



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNDL-S

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on June 27, 2018 (the “Application”). The Landlord applied for compensation for damage to the unit and sought to keep the security deposit. The Landlord also sought reimbursement for the filing fee.

The Landlord and Tenant appeared at the hearing. The Tenant called a witness during the hearing. I explained the hearing process to the parties who did not have questions when asked. The parties and witness provided affirmed testimony.

The Tenant confirmed he wanted double the security deposit back if I found the Landlord breached the *Residential Tenancy Act* (the “Act”) or *Residential Tenancy Regulation* (the “Regulations”).

Both parties had submitted evidence prior to the hearing. I addressed service of the hearing package and evidence. The Tenant confirmed he received the hearing package. The Tenant said he did not receive the Landlord’s evidence.

The Landlord testified that she put the evidence in the Tenant’s mail box on October 25, 2018. She provided the address that she left it at. She said it was separate from the hearing package. The Landlord had not submitted any evidence in relation to service of her evidence on the Tenant.

It is the Landlord who must satisfy me that her evidence was served on the Tenant in accordance with the *Act* and Rules of Procedure (the “Rules”). The Landlord testified that she served her evidence on the Tenant; however, the Tenant testified that he never received the evidence. The Landlord did not provide any evidence in support of her

position that her evidence was served on the Tenant. Given the conflicting testimony, and lack of evidence to support the Landlord's position, I am not satisfied that the Landlord's evidence was served on the Tenant in accordance with the *Act* and Rules.

I heard from the parties in relation to whether the Landlord's evidence should be admitted or excluded in the circumstances. I determined it was necessary to exclude the evidence. I find admitting the evidence would have been unfair to the Tenant given the nature of the evidence and his testimony that he did not receive it.

The Landlord confirmed she received the Tenant's evidence.

The parties were given an opportunity to present relevant oral evidence, make relevant submissions and ask relevant questions. I have considered all admissible documentary evidence and all oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Landlord entitled to compensation for damage caused to the rental unit?
2. Is the Landlord entitled to keep the security deposit?
3. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

The Landlord sought the following:

Item	Description	Amount
1	Kitchen fan	\$263.93
2	Painting	\$1000.00
3	Cleaning	\$140.00
4	Tile floor repair	\$769.19
	TOTAL	\$2,173.12

The parties agreed there was a written tenancy agreement in this matter. The Tenant testified that he had an agreement with the previous owner of the rental unit and that the Landlord purchased the rental unit in 2014. The Landlord agreed but stated that she

purchased the rental unit in 2015. The Tenant thought the tenancy started in March or April of 2014. The Landlord said the tenancy started April 1, 2014. The parties agreed the tenancy was a one-year fixed term tenancy that then became a month-to-month tenancy. The parties agreed rent was \$1,100.00. The parties agreed the Tenant paid a \$525.00 security deposit and that the Landlord still holds this.

The Tenant testified that he vacated the rental unit June 24, 2018. The Landlord testified the Tenant vacated June 19, 2018.

The Tenant testified that he provided the Landlord with his forwarding address in writing but could not recall when. He said he left it in the Landlord's mailbox. He said he also sent a text. The Landlord denied that the Tenant provided his forwarding address in a letter. She testified that she asked him for it on June 19, 2018 and he wrote it on a piece of paper. She said this was the first time she received his forwarding address and that she did not receive his text. The Tenant agreed he provided the address on June 19, 2018 as stated by the Landlord.

The parties agreed the Landlord did not have an outstanding monetary order against the Tenant at the end of the tenancy. Both agreed the Tenant did not agree in writing at the end of the tenancy that the Landlord could keep some or all of the security deposit.

The Tenant testified that he did a move-in inspection with the previous owner in 2014. The Tenant testified that a move-in Condition Inspection Report was completed and signed by both him and the previous owner. The Tenant testified that the previous owner gave him a copy of the move-in Condition Inspection Report but could not recall how or when. The Landlord was not aware of whether a move-in inspection was done.

The Tenant testified that no move-out inspection was done. The Landlord testified that her and the Tenant did do a move-out inspection around June 19, 2018. The Landlord testified that a Condition Inspection Report was completed and signed by her but not the Tenant. The Landlord said she did not provide a copy of the move-out Condition Inspection Report to the Tenant.

In reply, the Tenant testified that he met with the Landlord and they walked around and noted damage in the rental unit but that she did not have a Condition Inspection Report but a statement saying she wanted to use the security deposit.

The parties testified as follows in relation to the compensation sought.

Kitchen fan

The Landlord testified that the exhaust fan in the kitchen was broken at the end of the tenancy and had to be replaced. She said she called the previous owner who said the fan was in perfect condition. The Landlord testified that the Tenant acknowledged breaking the fan.

The Tenant submitted that the Landlord cannot prove the fan was working. He disputed the cost claimed for replacing the fan.

Painting

The Landlord testified that she hired a painter that the Tenant recommended to paint the rental unit. She said the rental unit was badly damaged. She testified that there were a lot of holes in the walls. The Landlord testified that she observed the Tenant's children put pins in the walls for fun. The Landlord did not know when the rental unit had last been painted.

The Tenant acknowledged that he hung posters and pictures on the walls. The Tenant testified that he and his partner filled the holes in the kitchen, living room and TV area. He acknowledged that he did not fill the holes in some rooms. He said he told the Landlord he would come back and finish filling the holes. He testified that the Landlord would not allow them back into the rental unit to finish. The Tenant testified that the holes were small push-pin holes. He said the holes were not visible once filled.

The Tenant did not agree that the holes were beyond reasonable wear and tear. He pointed out that he lived there for four years and that the rental unit needed painting.

Cleaning

The Landlord testified that the Tenant did not clean the rental unit at all upon move-out. She said the Tenant vacuumed the floors but did not wipe them down. She said she hired a cleaning company to clean the kitchen, bathroom and closets.

The Tenant testified that he left the rental unit reasonably clean.

Tile floor repair

The Landlord testified that there were cracks in the tile floor upon move-out. She said there was mold and mildew stains in the bathroom. The Landlord testified that the Tenant did not clean well during the tenancy. She said she hired a company to clean the floor and fill the cracks.

The Tenant testified that he did not know which tile the Landlord was referring to. He said there were two cracked tiles when he moved into the rental unit. The Tenant denied causing any damage to the floor.

The Tenant called a witness. She testified that the rental unit had quite a few pin and tack holes where the Tenant's children put up posters. She said she helped the Tenant fill the holes. She testified that the walls needed to be painted but that they were ready to be painted.

The witness testified that the Tenant was in the process of cleaning the rental unit when she was present. She said there was no damage to the floors or cabinets.

The Landlord asked the witness questions. In response she testified about observing the Tenant and his children cleaning. She also testified about filling the holes in the walls.

Analysis

Section 7 of the *Act* states:

(1) If a...tenant does not comply with this Act...or their tenancy agreement, the non-complying...tenant must compensate the [landlord] for damage or loss that results.

(2) A landlord...who claims compensation for damage or loss that results from the [tenant's] non-compliance...must do whatever is reasonable to minimize the damage or loss.

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order 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.

Under sections 24 and 36 of the *Act*, landlords and tenants can extinguish their rights in relation to the security deposit if they do not comply with the *Act* and *Regulations*. Further, section 38 of the *Act* sets out specific requirements for dealing with a security deposit at the end of a tenancy.

Pursuant to rule 6.6 of the Rules of Procedure, it is the Landlord as applicant who has the onus to prove the claim on a balance of probabilities.

I accept the testimony of the Tenant that he did a move-in inspection with the previous owner. The Landlord did not know if one was done but did not dispute that one was done. I find the Tenant has not extinguished his rights in relation to the security deposit under section 24 of the *Act*.

The parties disagreed about whether a move-out inspection was done. However, I find the Tenant did not extinguish his rights in relation to the security deposit under section 36 of the *Act* regardless of which version of events I accept.

I do not accept the testimony of the Landlord that she completed a move-out Condition Inspection Report. The Tenant denied this. There is no evidence before me that the Landlord did complete a Condition Inspection Report. I am not satisfied that she did. I find the Landlord did extinguish her right to claim against the security deposit for damage to the rental unit under section 36(2)(c) of the *Act*. I note that the Landlord acknowledged she did not provide a copy of the Condition Inspection Report to the Tenant. This also leads to the finding that the Landlord extinguish her right to claim

against the security deposit for damage to the rental unit under section 36(2)(c) of the *Act*.

Given the testimony of the parties, I accept that the Landlord received the Tenant's forwarding address in writing on June 19, 2018. I am not satisfied based on the testimony of the Tenant and evidence provided that the Landlord received the forwarding address prior to this date.

The parties disagreed about when the Tenant vacated the rental unit. I do not find it necessary to determine this.

Pursuant to section 38(1) of the *Act*, the Landlord was required to repay the security deposit or claim against it within 15 days of June 19, 2018 or June 24, 2018. However, the Landlord had extinguished her right to claim against the security deposit for damage to the unit and therefore her only option under section 38(1) of the *Act* was to repay the security deposit or claim against it for something other than damage to the rental unit. Given the Landlord did neither, I find the Landlord breached section 38(1) of the *Act*. Pursuant to section 38(6) of the *Act*, the Landlord cannot claim against the security deposit and must pay the Tenant double the amount of the deposit. Therefore, the Landlord must return \$1,050.00 to the Tenant.

The Landlord is still entitled to claim for compensation for damage to the unit and I consider that now.

Section 37 of the *Act* addresses a tenant's obligations upon vacating a rental unit and states:

(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

Kitchen fan

I am not satisfied that the Tenant broke the kitchen fan. There is no documentary evidence before me about the state of the rental unit or kitchen fan at the start of the tenancy. I do not find the Landlord's testimony that she called the previous owner who stated the fan was working to be compelling evidence without a witness statement or

testimony from the previous owner. The Landlord testified that the Tenant acknowledged breaking the fan; however, he did not do so at the hearing. I find there is insufficient evidence to prove the Tenant broke the fan. Therefore, I cannot find that the Tenant breached the *Act* and do not find the Tenant responsible for replacing the fan.

Painting

Given the testimony of the Tenant's own witness about there being quite a few holes in the walls of the rental unit and the walls needing paint, I accept that the damage to the walls was beyond reasonable wear and tear as submitted by the Landlord. I therefore accept that the Tenant breached section 37 of the *Act*.

I accept that the walls needed to be painted. Again, the Tenant's own witness acknowledged this.

Policy Guideline 40 deals with the useful life of items including indoor paint. At page five, the Policy Guideline states that the useful life of interior paint is four years. The Landlord did not know when the rental unit had last been painted. The Tenant pointed out that he lived there for four years. I find the useful life of the paint had passed and therefore decline to award the Landlord compensation for having the rental unit painted.

Cleaning

The Landlord testified that the Tenant did not clean the rental unit upon vacating. The Tenant testified that he did. The Tenant's witness provided testimony that supported the position of the Tenant in this regard. There is no evidence before me supporting the Landlord's position that the rental unit was dirty such as a move-out Condition Inspection Report or photos of the rental unit. I am not satisfied that the Tenant breached the *Act* by failing to leave the rental unit reasonably clean given the conflicting testimony and lack of evidence to support the Landlord's position.

Tile floor repair

The Landlord testified that the Tenant left the tile flooring dirty and cracked. The Tenant denied this. The Tenant's witness provided testimony that tends to support his position. There is no evidence before me supporting the Landlord's position that the tile flooring was dirty or cracked such as a move-out Condition Inspection Report or photos of the rental unit. The Tenant acknowledged that two tiles were cracked but said this was the

case upon move-in. I am not satisfied that the Tenant cracked the tile flooring or left it dirty and therefore am not satisfied the Tenant breached the *Act* in this regard.

In summary, the Landlord has failed to prove that she is entitled to any of the compensation sought and therefore I decline to award her the requested compensation.

Given the Landlord was not successful in this application, I decline to grant the Landlord reimbursement for the \$100.00 filing fee.

The Tenant is issued a Monetary Order for \$1,050.00, double the security deposit.

Conclusion

The Application is dismissed without leave to re-apply.

The Landlord must return double the security deposit to the Tenant. The Tenant is issued a Monetary Order for \$1,050.00. If the Landlord does not return \$1,050.00 to the Tenant, this Order must be served on the Landlord. If the Landlord does not comply with the Order, it may be filed in the Provincial Court (Small Claims) 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 *Act*.

Dated: November 29, 2018

Residential Tenancy Branch