimony. They were provided the opportunity to present their relevant oral, written and documentary evidence and to make submissions at the hearing. The Tenant noted that she did not receive all of the evidence that the Landlord submitted to the Residential Tenancy Branch. I addressed this under Preliminary Matters.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

Prior to the hearing, I reviewed the service of the Notice of Hearing and the exchange of evidence with the Landlord and the Tenant. The Tenant did receive the Notice of Hearing and the first evidence package from the Landlord, but stated that they did not receive any of the pictures that had been entered as evidence. The Landlord admitted that she did not send the pictures to the Tenant as they were pictures of the condition of the rental unit during the move-out inspection.

I find that the pictures of the rental unit were not served in accordance with the Residential Tenancy Branch–Rules of Procedure–Rule 3 and therefore, the pictures were not reviewed or considered during the hearing or this Decision.

Issues to be Decided

Should the Landlord receive a Monetary Order for damages and deduct the cost of repairs and cleaning from the security deposit?

Should the Landlord be reimbursed for the Filing Fee?

Background and Evidence

The Tenant and the Landlord agreed on the following:

The 1-year, fixed-term tenancy began in July of 2015. Monthly rent was \$1,250.00 and the Landlord collected, and still holds, a security deposit of \$625.00.

The tenancy ended on April 30, 2018 and a move-out inspection was completed. The Tenant did not agree with the Landlord's assessment of damage and, although the Landlord and the Tenant discussed settlement, they could not come to an agreement regarding damages and the return of the security deposit.

The Tenant emailed the Landlord their forwarding address on May 2, 2018.

Landlord Evidence:

The Landlord submitted a Monetary Order Worksheet that set out the damages that she claimed were the responsibility of the Tenant.

1. Lemon Fresh Carpet Cleaning \$99.75
The Landlord acknowledged that the Tenant had rented a carpet cleaner; however, felt the Landlord had to have the carpets professionally cleaned because of a blue stain on the carpet and a smell of urine in the closet.
2. Strata Bylaws/Move-Out Fee \$50.00
The Landlord stated the Strata complex required a payment of \$50.00 for a move-out fee. The Landlord acknowledged that this term was not included in the tenancy agreement, nor did the Landlord made the Tenant aware of this fee prior to the end of tenancy.
3. Home Depot – Cleaning Supplies \$26.74
The Landlord stated that she needed to buy cleaning supplies to clean the blinds, mirrors, bathroom and stove. She stated that these surfaces required extra cleaning and argued that the Tenant did not leave them reasonably clean.
4. Home Depot – Hole patching and paint \$69.08
The Landlord stated that she had to buy a putty knife, putty and paint to fix the holes in the walls as a result of the Tenant hanging art and to paint over some scuff marks.
5. Home Depot – Horizontal Blind \$54.97
The Landlord stated that the cord had been chewed by a cat (Tenant's pet), therefore, she had to replace the blind.

6. Rona – Vertical Blind \$52.63

The Landlord stated the vertical blinds in the living room, at the beginning of the tenancy, had one slat missing on the end and that it was still useable. During the move-out inspection, it was noted that two slats were missing in the middle of the blind, causing the blind to lose its effectiveness.

7. Home Depot – Counter Top Laminate \$164.64
8. Home Depot – Counter particle board \$57.46

The Landlord stated that the move-in report showed that the kitchen counter tops were in “fine” condition. During the move-out inspection, the Landlord found that the tops were damaged and suggested that the Tenant caused some “chemical” damage to the surfaces, as the old counter tops could be seen. The Landlord stated that the counter tops were original from 1994 and that the counters had been painted with a “transformational kit” before the tenancy.

The Landlord is claiming for a total of \$575.27 in damages to apply against the Tenants’ security deposit.

Tenant’s Evidence:

The Tenant responded to the Landlord’s claim regarding damages.

1. Lemon Fresh Carpet Cleaning \$99.75

The Tenant stated that she did clean the carpets of the rental unit with a rented carpet cleaner; however, acknowledged that her daughter may have dropped a freezie on the carpet and that during potty training, her daughter may have urinated on the carpet. The Tenant did not feel there was any smell from the urine.

2. Strata Bylaws/Move-Out Fee \$50.00

The Tenant stated that they were unaware of the move-out fee and were only told at the move-out inspection.

3. Home Depot – Cleaning Supplies \$26.74

The Tenant disagreed that the rental unit required further cleaning; although, admitted that they oven may have needed another wipe down.

4. Home Depot – Hole patching and paint \$69.08

The Tenant stated that she did have some artwork hung on the walls and when it was removed, she also removed the nails, leaving behind small holes. She admitted that there were some scuff marks on the walls.

5. Home Depot – Horizontal Blind \$54.97

The Tenant stated that she only learned that the blind was damaged during the move-out inspection and that she agreed to replace the blind.

6. Rona – Vertical Blind \$52.63

The Tenant stated that one slat was missing and that she broke one.

7. Home Depot – Counter Top Laminate \$164.64
8. Home Depot – Counter particle board \$57.46

The Tenant stated that the kitchen counter tops were flaking upon move-in. She used a kitchen cleaning spray and the counters deteriorated during the tenancy. She felt that the painting of the counter tops is a temporary fix and does not feel she should be held responsible for the replacement of the kitchen counters.

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.

Residential Tenancy Policy Guidelines No. 1 and No. 40 are general guides that set out responsibilities for Landlords and Tenants and for determining the useful life of building elements when determining damages under the Act. I refer to these guides to assist in determining responsibilities and to acknowledge that there is a useful life for furnishings and finishes. When Landlords consider compensation for repairs, that they should not expect to be fully compensated for bringing back a kitchen counter, for example, to new condition when there is evidence of previous wear and tear.

When making a decision on the claimed damages and in addition to considering the above, I will also apply the following:

Section 32(4) of the Act states that a tenant is not required to make repairs for reasonable wear and tear.

Section 37(2) of the Act directs the tenant, upon vacating a rental unit, to leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

1. Lemon Fresh Carpet Cleaning \$99.75

Although the Tenant stated they did clean the carpets, they also acknowledged that they may be responsible for some staining and why there may be a smell of urine. I accept the Landlord's testimony that there was damage that required professional cleaning and find that the Tenant did not abide by Section 37(2) of the Act in regard to the carpets, and that the cost of the professional carpet cleaning was reasonable. I find that the Landlord has established a claim of \$99.75.

2. Strata Bylaws/Move-Out Fee \$50.00

The Landlord failed to provide sufficient evidence to prove that the \$50.00 move-out fee was part of the tenancy agreement and that the Tenants had any knowledge of this fee. I find that the Landlord has not established a claim for the Strata Bylaws/Move-Out Fee.

3. Home Depot – Cleaning Supplies \$26.74

I accept the Landlord's testimony that the rental unit required further cleaning, including scuff marks and the oven. The Landlord is only claiming the cost of the cleaning supplies and not labour for the cleaning. I find that it is reasonable that the Landlord be compensated for the cost of the cleaning supplies and has established a monetary claim of \$26.74.

4. Home Depot – Hole patching and paint \$69.08

Regarding nail holes, the Tenant is only responsible to compensate the Landlord for an excessive number of nail holes, large nails or screws or tape that have been used and have damaged the walls. The Landlord failed to provide sufficient evidence of any damage other than small nail holes to hang artwork. I find that the Landlord has not established a claim for the hole patching and paint.

5. Home Depot – Horizontal Blind \$54.97

The Tenant has agreed to compensate the Landlord for the damaged blind. I find that the Landlord has established a claim for the Horizontal Blind in the amount of \$57.97.

6. Rona – Vertical Blind \$52.63

Based on the testimony of the Landlord and the Tenant, I find that Vertical Blinds were slightly damaged at the beginning of the tenancy and more so at the end of the tenancy. Considering the useful life of blinds, I find that the Tenant is responsible for half of the cost of the new blinds. The Landlord has established a monetary claim \$28.73.

7. Home Depot – Counter Top Laminate \$164.64

8. Home Depot – Counter particle board \$57.46

The Landlord stated the kitchen counter tops were in "fine" condition at the beginning of the tenancy; however, when I reviewed the Condition Inspection Report that the Landlord submitted as evidence, I noted that the countertops at move-in were given a code "F". As stated on the Condition Inspection Report, the Condition Code for "F" is Fair. The Landlord acknowledged that the counter tops were approximately twenty-four years old and that they had been updated with paint prior to the tenancy. After the tenancy, the Landlord chose to bring the counter tops back to new condition by replacing them instead of repainting. I find the Landlord did not provide sufficient evidence to demonstrate that she considered how she might mitigate the costs to the Tenants. Further, as the counters were nearing the end of their useful life, according to Policy Guideline No. 40, I find that the damage was the result of normal wear and tear, rather than a result of the Tenant's breach of the Act. I find that the Landlord has not established a claim for the new counter tops.

In accordance with Section 67 of the Act and as a result of my findings, I find that the Landlord should receive some, but not all, of the monetary compensation for cleaning and damages in the rental unit. I find the Landlord should be reimbursed for a total cost of \$213.19.

I find that the Landlord's Application has merit and that they should be reimbursed for the Filing Fee of \$100.00.

Conclusion

The Landlord has established a monetary claim, in the amount of \$313.19, which includes \$213.19 in damages and \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution. Pursuant to section 72(2) of the *Act*, I authorize the Landlord to deduct \$313.19 from the Tenants' security deposit of \$625.00, and pay the Tenant the balance of \$311.81.

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 15, 2018

Residential Tenancy Branch