



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL MNDCL-S MNDL-S MNRL-S

Introduction

Pursuant to section 58 of the *Residential Tenancy Act*. (the *Act*), I was designated to hear this matter. This hearing dealt with the landlord's application for:

- a Monetary Order pursuant to section 67 of the *Act*; and
- recovery of the filing fee from the tenants pursuant to section 72 of the *Act*.

Both the landlord's agent, N.V. and the tenant attended the hearing by way of a conference call. The tenant was joined at the hearing by co-tenant M.Z. All parties were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The tenant confirmed receipt of the landlord's application for dispute resolution and evidentiary package after they were sent to him by way of Canada Post Registered Mail on March 18, 2018. The tenant is found to have been duly served in accordance with the *Act*.

The landlord said no evidence was received from the tenant. The tenant acknowledged that he had failed to serve the landlord with his evidentiary package. *RTB Rule of Procedure* 3.15 states, "the respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant". I find the tenant has failed to provide his evidentiary package to the landlord in accordance with Rule 3.15 and will not consider the evidence he submitted.

Issue(s) to be Decided

Is the landlord entitled to a monetary award?

Can the landlord recover the filing fee?

Can the landlord retain the tenant's security deposit?

Background and Evidence

At the hearing all parties in attendance agreed to the following facts. The tenant began occupying the rental unit on September 9, 2011 on a fixed term tenancy agreement set to expire on February 28, 2018. Rent was \$2,400.00 per month, and a security deposit of \$1,200.00 paid at the outset of the first fixed term tenancy was surrendered to the landlord by the tenant's agent following his departure from the rental unit on February, 2018. The unit was rented fully furnished and included all bedding and kitchenware.

The landlord has applied for a monetary award as follows:

| Item | Amount |
|--|-------------------|
| Closet door track | \$107.00 |
| Barstool | 110.88 |
| Pots and Pans | 224.00 |
| Miscellaneous towels/sheets/vacuum/pillows/bathmat | 599.54 |
| Microwave broken exhaust replacement | 84.38 |
| Missing and broken blinds | 78.88 |
| Wireless Router | 224.00 |
| Property Management Service | 567.00 |
| Apartment cleaning/junk removal | 843.00 |
| Strata Fines | 3,400.00 |
| Scratches on Front Door | 262.50 |
| Repainting of closet and bathroom door | 315.00 |
| Return of Filing Fee | 100.00 |
| | |
| Total = | \$6,916.18 |

The landlord said she suffered the loss as noted above because of the large amount of work and effort which was required to re-rent the unit following the tenant's departure. Furthermore, the landlord alleged that the tenant had returned the rental unit heavily damaged and several in the home items were either missing or unusable. For this

reason, the landlord said that numerous small fixes were required in the home, various appliances and furniture needed replacing and an overall cleaning of the unit was required. The landlord explained the tenants had rented the apartment via AirBnb for the entire duration of the tenancy, and she attributed the significant wear and tear to the unit to the various short term rentals.

In addition to the amount claimed for damage, the landlord was looking to recover strata fines which she argued the unit was subject to because of repeated AirBnb usage and for lost rent as a result of the tenant's failure to provide proper notice of his move out.

The tenant disputed that he failed to provide proper notice of move out, highlighting the fact that he vacated the property following the conclusion of the fixed-term tenancy agreement. The tenant also argued that the strata fines had not actually been levied against the landlord, and in fact the landlord had only been subject to repeated warnings of fines. The tenant acknowledged using the rental unit for AirBnb but alleged the landlord had been aware of his rental arrangement and attributed the landlord's application for a monetary award to a business relationship that had soured.

The tenant argued the home was outfitted with numerous items which were well beyond their useful life. In particular he cited the pots, pans, linens and couch as being used when he first took possession of the unit. The tenant continued by explaining he had in fact replaced the internet router and argued that no cleaning was required in the unit because it was subject to constant cleaning as a result of his AirBnb business. The tenant said he had a very good rating on the AirBnb website and therefore, in order to keep this rating, he had a duty to maintain a high level of cleanliness in the suite. The tenant said a professional cleaner would attend to the property approximately every five days and he explained this same cleaner cleaned the suite following the conclusion of the tenancy.

The tenant attributed a majority of the damage for which the landlord sought compensation to normal wear and tear. The tenant said the building was twelve years old and many of the items listed by the landlord were beyond their useful life.

The tenant acknowledged his agent agreed to surrender the security deposit without the tenant's approval; however, he attributed this mistake to a language barrier.

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 bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove her entitlement to a monetary award.

The landlord submitted several photos of the damage she alleged was suffered in the rental unit, while also uploading numerous invoices for items that required purchasing following the conclusion of the tenancy, along with a copy of the condition inspection report signed by the tenant's agent. Both parties agree the unit was subject to Airbnb with the landlord alleging that the unit suffered unreasonable damage as a result of this wear and tear, while the tenant argued the unit was subject to normal wear and tear, and the items provided as part of the tenancy were used when the tenancy began.

When questions of normal wear and tear are raised by a party, as they were by the tenant in this case, *Residential Tenancy Policy Guideline #40* provides direction for determining the useful life of building elements. This *Guideline* must be read in conjunction with *Guideline #1*, which states, "An arbitrator may determine whether or not repairs or maintenance are required due to reasonable wear and tear or due to deliberate damage or neglect by the tenant."

After considering the testimony of all parties present, and having reviewed the landlord's evidentiary package, I find the damage caused to the unit was not the result of deliberate damage or neglect because the tenant had the suite cleaned regularly to maintain his high rating on AirBnb. It must therefore be considered in light of *Policy Guideline #40* which determines the useful life of items.

This guideline notes the following useful life of the following items listed by the landlord:

- Doors = 20 years
- Interior paint = 4 years
- Blinds = 10 years

- microwave = 10 years
- furniture = 10 years
- storage (closet) = 10 years

If the unit was built twelve years ago when the landlord took possession of the rental unit there remains 0% of life expectancy related to; blinds, microwave, couch or closet. The landlord acknowledged during the hearing that these items were new with the unit or purchased when she first took possession. Therefore, I find the landlord is not entitled to a return of any money sought in relation to these items for which she sought compensation.

I will therefore focus my analysis on the landlord's application related to interior paint, broken stools, strata fines, pots/pans and linens, a wireless router, lost rent and various charges for work completed on the rental unit.

Interior Paint

The landlord said the paint was new three years ago. The useful life of interior paint is four years, therefore there remains one year, or 25% of its useful life remaining. The landlord is awarded \$78.75 or 25% of the \$315.00 sought.

Stools

The landlord said the barstools were approximately 1.5 to 2 years old. The tenant did not dispute the stools were broken but said they were of poor quality and did not warrant replacement. Despite the tenant's argument, I find the stools were broken under his tenancy and must therefore be replaced. The useful life stools, which are considered furniture, is ten years. I find they had eight years, or 80% of their useful life remaining. The landlord is awarded an award of \$88.70 for the replacement of the stools.

Strata Fines

I find no loss was incurred by the landlord as a result of strata violations. The landlord has not provided proof of receipt of any penalties since the tenancy ended in February 2018.

Pots/Pans/Linens

The landlord explained all pots, pans and linens were 1.5 to 2 years old when the tenant took possession of the rental unit. The tenant argued these items were much older than this but failed to provide any evidence to support his position. I find the landlord has sufficiently demonstrated that these items required replacement following the conclusion of the tenancy, that a loss was incurred when these items were replaced and that, the tenant failed to maintain these items in an adequate state. I will therefore award the tenant \$724.00, equivalent to a complete return of all funds associated with the replaced pots and pans, and a portion of the claim for replacement linens, less 20% for normal wear and tear.

Wireless Router

I accept the testimony of the tenant that the wireless router was replaced at his own expense following the conclusion of the tenancy. I find no loss has incurred and therefore decline to award the landlord a return of funds for the wireless router.

Lost Rent

The landlord argued she was entitled to rent for March 2018 because the tenant had failed to provide adequate notice of his intention to vacate the property. A review of the tenancy agreement entered into evidence by the landlord shows the parties agreed to a fixed term tenancy agreement which was scheduled to expire on February 28, 2018. In the portion of the agreement that provides instructions to the parties on matters related to the tenancy following the conclusion of the fixed length of time, it states, "the tenancy ends and the tenant must move out of the residential unit." Both the landlord and tenant initialed the portion of the agreement showing they agreed to this clause. I find the tenant therefore had no obligation to provide the landlord with any notice that he intended to vacate the property following the conclusion of the tenancy on the agreed upon date.

Miscellaneous Work/Junk Removal

The final portion of the landlord's application concerned various invoices for cleaning, junk removal and time spent re-renting the suite. I have previously stated that I am satisfied the tenant left the suite reasonably clean, but furthermore, I find the tenant has

already fulfilled any obligation related to this perceived loss as he forfeited his security deposit. The tenant argued the security deposit was surrendered in error because his agent did not have an adequate grasp of the English language; however, I dismiss this argument, as he permitted the agent to act on his behalf and was responsible to provide him with adequate instructions.

As the landlord was partially successful in her application, she may recover the \$100.00 filing fee associated with the application.

Conclusion

I issue a Monetary Order of \$2,400.00 in favour of the landlord as follows:

| Item | Amount |
|-----------------------|-----------------|
| Interior Paint | \$78.75 |
| Replacement of Stools | 88.70 |
| Pots, Pans, Linens | 724.00 |
| Return of Filing Fee | 100.00 |
| | |
| Total = | \$991.45 |

The landlord is provided with a Monetary 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: October 15, 2018

Residential Tenancy Branch