



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for damage, pursuant to section 67;
- authorization to retain the tenants' security deposit, pursuant to section 38; and
- authorization to recover the filing fee from the tenants, pursuant to section 72.

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 1:58 p.m. in order to enable the tenants to call into this teleconference hearing scheduled for 1:30 p.m. The landlord and his agent attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord, his agent and I were the only ones who had called into this teleconference.

The landlord's agent testified that the tenants were individually served the notice of dispute resolution packages by registered mail on July 27, 2018. The landlord's agent provided the Canada Post Tracking Numbers to confirm these registered mailings. I find that the tenants were deemed served with these packages on August 1, 2018, five days after their mailing, in accordance with sections 89 and 90 of the *Act*.

Issue(s) to be Decided

1. Is the landlord entitled to a Monetary Order for damage, pursuant to section 67 of the *Act*?
2. Is the landlord entitled to retain the tenants' security deposit, pursuant to section 38 of the *Act*?
3. Is the landlord entitled to recover the filing fee from the tenants, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the landlord and his agent, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The landlord provided undisputed testimony that this tenancy began on August 1, 2013 and ended on June 30, 2018. Monthly rent in the amount of \$1,625.00 was payable on the first day of each month. A security deposit of \$812.50 and a key/fob deposit of \$200.00 were paid by the tenants to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application. The

tenants provided the landlord with their forwarding address via e-mail on July 13, 2018. The landlord received the aforementioned e-mail on July 13, 2018. The landlord filed for dispute resolution on July 27, 2018.

The landlord provided undisputed testimony that a move in condition inspection and inspection report were completed on July 30, 2013. The move in condition inspection report was signed by both parties and entered into evidence. The landlord testified that a move out condition inspection report was not completed but a security deposit and interest statement (the "Statement") was completed. The Statement was signed by both parties and a copy was entered into evidence. The Statement states that the tenants consent to the following deductions from their security and key/fob deposits:

- the cost of cleaning the subject rental property;
- the cost of repairs to the drywall;
- the cost of installation of light fixtures; and
- the cost of missing keys.

The landlord testified that when the tenant signed the Statement, specific amounts to be deducted for each item were not included and that on a date after the tenant signed the Statement the landlord entered the cost of each item. The landlord testified that the tenants' keys and fobs were returned to him.

The landlord testified that the carpet in the subject rental property was very dirty when the tenants moved out and needed to be professionally cleaned. The landlord entered into evidence a carpet cleaning estimate in the amount of \$135.45.

The landlord testified that the property was left dirty and required professional cleaning. The landlord entered into evidence a rate sheet for a cleaning company. The landlord testified that he did not hire the cleaners whose rate sheet he entered into evidence. The landlord testified that he hired a different company to clean the subject rental property after he completed some renovations. No receipt or evidence from the other cleaning company were entered into evidence.

The landlord testified that when the tenants moved out, the kitchen and bathroom cabinets looked like someone had taken sandpaper to them and that they needed to be re-finished. The move in condition inspection report notes that there were some small scratches on the kitchen cabinets and a scratch near the drawer on the cabinet in the bathroom. The landlord testified that the cabinets were installed new in 2006. The landlord entered into evidence an estimate for the re-finishing of the cabinets in the amount of \$1,575.00.

The landlord testified that the blinds in the subject rental property were in good condition when the tenants moved in. The move in condition inspection report confirms the landlord's testimony. The landlord testified that after the tenants moved out, all of the blinds in the subject rental property looked like they had been clawed at by an animal and that they were not repairable. The landlord testified that he replaced all of the blinds in the subject rental property which cost him \$1,158.00. The landlord did not submit a receipt or quote into evidence. The landlord testified that the blinds in the subject rental property were new in 2006.

The landlord testified that the tenants dis-assembled the kitchen facet and added some of their own new parts to it. The landlord testified that facet modified by the tenants did not work properly and required replacement. The landlord entered into evidence a receipt for a new facet in the amount of \$133.28. The

landlord testified that the facet was new in 2006. The move in condition inspection report does not specifically mention the kitchen facet.

The landlord testified that the tenants removed one of the light fixtures in the subject rental property and installed their own fixture which they removed when they vacated the subject rental property. The landlord testified that the landlord's light fixture was damaged by the tenants when they removed it and thus required replacing. The landlord did not enter a receipt for the replacement of the light fixture into evidence. The light fixture was installed in 2006. The landlord estimated that a new light fixture would be approximately \$200.00.

The landlord testified that the labour for installing the light fixture and the faucet cost him \$300.00. The landlord entered into evidence a quote for "General works: floor caps, lighting, shelving caulking, doors" in the amount of \$300.00.

The landlord testified that the tenants left numerous holes in the drywall which required repair. The move in condition inspection report states that the walls in the subject rental property were in good condition except that there were some anchor and screw holes in the living room and dining room drywall. The drywall was installed in 2006. The landlord entered into evidence an estimate for the drywall repair in the amount of \$300.00.

The landlord testified that the ceiling in the den/2nd bedroom had markings of unknown origin on it and required re-painting. The move in condition inspection report does not mention any markings on the ceiling of the den/ 2nd bedroom. The landlord testified that the ceiling in the den/2nd bedroom was last painted in 2010. The landlord entered into evidence a quote for the painting of the ceiling in the amount of \$300.00.

The landlord testified that the floors in the living and dining rooms were severely scratched and required replacing and that the den/2nd bedroom suffered significant water damage and also required replacing. The move in condition inspection report notes that the floor in the living room had some scuff marks, the floor in the dining room and den/2nd bedroom, was in good condition. The landlord testified that new flooring in the living and dining rooms cost \$3,081.13, and the new flooring in the den/2nd bedroom cost \$660.98. No receipts or quotes were entered into evidence.

The landlord testified that the carpets in the master bedroom had bleach stains and required replacing. The landlord testified that the carpets were installed in 2010. No receipts or estimates for carpet replacement were entered into evidence.

The landlord is seeking the following damages from the tenants:

Item	Amount
Carpet cleaning	\$135.45
Cleaning	\$319.00
Cabinet re-surfacing	\$1,575.00
Blinds	\$1,158.08
Kitchen faucet	\$133.28
Wall repair	\$300.00
Installation of facet and lighting	\$300.00

Ceiling painting	\$300.00
Lighting fixture replacement	\$200.00
Flooring	\$3,742.11
Total	\$8,162.92

Analysis

Policy Guideline 16 states that 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.

Section 37 of the *Act* states that when tenants vacate a rental unit, the tenants must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Based on the landlord's testimony, I find that the carpet of the subject rental property was dirty and required cleaning. The landlord entered into evidence a carpet cleaning quote in the amount of \$135.45. I find that the tenants are responsible for this carpet cleaning fee.

Pursuant to Policy Guideline 16, I find that the landlord has failed to prove the amount of or value of the damage or loss for the following items as no receipts or quotes were entered into evidence. I note that a rate sheet is not a quote.

Item	Amount
Cleaning	\$319.00
Blinds	\$1,158.08
Lighting fixture replacement	\$200.00
Flooring	\$3,742.11

I therefore dismiss the landlords claims for the above listed items.

Policy Guideline #40 states that the useful life for cabinets is 25 years (300 months). Therefore, at the time the tenant moved out, there was approximately 156 months of useful life that should have been left for the cabinets of this unit. I find that since the cabinets required resurfacing after approximately 144 months, the tenants are required to pay according to the following calculations:

$\$1,575.00$ (cost of resurfacing) / 300 months (useful life of cabinets) = $\$5.25$ (monthly cost)

$\$5.25$ (monthly cost) * 156 months (expected useful life of cabinets after tenants moved out) =
\$819.00

Policy Guideline #40 states that the useful life for faucets is 15 years (180 months). Therefore, at the time the tenant moved out, there was approximately 36 months of useful life that should have been left for the faucet. I find that since the faucet required replacing after approximately 144 months, the tenants are required to pay according to the following calculations:

$$\text{\$133.28 (cost of new faucet) / 180 months (useful life of faucet) = \$0.74 (monthly cost)}$$

$$\text{\$0.74 (monthly cost) * 36 months (expected useful life of faucet after tenant moved out) = } \mathbf{\text{\$26.64}}$$

Policy Guideline #40 states that the useful life for drywall is 20 years (240 months). Therefore, at the time the tenant moved out, there was approximately 96 months of useful life that should have been left for the drywall of this unit. I find that since the drywall required repair after approximately 144 months, the tenants are required to pay according to the following calculations:

$$\text{\$300.00 (cost of repairing drywall) / 240 months (useful life of drywall) = \$1.25 (monthly cost)}$$

$$\text{\$1.25 (monthly cost) * 96 months (expected useful life of drywall after tenant moved out) = } \mathbf{\text{\$120.00}}$$

Policy Guideline #40 states that the useful life for interior painting is four years. Therefore, at the time the tenant moved out, there was no useful life left on the paint. I therefore find that the landlord is not entitled to recover damages for the painting of the ceiling in the den/2nd bedroom.

In support of his claim for the cost of labour to install the faucet and the light fixture, the landlord submitted into evidence a quote for “general works: floor caps, lighting, shelving caulking, doors”. I find that this quote is for a number of things and it is not possible to determine what the labour for installing the light fixture and the faucet would be. I therefore find that the landlord has failed to quantify his damages and so his claim fails.

Condition Inspection Reports

Sections 23, 24, 35 and 36 of the *Act* establish the rules whereby joint move-in and joint move-out condition inspections are to be conducted and reports of inspections are to be issued and provided to the tenants. When disputes arise as to the changes in condition between the start and end of a tenancy, joint move-in condition inspections and inspection reports are very helpful. These requirements are designed to clarify disputes regarding the condition of rental units at the beginning and end of a tenancy.

Sections 35 and 36 of the *Act* state that the right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord does not complete a condition inspection report in accordance with the regulations and provide the tenant a copy of that report in accordance with the regulations.

The landlord testified that no move out inspection report was completed. Responsibility for completing the move out inspection report rests with the landlord. I find that the landlord did not complete the condition inspection report in accordance with the Regulations, contrary to sections 35 and 36 of the *Act*.

Since I find that the landlord did not follow the requirements of the *Act* regarding the joint move-out inspection report, I find that the landlord's eligibility to claim against the security deposit and pet damage

deposit for damage arising out of the tenancy is extinguished in accordance with sections 35 and 36 of the *Act*.

Security Deposit Doubling Provision

Section 38 of the *Act* requires the landlord to either return the tenants' security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenants' provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit.

However, this provision does not apply if the landlord has obtained the tenants' written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenants to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

I find that the Statement signed by the tenants did not authorize a specific amount to be deducted from the tenants' security deposit and therefore does not meet the requirements of section 38(4) of the *Act*. Without stating a specific amount, there is no meeting of the minds or agreement between the parties.

Section C(3) of Policy Guideline 17 states that unless the tenants have specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit if the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the *Act*.

The landlord testified that he received the tenants' forwarding address via email on July 13, 2018. While this does not conform to the service requirements in section 88 of the *Act*, I find that the tenants' forwarding address was sufficiently served for the purposes of this *Act*, pursuant to section 71 of the *Act*, on July 13, 2018 because the landlord confirmed receipt of the email on July 13, 2018.

In this case, while the landlord made an application to retain the tenants' security deposit within 15 days of receiving the tenants' forwarding address in writing, he is not entitled to claim against it due to the extinguishment provisions in sections 35 and 36 of the *Act*. Therefore, the tenants are entitled to receive double their security deposit as per the below calculation:

$$\$812.50 \text{ (security deposit)} * 2 \text{ (doubling provision)} = \mathbf{\$1,625.00}$$

Since the tenants returned their keys and fobs, I find that the tenants are entitled to the return of their key and fob deposit in the amount of \$200.00.

Section 72(2) states that if the director orders a party to a dispute resolution proceeding to pay any amount to the other, the amount may be deducted in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant. This provision applies even though the landlord's right to claim from the security deposit has been extinguished under section 36 of the *Act*.

As the landlord was partially successful in his application, I find that he is entitled to recover the \$100.00 filing fee from the tenants.

Conclusion

I issue a Monetary Order to the tenants under the following terms:

Item	Amount
Double security deposit	\$1625.00
Key/fob deposit	\$200.00
Less carpet cleaning	-\$135.45
Less cost of re-finishing cabinets	-\$819.00
Less cost of faucet	-\$26.64
Less cost of drywall repair	-\$120.00
Less filing fee	-\$100.00
TOTAL	\$623.91

The tenants are provided with this Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord 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: December 03, 2018

Residential Tenancy Branch