



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL, MNDCL-S, FFL

Introduction

This is an Application for Dispute Resolution (the “Application”) brought by the Landlord requesting a monetary order in the maximum sum of \$5,995.00 for cleaning, repairs and other damages. The Landlord also requests an order for payment of the filing fee.

This matter was originally scheduled for July 9, 2018; an interim decision was rendered on July 12, 2018 allowing an adjournment as I was not satisfied that the Tenant had been properly served with notice of the hearing and he had not appeared for the scheduled date and time. The matter was scheduled to reconvene on September 17, 2018.

The Landlord, Tenant and a co-tenant (“MD”) appeared for the scheduled hearing. The Tenant indicated that he did not receive service of the Notice of Hearing until July 23, 2018, which the Tenant claims exceeds the time allowed under the interim decision. My previous decision required the Landlord to serve the Tenant as required under the Act.

Under section 89, the documents may be served by registered mail and the Landlord provided proof that the mail was sent out on July 20, 2018, which I find provided the Tenant with sufficient opportunity to review and respond to the claims in advance of the hearing date. The Tenant filed a significant amount of material, photographs and over a dozen videos in response to the claim, within the required timelines; I find that he was not prejudiced by being served on July 23, 2018 and that the hearing was to proceed.

The hearing process was explained and parties were given an opportunity to ask any questions about the process. The parties were given a full opportunity to present

affirmed evidence, make submissions, call witnesses and to cross-examine the other party on the relevant evidence provided in this hearing.

Although all evidence was taken into consideration at the hearing, only that which was relevant to the issues is considered and discussed in this decision.

The Tenant explained that there was a previous hearing addressing the security deposit; the Landlord did not dispute this and accordingly, I am dismissing the matter of the security deposit claim by the Landlord as that issue is *res judicata* and has already been decided in a previous hearing by another Arbitrator.

The Landlord questioned whether or not the co-tenant ought to have been named as a tenant based on the tenancy agreement filed into evidence. As this Application only named the one male Tenant, and he was the only person served, the Landlord was informed that this is the only party that I would be considering the claim against. As the tenancy ended more than two years ago, the limitation period for filing a new claim against the co-tenant has expired. The hearing continued as against Tenant MC, although the co-tenant offered testimony into evidence with respect to the condition of the rental unit during the tenancy.

Issues to be Decided

Is the Landlord entitled to a monetary order for cleaning, repairs and damages, pursuant to section 67 of the Residential Tenancy Act ("Act")?

Is the Landlord entitled to payment of the filing fee, pursuant to section 72 of the Act?

Background and Evidence

This tenancy began October 1, 2006 and ended December 31, 2015; a security deposit of \$550.00 was paid to the Landlord and a copy of the tenancy agreement was submitted into evidence. The Tenant rented a main level suite for \$1,100.00 per month, and the Landlord resided in the upper levels of the home. The Tenant and Landlord did a final inspection at the end of the tenancy and both parties submitted photographs, video and documentation of that inspection and its outcome.

The Landlord is claiming the following items totalling \$5,995.00 against the Tenant (based on the higher carpet estimate submitted):

1. Cleaning, work fixing damage or neglect - \$1,412.50
2. Purchases/services - \$904.52
3. Replacement of carpet – estimated between \$3,683.28 and \$2,903.88

The Landlord stated that he bought new carpeting in 2005, about one year prior to the start of this tenancy. He claims that the carpet had a useful life expectancy of 20 years. At the end of the tenancy in 2015, he discovered stains which professional cleaners found to be non-organic in nature. The Landlord submitted two quotes for new carpeting based on low to mid quality carpeting; the quotes were \$2,903.88 and \$3,683.28, which included removal of existing carpet and installation. He states that he re-rented the suite and has not replaced the carpeting although this tenancy ended almost three years ago; his reason was that he needed the money from the Tenant to pay for the carpet replacement that is needed.

The Tenant states that the carpet had been vacuumed at the end of the tenancy, but not professionally cleaned. They used a carpet pad protector where a chair was positioned and claim that the carpet was left in reasonable condition; it is their position that there is no need to replace the carpet as the rental unit was re-rented with the existing carpet almost three years ago.

The Landlord states that he provided three sets of keys but only received two at the end of the tenancy. He replaced the deadbolt and keys at a cost of \$162.68 and provided a receipt for this expense. The Landlord states that it was a necessary cost due to potential security risks. The Tenant did not respond to this claim.

The Landlord states that the Tenant had a cat and that there was evidence of cat fur and filth throughout the residence. He claims that it appeared the surfaces had simply been wiped down with a cloth and that considerable work was necessary to bring it up to a reasonable standard of cleanliness. He indicated that mold was found around window sills as well.

He provided receipts from a person who now resides in the rental unit in the amount of \$325.00 and \$275.00 for 24 hours of cleaning work, at a rate of \$25.00/hour. Photographs and a diagram were submitted into evidence to show what needed additional cleaning, the Landlord claiming that it was difficult to see the extent of the work required during the move-out inspection due to the late hour.

The Tenant states that the rental unit was cleaned by a professional cleaner every two weeks and that there were ongoing issues with moisture seeping into the window and patio door slides; the cleaner used paper towels in place to collect the moisture which would build up between cleanings.

The co-tenant argued that the photographs from the Landlord were suspect as it showed some discrepancy in the cleanliness in different photographs submitted. The Tenant claims that they did a normal amount of cleaning upon move-out, and the co-tenant stated that it was probably “not as good as it could have been”. They offered to remove items left next to the house, but the Landlord had said to leave it. The Tenant submitted several videos taken during the move-out inspection which show the condition the rental unit was left in; the Landlord is seen using a high-powered light to inspect all corners of the rooms during the video.

The Landlord described small holes in the walls from where things were hung as requiring patching and painting. In addition, he noted some dents and there was some wall damage where a shelf was removed. He indicated there were several small nail holes clustered in the ceiling in one of the bedrooms. The Landlord also changed out a toilet seat damaged by the Tenant’s cat.

The Landlord submitted a schedule of costs for replacing a blind, caulking where mold was found, replacing pot lights and related time/expenses. The Landlord states that he incurred expenses for carrying out needed repairs and painting which came to \$2,312.02 (this total included the cleaning labour cost previously mentioned as the Landlord grouped and summarized items together in his evidence). The Landlord provided details of time and expenses room- by-room. Receipts were also submitted as evidence of the expenses incurred.

The co-tenant states that she did not hang anything from the bedroom ceiling and has no idea where there is a small cluster of nail holes in the “popcorn” ceiling in the bedroom she occupied. The Tenants explained that there were at least three small flooding incidents between 2010 and 2014 that caused water from damaged pipes to enter their rental unit; photographs were kept to document this issue, and were submitted into evidence.

They were concerned about mold issues from that point forward, and dispute that they are liable for any associated costs for mold issues or clean up of mold. The Tenants began keeping detailed records of incidents after the Landlord failed to follow through

with needed repairs and maintenance, and these records were submitted into evidence. The Tenants have made an application against the Landlord with respect to those issues which is scheduled to be heard September 21, 2018.

Lastly, the Landlord also claims the filing fee of \$100.00.

Analysis

Under section 7 of the Act, a party who fails to comply with the Act, regulation, or tenancy agreement must compensate the other party for damage or loss that results. To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. that a damage or loss exists;
2. that the damage or loss results from a violation of the Act, regulation or tenancy agreement;
3. the value of the damage or loss; **and**
4. steps taken, if any, to mitigate the damage or loss.

The burden of proof falls to the Landlord to prove that the Tenant is in breach of the Act or regulations. Section 32 sets out the expectations during a tenancy:

32 (1) *A landlord must provide and maintain residential property in a state of decoration and repair that*

*(a) complies with the health, safety and housing standards required by law, and
(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.*

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(4) A tenant is not required to make repairs for reasonable wear and tear.

(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement. [bolding added]

The Tenant has a duty to leave the rental unit in a reasonable condition at the end of the tenancy in accordance with section 37 of the Act:

37 (1) *Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.*

(2) *When a tenant vacates a rental unit, the tenant must*

(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and

(b) give the landlord all the keys *or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.*

The specific claims of the Landlord are addressed below. It is noted that the Landlord submitted approximately a dozen photographs and a diagram as evidence of the condition that the Tenant left the rental unit in at the end of the tenancy; in response, the Tenant uploaded over 100 videos, photographs and other records to dispute the claim that the condition was unacceptable.

Carpet Replacement:

Under Policy Guideline 40 of the Residential Tenancy Branch, carpet in a rental unit has a useful life expectancy of 10 years, after which it is reasonable to assume that it should be replaced by the Landlord due to normal wear and tear. Based on the evidence provided, I find that this carpet was 10 years old at the end of the tenancy and find that the wear and staining is of a nature that it be considered “reasonable wear and tear” over that time span. Under section 37 of the Act, a tenant is not liable for reasonable wear and tear. Accordingly, the Tenant is not liable for the cost to replace the carpeting, as this is the responsibility of the Landlord. Even if the Tenant had been proven to have caused enough damage to necessitate replacement, the age of the carpet exceeds ten years, therefore it is the Landlord’s responsibility to replace the carpeting and this cost cannot be passed along to the Tenant who happened to be living in the rental unit when the carpet required replacement. For the same reasons, I am not allowing any claim for carpet cleaning by the Landlord.

Cleaning Expenses:

Under section 37 of the Act, a tenant must leave a rental unit reasonably clean and undamaged, except for reasonable wear and tear. I have reviewed the photographs, video and diagram of cleaning that was required and find that some additional cleaning was warranted in order to bring the rental unit up to the standard which one would

expect; however, I do not find that the Tenant left the rental unit in a filthy condition. The Tenant's former roommate did admit that the place could have used additional cleaning, and in that regard, I do agree.

Accordingly, I am prepared to award a nominal amount based on what would appear to have been required to complete the cleaning as listed in the diagram. I find that 6 hours of additional cleaning (approximately 1 hour/room) at a rate of \$25.00 per hour is reasonable, for a total of \$150.00 for labour; I further award \$21.23 for cleaning supplies purchased at a local supermarket as indicated in a receipt submitted by the Landlord. I award the Landlord the total sum of **\$171.23** for reasonable cleaning expenses.

Locks/Keys:

Section 37 requires a tenant to provide all the keys to the Landlord at the end of a tenancy. I find, in the absence of any submissions to the contrary, that the Tenant failed to return all keys and I find that the Landlord has proven his claim for the cost of replacing the deadbolt and keys in the sum of **\$162.68**.

Repair Work:

The Tenant is liable for damage caused during the tenancy that is beyond normal wear and tear. The Landlord has the burden of proving whether or not the Tenant has caused the damage as alleged. The Landlord has failed to submit a proper move-in or move-out inspection report in accordance with the regulations, as required under section 23 of the Act.

The purpose of doing a move-in inspection is to document the actual condition of the premises so that it can be determined whether damage has occurred during the tenancy that follows. In this case, the tenancy agreement simply has notes at the end pointing out chips in the stove top enamel and discolouration of vinyl flooring by the bathtub. It is not a Condition Inspection Report in the form expected under the Act and regulations. A diagram with notations was used for the move-out inspection, which appears to have been signed by the Tenants. This document points out cleaning and repairs noted by the Landlord, but does not contain the detailed information normally provided for in a proper Condition Inspection Report.

I have considered each of the items that the Landlord has claimed required repairs. Based on the information submitted, I find only the following repairs to have been proven by the Landlord, on a balance of probabilities:

1. Blind to be fixed - **\$67.20**
2. Toilet seat replacement - **\$48.00**
3. Kitchen pot lights - **\$27.84**
4. Wall repair where shelf glued - **\$37.50**

As for the claims for time and materials to do minor patches and paint walls, Policy Guideline 40 states that the expected life of interior paint on walls is four years. As this was a nine-year tenancy, I find that it was the Landlord's responsibility to attend to minor repairs and painting of the walls at the end of this tenancy. The evidence presented does not indicate or suggest to me that there was wall or ceiling damage of a nature that exceeds that which would be expected from normal wear and tear after a tenancy of nine years, with the exception of the repair where the shelf was glued to the wall as noted above.

With respect to work done to address mold or mildew on window sills, I am satisfied that the Tenant did regular cleaning and that this concern relates more to the structure itself and is dependent on the age and character of the home, as opposed to negligence on the part of the Tenant. Past floods and claims of improper maintenance to the exterior suggest that the development of mold was not the responsibility of this Tenant.

The Landlord has claimed garbage removal and a recycling fee of \$50.00 and \$15.00 respectively; based on the evidence before me, I am satisfied that the Landlord is entitled to the **\$65.00** for these expenses.

As the Landlord was partially successful in his claim, I am awarding the **\$100.00** filing fee. The total monetary award to the Landlord is **\$679.45**, calculated as follows:

The final monetary order is calculated as follows:

Item	Amount
Cleaning	\$171.23
Locks and Keys	\$162.68
Blinds	\$67.20
Toilet seat replacement	\$48.00
Kitchen pot lights	\$27.84
Wall/shelf repair	\$37.50
Garbage removal and recycling fee	\$65.00

Recovery of Filing Fee for this Application	\$100.00
Total Monetary Order	\$679.45

This order must be served on the Tenant and may then be filed in the Small Claims Division of the Provincial Court and enforced as an order of that court if the Landlord fails to make payment. Copies of this order are attached to the Tenant's copy of this Decision.

Conclusion

The Tenant shall pay forthwith to the Landlord the sum of \$679.45 for cleaning, repairs and other expenses.

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: September 25, 2018

Residential Tenancy Branch