



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CAPITAL REGION HOUSING CORPORATION
and [tenant name suppressed to protect privacy]

DECISION

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

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord filed under the *Residential Tenancy Act* (the “Act”), for a monetary order to recover unpaid rent, for compensation under the *Act*, for compensation for damages for the Landlord, for permission to retain the security deposit, and to recover the cost of the filing fee for this application. The matter was set for a conference call.

Both the Landlord and Tenants attended the hearing and were each affirmed to be truthful in their testimony. Each party was provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

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 is described in this Decision.

Issues to be Decided

- Is the Landlord entitled to a monetary order for unpaid rent?
- Is the Landlord entitled to monetary compensation for damages under the *Act*?
- Is the Landlord entitled to retain the security deposit?
- Is the Landlord entitled to the return for their filing fee for this application?

Background and Evidence

The parties agreed that the tenancy began on December 1, 2014, as a month to month tenancy. Rent in the amount of \$965.00 was to be paid by the first day of each month and the Landlord had been given a \$452.00 security deposit. A copy of the tenancy agreement was submitted to documentary evidence by the Landlord.

The Landlord and the Tenant agreed that the tenancy ended on June 30, 2018, in accordance with the *Act*, but that the Tenants did finish moving out until July 4, 2018. Both parties agreed that the move-out condition inspection report had been completed at the end of the tenancy. Both parties agreed that they also had completed an addendum to the condition inspection report called the "Security Deposit Return Form." The Landlord testified that the Tenant had agreed to four deductions to the security deposit. The Landlord testified that Tenant had agreed to pay \$124.52 for over holding the rental unit from July 1 to July 4, 2018, \$135.00 for carpet cleaning, \$250.00 for extra cleaning to the rental unit, and \$250.0 for drapery cleaning. The Landlord submitted a copy of the Security Deposit Return Form into documentary evidence.

The Landlord testified that they had decided to replace the carpets in the rental unit and are not seeking the agreed upon amount of \$250.00 for carpet cleaning and that the drapery cleaning had only cost \$63.00.

The Tenant testified that he agreed to the Landlord's claims for \$124.52 in overholding charges, \$250.00 in additional cleaning charges and \$63.00 in drapery charges.

The Landlord testified that they are also seeking \$575.00 in painting and wall repair costs. The Landlord testified that the Tenants had put an excessive number of screw holes in the walls of the rental unit and that they are seeking to recover \$575.00 for the repair and repainting of the damaged walls; consisting of \$83.00 in drywall repair and \$492.00 in repainting costs. The Landlord testified that the actual drywall repair had cost \$1650.00, and the painting had cost \$1150.00, but that they were only seeking to recover a portion of the actual costs as the paint in the rental unit had been three and a half years old at the end of the tenancy.

The Tenant testified that he did not agree that they had damaged the walls of the rental unit. The Tenant testified that they had been given permission to hang shelves in the rental unit and that when they asked if they should patch the screw holes from the shelves at the end of the tenancy, the Landlord had told them they didn't need to do

that. The Tenant testified that the Landlord had informed them that they would prefer to do their own work on the walls of the rental unit.

The Landlord agreed that the Tenant had asked about repairing the screw holes from the shelving units during the pre-move out inspection and that she had told them the Landlord preferred to do their own repairs on the rental unit. The Landlord testified that when she had said that she had not been able to access the extent of the damage to the unit caused by the shelving units the Tenant had hung on the walls. It was when the Tenant had removed the shelves that the true extent of the damage was visible. The Landlord provided 28 pictures of the holes in the walls of the rental unit into documentary evidence.

Analysis

Based on the evidence before me, the testimony, and on a balance of probabilities I find that:

I accept the agreed upon testimony of both parties that the Tenant has agreed to pay the Landlord \$437.52; consisting of 250.00 for cleaning the rental unit, \$63.00 for cleaning the drapery and \$124.25 for overholding the rental unit for four days at the end of the tenancy.

The Landlord has also requested compensation to recover the costs for repairing and repainting the walls of the rental unit due to damage caused by the Tenant.

In order to determine if the Tenants breached the Act when they did not repair the screw holes in the rental unit at the end of the tenancy, I must first determine if the screw holes left by the Tenants are damage or everyday wear and tear. The Residential Tenancy policy guideline #1 states:

“Nail Holes:

1. Most tenants will put up pictures in their unit. The landlord may set rules as to how this can be done e.g. no adhesive hangers or only picture hook nails may be used. If the tenant follows the landlord's reasonable instructions for hanging and removing pictures/mirrors/wall hangings/ceiling hooks, it is not considered damage and he or she is not responsible for filling the holes or the cost of filling the holes.
2. The tenant must pay for repairing walls where there are an excessive number of nail holes, or large nails, or screws or tape have been used and left wall damage.

3. The tenant is responsible for all deliberate or negligent damage to the walls.”

The policy guide states that the Tenant must pay to repair walls where there is an excessive number of holes. I have received the documentary evidence submitted by the Landlord, and I find that there is an excessive number of screw holes in the walls of the rental unit that constitute damage to the walls of the rental unit. Section 32(3) of the *Act* set out the obligation for a tenant to repair damage to the rental unit.

Landlord and tenant obligations to repair and maintain

32 (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.

I find that the Tenants breached section 32(3) of the *Act* when they returned the rental unit to the Landlord with damaged walls.

Awards for compensation due to damage are provided for under sections 7 and 67 of the *Act*. A party that makes an application for monetary compensation against another party has the burden to prove their claim. The Residential Tenancy Policy Guideline #16 Compensation for Damage or Loss provides guidance on how an applicant must prove their claim. The policy guide states the following:

“The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To determine whether compensation is due, the arbitrator may determine whether:

- A party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- Loss or damage has resulted from this non-compliance;
- The party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- The party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

I accept the Landlords’ testimony that they paid \$1,650.00 to have the drywall in the rental unit repaired and \$1,150.00 to have the rental unit repainted. In determining the suitable award, I must refer to the Residential Tenancy Branch guideline # 40 Useful Life of Building Elements. The guideline sets the useful life of interior paint at four years, and drywall at 20 years.

I accept the testimony of the Landlord that the rental unit had been freshly painted at the beginning of this tenancy on December 1, 2014. Therefore, I find that the paint was three and a half years old at the end of this tenancy. Accordingly, I find that the Landlord has proven the entitlement of the recovery of 12.5% of the costs to paint the rental unit, in the amount of \$143.75.

I have reviewed the Landlord testimony and documentary evidence, and I find that there is no evidence before me to prove the age of the drywall in the rental unit. However, I find that the \$83.00 requested in the Landlord application to represent, approximately, 5% of the Landlord's cost to repair the drywall. I find that the \$83.00 requested by the Landlord to be a reasonable amount given the extent of the damage. Therefore, I find that the Landlord has proven the entitlement to the Nominal award of \$83.00 for the damage caused to the drywall in the rental unit during this tenancy.

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord has been successful in their application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this hearing.

<u>Awarded Item's</u>	<u>Due</u>
Over holding	\$124.52
Cleaning Rental unit	\$250.00
Cleaning Drapery	\$63.00
Drywall repair	\$83.00
Painting (12.5%)	\$143.75
	\$664.27
Security Deposit	<u>-\$452.00</u>
	\$212.27
Filing fee	\$100.00
Due	\$312.27

I grant the Landlord a Monetary Order in the amount of \$312.27, consisting of \$124.52 for overholding the rental unit, \$250.00 for cleaning the rental unit, \$63.00 for cleaning the drapery, \$83.00 for drywall repair, \$143.75 for painting, and the recovery of the \$100.00 filing fee for this hearing, less the \$452.00 security deposit the Landlord is holding for this tenancy.

Conclusion

I find for the Landlord under sections 38, 67 and 72 of the Act. I grant the Landlord a **Monetary Order** in the amount of **\$312.27**. The Landlord is provided with this Order in the above terms, and the Tenants must be served with this Order as soon as possible. Should the Tenants 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: November 29, 2018

Residential Tenancy Branch