



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 for:

- a Monetary Order pursuant to sections 37 and 67 of the *Residential Tenancy Act* (the *Act*) for compensation for damage caused by the tenant, their pets or guests to the unit, site or property;
- authorization to retain the security deposit pursuant to section 38 of the *Act*; and
- a request to recover the filing fee for this application pursuant to section 72 of the *Act*.

The tenant, the tenant's advocate, and the landlord's agent (the "landlord") appeared at the hearing. All parties present were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The landlord testified that the tenant was served with the notice of dispute resolution package, including the landlord's evidence, by way of registered mail on July 16, 2018. The tenant confirmed receipt of the notice of dispute resolution and evidence on July 18, 2018.

The tenant testified that she provided a copy of her evidentiary package to the landlord on December 06, 2018 by way of courier. The landlord confirmed receipt of the tenant's evidence. Based on the testimony provided by the landlord, I find that the landlord has been adequately served with the tenant's evidence, such that the landlord was served in accordance with the timelines for service of evidence as prescribed in the Residential Tenancy Branch Rules of Procedure.

The landlord applied for a Dispute Resolution proceeding seeking monetary compensation, in the amount of \$1,417.50, for a purported monetary loss arising from, as the landlord asserts, damage to the rental unit caused by the tenant.

Issue(s) to be Decided

- Is the landlord entitled to monetary compensation due to damage caused by the tenant to the rental unit?
- Is the landlord entitled to retain the security deposit?
- Is the landlord entitled to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the sworn testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this decision.

The parties agreed that the tenancy began on March 01, 2012, and that the agreed-upon monthly rent owed by the tenant, in the form of a tenant rent contribution, was \$436.00, due on the first day of each month. The tenant provided a security deposit in the amount of \$525.00, which continues to be held by the landlord. The tenancy ended pursuant to a one-month notice to end tenancy provided by the tenant to the landlord. The tenant vacated the rental unit on June 30, 2018.

The landlord is seeking monetary compensation in the amount of \$1,417.50, for a purported monetary loss arising from, as the landlord asserts, damage to the rental unit caused by the tenant. The landlord summarized the items comprising the claim for damages as follows:

ITEM	AMOUNT
Walls- Washing and drywall repairs	\$200.00
Carpet cleaning – steam and detergent treatment	350.00
Window cleaning	150.00
Blinds cleaning	250.00
Light fixture cleaning in dining room	20.00

Smoke detector repair	40.00
Shelf cleaning in laundry room	50.00
Patio cleaning and garbage disposal	100.00
Cleaning doors	50.00
Bifold door repairs	60.00
Door stopper re-installation	30.00
Range hood cleaning	50.00
Tax	67.50
TOTAL	\$1,417.50

The landlord testified that a condition inspection was undertaken at the start of the tenancy and that a condition inspection report was completed at that time. The landlord stated that the tenant was given two opportunities to attend a condition inspection after the rental unit had been vacated, and that the tenant appointed an agent to attend on her behalf on July 6, 2018, the date on which the condition inspection occurred at the end of the tenancy. Both the landlord and tenant confirmed that the tenant was represented at the end of tenancy condition inspection by an individual who, for the purpose of this decision, will be identified as “Ms. D”.

The landlord testified that the pictures provided as part of the landlord’s evidence package which depict damage to the rental unit were taken during the condition inspection after the rental unit had been vacated. Along with her testimony, the landlord referred to the pictures and the condition inspection report at the end of tenancy to describe the damage purportedly caused by the tenant.

The landlord testified that they obtained a quote from a renovation company which details the repairs, and cleaning, required to the rental unit to repair damage caused by the tenant. The renovation company provided an estimate of \$1,417.50 for the items identified as damage caused by the tenant. The landlord provided that although the actual cost of the repairs and cleaning was much higher, the landlord chose to rely on the lower figure of the estimate in the amount of \$1,417.50 to form the basis of their monetary claim for compensation.

The landlord provided that the tenant had left stains on the carpet which required an initial cleaning treatment, followed by a second cleaning in an effort to remedy certain stains that were not cleaned during the first carpet cleaning. The tenant testified that she had cleaned the carpets throughout the rental unit; however, the tenant did not provide any invoice or documents to substantiate her assertion, and further, the tenant

provided that there were certain stain in the carpets that were due to “wear and tear” and from having children reside in the rental unit. The parties agreed that the carpets were classified as being in new condition at the start of the tenancy.

The landlord testified that the tenant had been given permission to affix items, such as pictures, to the walls of the rental unit, and that the tenant was provided with instructions to fill any holes left in the walls at the end of the tenancy. The landlord alluded to the move-out instruction sheet provided to the tenant which includes these instructions.

The landlord provided testimony, and referred to photographs, to assert that there was damage to the walls that was not due to affixing items to the walls; rather, there were holes, scratches, and dents to the some of the walls that were not caused by affixing items, and further, some walls had been drawn on. The landlord also testified that the holes left behind due to items being affixed were great in number and that the tenant did not adhere to the instructions provided to repair such holes by patching them with drywall mud, followed by sanding.

The tenant testified that she had adequately cleaned the rental unit and left it in a reasonable state of repair and cleanliness, and that any item deemed by the landlord to be classified as damage should instead be alternatively weighed in light of wear and tear given the length of the tenancy.

The tenant provided that the smoke detector kept falling from the roof during the course of the tenancy and that she would affix it back in place. The tenant confirmed that there were holes left in the wall due to items being affixed to the walls, but that the move-out instructions did not provide any instructions to patch any such holes. The tenant testified that items were affixed to the walls during the tenancy, but that the holes left behind were due to regular use and wear and tear.

The tenant further provided that although she cleaned the carpets and floors, she was not able to remove the stains identified by the landlord. The tenant agreed that there were stains on the carpet located on the stairs and living room. The tenant testified that she did thoroughly clean the blinds, and that at the start of the tenancy, some rooms did not have blinds, and that she installed blinds on her own accord.

The tenant asserted that at the start of the tenancy, the oven was filthy and that the range hood was old, rusty, and dirty. The tenant also testified that the door stopper in the entryway of the rental unit had fallen from the wall and that a mark was subsequently left on the wall by the door knob.

The tenant further provided that some walls were left with scratches and pen marks, as well as stickers. The tenant asserted that the sliding door in the laundry room was in poor condition at the start of the tenancy, and that the kitchen cabinets and some shelves were in poor condition at the start of the tenancy as well. The tenant further asserted that the windows and window sills showed signs of water leakage and condensation at the start of the tenancy and that she cleaned them at the end of the tenancy.

The tenant testified that after she had vacated the rental unit, the landlord had permitted another set of tenants to occupy the same rental unit shortly after the tenancy ended. The landlord confirmed that they permitted a family from another unit to temporarily occupy the rental unit in order to accommodate them for a short period of time. The landlord asserted that all photographs depicting damage to the rental unit were taken while the unit was vacant and prior to the other family temporarily moving-in to the unit.

The landlord also testified that the repair estimate provided by the restoration company was provided while a representative from the company inspected the rental unit when it was vacant prior to the other family temporarily occupying it.

The landlord testified that the repairs completed to the rental unit were based on the damage identified and documented during the condition inspection at the end of the tenancy, and as identified on the estimate provided by the restoration company, and that no subsequent damage was caused by the family temporarily occupying the rental unit after the tenant had vacated the rental unit.

Analysis

Upon consideration of the evidence before me, I will outline the following relevant Sections of the *Act* that are applicable to this situation. I will provide the following findings and reasons when rendering this decision.

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 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 value of the loss or damage. In this case, the onus is on the landlord to prove their claim for a monetary award.

Regarding the landlord's claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that 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, and that it is up to the party claiming compensation to provide evidence to establish that compensation is warranted. In essence, to determine whether compensation is due, the following four-part test is applied:

- Did the tenant fail to comply with the *Act*, regulation or tenancy agreement?
- Did the loss or damage result from this non-compliance?
- Did the landlord prove the amount of, or value of, the damage or loss?
- Did the landlord act reasonably to minimize that damage or loss?

Section 37 of the *Act* provides, in part, the following:

- 37** (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

The onus or burden of proof is on the party making the claim. When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events without any form of evidentiary corroboration, the party making the claim has not met the burden on a balance of probabilities and the claim fails.

Based on the testimony and evidence provided by the parties, and on a balance of probabilities, I find that the landlord has demonstrated that it is more likely than not that there was some damage, and a need for cleaning, caused by the tenant to the rental unit. Therefore, with respect to some items forming the landlord's claim for compensation arising from damage, I find that the tenant failed to comply with section 37 of the *Act*, and the landlord's loss resulted from this non-compliance.

However, as detailed below, the landlord has not met the burden of proof in substantiating that the tenant caused damage, or is liable for, with respect to all items for which compensation is sought.

The final component of the four-part test referenced above is the requirement for the claimant to prove the amount of, or value of, the damage or loss. I find that the landlord has provided sufficient evidence, in the form of copies of invoices and an itemized list of items and the associated cost to replace those items, to prove the amount of the loss for some of the items discusses below. However, as detailed below, the landlord did not meet the burden for all items for which compensation was sought.

With respect to the landlord's claim in the amount of \$200.00 for repair to the walls, I find that both parties have presented evidence, in the form of their respective photographs and testimony, which demonstrate that there was damage to the walls. Both parties provided photographs which depict damage to the walls, such as writing on the walls, and holes in the walls, caused by both having had items affixed to the walls, and scratches, dents, scrapes, and holes for which the cause is not having items affixed to the walls. Residential Policy Guideline #1 provides the following with respect to walls:

Cleaning:

The tenant is responsible for washing scuff marks, finger prints, etc. off the walls unless the texture of the wall prohibited wiping.

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.

I find that the photographs depict that there are an excessive number of nail holes that have resulted in wall damage to certain parts of the rental unit. I further find that the landlord permitted the tenant to affix pictures to the walls and had provided instructions to the tenant with respect to repair to the walls at the end of tenancy.

The landlord provided a “move-out checklist” which includes instructions to wash walls and repair holes left in walls by filling them with drywall mud, followed by sanding. As such, since the tenant did not adhere to the landlord’s instructions to remediate and repair holes left by affixing items to the walls, the resulting nail holes can be considered damage apart from regular wear and tear.

Based on the foregoing, I find that the landlord has established that the tenant caused damage to the walls of the rental unit. I accept the landlord’s claim, along with the invoice of the cost to repair the walls, seeking \$200.00 as compensation for repairs and cleaning of the walls. The landlord is awarded \$200.00 for this portion of its claim.

With respect to the landlord’s claim seeking compensation in the amount of \$350.00 for carpet cleaning, I find that the landlord has met the burden of proving this loss. Both parties provided testimony which illustrates that there were stains left on the carpets at the end of the six-year tenancy, and that the carpets were in a new condition at the start of the tenancy; this is supported by the condition inspection reports as well.

Both parties presented photographs which depict stains to certain areas of the carpet located throughout the rental unit. Although the tenant provided that she attempted to clean the carpets, I accept the evidence and testimony provided by both parties which describes that the carpets had stains at the end of the tenancy.

The parties agreed that the carpets were in new condition at the start of the tenancy. Notwithstanding the tenant’s assertion that she cleaned the carpets, I accept that it was reasonable for the landlord to undertake an attempt to clean the carpets to mitigate the damage to the carpets, as both parties agreed that there remained areas of staining on the carpet at the end of the tenancy.

The tenant asserted that it was unreasonable for the landlord to have the carpets professionally cleaned twice, and that the failure to have the carpets adequately cleaned after the first attempt is not a cost that should be passed to the tenant to bear. When pressed to offer an explanation as to why a second attempt was needed to clean the carpets, the landlord was not able to provide a sufficient response to explain the need for a second cleaning. Therefore, while I accept that it was reasonable for the landlord to attempt to adequately clean the carpet to address the issue of the stains left behind, I find that the landlord has only established the need for one attempt at carpet cleaning, and has not justified the cost for a second cleaning.

The landlord has provided only that they seek a cost in the amount of \$350.00, and has not identified the separate costs for the first and second cleanings. Therefore, I will grant the landlord half of the \$350.00 sought for carpet cleaning, as only a partial amount has been proven, which represents the initial attempt at cleaning the carpet. The landlord is granted \$175.00 for carpet cleaning.

With respect to the landlord's claim in the amount of \$30.00 for a door stopper reinstallation, I find that the landlord has sufficiently met the burden of proving this claim. The landlord testified that the door stopper had been detached from the wall, and the tenant's testimony verifies the claim. Therefore, I grant the landlord's request to recover the cost of reinstalling the door stopper.

The landlord has sought \$100.00 for patio cleaning and garbage disposal. The tenant asserted she cleaned the patio and removed garbage from the rental unit. With respect to the patio, the tenant asserted that after cleaning, a few leaves remained on the patio. The landlord provided photographs which depict a relatively clean patio with a few leaves. The landlord also provided a photograph which depicts an unidentified item, which the landlord claims belongs to the tenant. The landlord has also provided a photograph which they claim purportedly depicts garbage under the patio deck; however, the manner in which the photograph presents does not illustrate the garbage to which the landlord refers.

I find that the landlord has not provided sufficient testimony or evidence to substantiate that the patio was left unclean, or that the tenant left garbage on the premises which warranted a disposal fee of \$100.00. Furthermore, the photographs provided by the landlord correlate with the tenant's assertion that the patio was left clean, save for a few leaves. Therefore, I dismiss the landlord's claim in the amount of \$100.00 for patio cleaning and garbage disposal.

The landlord has sought \$150.00 for window cleaning, and asserts that the cleaning involved frame and track cleaning, as well as removal of mould. However, the condition inspection report at the end of tenancy refers to the windows only as dusty, and does not mention any mould issue with respect to the windows, nor does the report mention any detail with respect to frame and track cleaning.

The landlord did not provide any additional testimony to support the claim sought for window cleaning. Rather, the tenant provided that there was an issue with the window sills at the start of the tenancy and that there were signs of water and moisture damage around the windows at the start of the tenancy; the landlord did not provide a response

to the tenant's testimony with respect to this point. I find that, on a balance of probabilities, the landlord has not established that the tenant caused damage to the window frame or track, and has not established that the area around the windows presented with mould due to the negligence of the tenant. Further, the landlord has not established that the tenant failed to adequately clean the windows at the end of the tenancy. Based on the foregoing, I dismiss the landlord's claim with respect to \$150.00 sought for window cleaning.

The landlord has sought \$250.00 for cleaning of the blinds. I find that the landlord has not proven that the tenant caused damage to the blinds. I accept the tenant's testimony that not all rooms had blinds at the start of the tenancy, and that the tenant sufficiently cleaned the blinds at the end of the tenancy. The condition inspection report supports the tenant's assertion that not all rooms had blinds and that the only issue with respect to the blinds was minor dust. Therefore, I dismiss the landlord's claim for cleaning of the blinds.

I dismiss the landlord's claim of \$20.00 for cleaning of a light fixture in the dining room, as the landlord did not provide any testimony or evidence to support this claim. In the individual sections of the condition inspection report there is no indication that the light covers required cleaning and yet at the end of the condition inspection report the landlord wrote "light cover cleaning" generally, but does not provide any additional information with respect to the location of the light cover.

I dismiss the landlord's claim of \$40.00 for repair of the smoke detector. The tenant testified that the smoke detector was poorly installed, as it repeatedly detached from the ceiling during the tenancy. The landlord did not provide any testimony to illustrate whether the smoke detector was damaged due to negligence on the part of the tenant, and further, did not provide any testimony to clarify whether the smoke detector was rendered inoperable, or whether it simply remained detached from the ceiling. At any rate, I find that the landlord did not prove that the tenant was negligent to the extent that she caused the smoke detector to detach from the ceiling or become inoperable such that it required repair, as the landlord asserts. I prefer the tenant's testimony which provides that the smoke detector detached from the ceiling in the absence of any negligent behaviour on the part of the tenant.

I dismiss the landlord's claim for shelf cleaning, cleaning doors, and bifold door repairs. I find that, on a balance of probabilities, the landlord has failed to meet the burden that the tenant was negligent and caused damage to, or failed to clean, these items.

The condition inspection report does not make reference to a shelf in the laundry room which requires cleaning, and the landlord has not provided any evidence to support this claim. The condition inspection report does not identify specifically a bifold door requiring repair, and the landlord has not provided any testimony to support this claim. Rather, the tenant provided that the bifold door to which the landlord referred presented with issues at the start of the tenancy, such that the mechanism used to allow the door to open and close did not function properly from the onset of the tenancy. The tenant further testified that not all cabinets and shelves were clean at the start of the tenancy.

With respect to the landlord's claim of \$50.00 for range hood cleaning, I find that the landlord has not proven that the tenant was negligent in causing the range hood to deteriorate to a state of disrepair. The tenant testified that the range hood was old, rusty, and dirty at the onset of the tenancy. Although the landlord has provided a photograph depicting a range hood which appears dirty, deteriorated, and not cleaned, the tenant's testimony conflicts with that of the landlord. The condition inspection report does not list the state of the range hood at the start of the tenancy such that I am able to rely on the agreed-upon state of the range hood at the start of the tenancy. As stated, the onus is on the claimant to establish their claim, and I find that in this case, when faced with conflicting testimony, I find that the landlord has not met the burden of proving the claim with respect to the range hood. Therefore, I dismiss the landlord's claim with respect to the cost purportedly incurred for cleaning the range hood.

The landlord is granted costs in the amount of \$200.00 for repair to the walls, \$175.00 for carpet cleaning, and \$30.00 for reinstallation of a door stopper. The total costs for damages awarded to the landlord are \$405.00.

Additionally, as the landlord has only been partially successful in its claim, I find the landlord is entitled to recovery of half of the filing fee paid for this application in the sum of \$50.00, and will add that amount to the monetary award as described above.

Residential Tenancy Policy Guideline #17 provides guidelines which govern the process to follow with respect to the security deposit. I find that the landlord has sufficiently proven that, after vacating the rental unit, the tenant caused damage to the rental unit for which the landlord has been awarded costs.

Therefore, I find that the landlord is entitled to retain a portion of the security deposit in lieu of having the tenant ordered to pay a sum of money to the landlord by way of a monetary order. As the landlord is awarded compensation for damages totaling \$405.00, and has been granted leave to recover \$50.00 of the filing fee, I hereby order

that the landlord is entitled to retain \$455.00 from the \$525.00 collected as a security deposit at the start of the tenancy.

The balance of the security deposit, in the amount of \$70.00, is to be returned to the tenant. Based on the information provided by the Residential Tenancy Branch deposit interest calculator, I find that there is no interest to be added to the amount of the deposit to be returned to the tenant.

Conclusion

I issue a monetary order in the tenant's favour in the amount of \$70.00 on the above terms.

The tenant is provided with a monetary order in the above terms and the landlord(s) must be served with this order as soon as possible. Should the landlord(s) fail to comply with these orders, these orders may be filed in the Small Claims Division of the Provincial Court and enforced as orders 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: January 02, 2019

Residential Tenancy Branch