



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 was convened as a result of the landlord's Application for Dispute Resolution ("application") seeking remedy under the *Residential Tenancy Act* ("Act"). The landlord applied for a monetary order for damage to the unit, site or property, for authorization to keep all or part of the tenant's security deposit, and to recover the cost of the filing fee.

The tenant and the landlord attended the teleconference hearing and gave affirmed testimony. Both parties were affirmed and the hearing process was explained to the parties. Both parties were also given the opportunity to ask questions. During the hearing the parties were given the opportunity to provide their evidence orally and respond to the testimony of the other party. I have reviewed all evidence before me that was presented during the hearing and that met the requirements of the Rules of Procedure. However; only the evidence relevant to the issues and findings in this matter are described in this decision.

Neither party raised concerns regarding the service of documentary or digital evidence.

Preliminary and Procedural Matter

The parties confirmed their email addresses at the outset of the hearing. The parties also confirmed their understanding that the decision would be emailed to the parties and that orders would be emailed to the applicable party.

Issues to be Decided

- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenant's security deposit under the *Act*?
- Is the landlord entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on August 1, 2018 and was scheduled to revert to a month to month tenancy after August 1, 2019. The tenancy ended in November 2018, when the tenant vacated the rental unit. The tenant testified that she vacated the rental unit on November 23, 2018. The landlord testified that the tenant vacated the rental unit on November 30, 2018. The parties agreed that during the tenancy, the monthly rent was \$1,100.00 per month and was due on the first day of each month. The tenant paid a security deposit of \$550.00 at the start of the tenancy, which the landlord continues to hold and which has accrued no interest to date.

The landlord has claimed for \$900.00; however during the hearing clarified that the actual amount claimed was lower at \$840.00 for the cost of re-painting. The landlord's \$840.00 claim is comprised as follows:

ITEM DESCRIPTION	AMOUNT
1. Re-painting of rental unit	\$840.00
TOTAL	\$840.00

Regarding item 1, the landlord has claimed \$840.00 for the cost to re-paint the rental unit due to what the landlord described as damage beyond reasonable wear and tear by the tenant during the tenancy.

The landlord referred to the Condition Inspection Report ("CIR") submitted in evidence. The incoming portion of the CIR was completed on July 31, 2018 and the outgoing portion of the CIR was completed on November 30, 2018. The parties agreed that the CIR was signed and that the tenant disagreed with the condition of the rental unit at the end of the tenancy.

The landlord testified that the rental unit was painted in July 2018, which was one month before the tenancy began in August 2018. The landlord also stated that nobody else rented the rental unit before the tenancy moved into the rental unit so the paint was new as a result.

The landlord referred to many colour photos submitted in evidence. While the landlord referred to several holes on several walls, the landlord was advised during the hearing that some of the photos were blurry and that I could not see all of the holes being referred to by the landlord in the photographic evidence. The landlord denied that any of the photos were duplicates and the tenant confirmed that she did not submit any of her own photographic evidence to rebut the landlord's photos. The tenant did agree that her boyfriend did use spray-paint in the rental unit and that one wall had spray-paint on it as a result.

In support of the landlord's claim of \$840.00 was an invoice dated December 16, 2018 which indicates that face plates were removed to ensure a proper paint job, that all holes in the suite were filled twice and sanded smooth, and that two coats of acrylic latex paint were applied to all walls.

The tenant stated that the tenancy agreement and addendum did not place any restrictions on how to hang pictures things on the walls. The tenant's response to the photographic evidence was in relation to the patching of holes throughout the rental unit. The tenant also stated that the customer's signature was missing from the invoice for painting and that she did not receive the invoice in evidence. The tenant denies that any of the holes exceed reasonable wear and tear.

The landlord replied to the tenant by stating that the damage exceeds reasonable wear and tear and that the tenant's unsatisfactory patching job lead to the need to have a professional fix the poor patching job by the tenant and to repaint the rental unit.

Analysis

Based on the documentary evidence and the testimony of the parties, and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of

probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the tenant. Once that has been established, the landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the landlord did what is reasonable to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Firstly, section 37 of the *Act* states:

Leaving the rental unit at the end of a tenancy

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.

[Emphasis added]

As a result, it is expected that some wear and tear will occur during every tenancy. The issue is whether it is reasonable or unreasonable. The parties clearly disagree on what

is reasonable wear and tear. I also note that the landlord is the only party with the onus of proof as the claim before me is the landlord's claim for compensation due to alleged damage by the tenant.

Residential Tenancy Branch Policy Guideline 1 – Landlord & Tenant – Responsibility for Residential Premises states the following regarding nail holes and painting:

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.

PAINTING

The landlord is responsible for painting the interior of the rental unit at reasonable intervals. The tenant cannot be required as a condition of tenancy to paint the premises. The tenant may only be required to paint or repair where the work is necessary because of damages for which the tenant is responsible.

[Emphasis added]

Based on the above, I find that a majority of the landlord's photos are either blurry or do not reflect the number of holes being claimed during the hearing based on the landlord's testimony. I also note that the landlord did not specify specific instructions on how to hang items on the interior walls of the rental unit. Given the above, I am unable to find that the number of holes is excessive.

Regarding the spray-paint, I find that spray-paint on the interior wall, which the tenant did not deny, is damage to the interior paint that exceeds reasonable wear and tear. Therefore, while I do not find the landlord has met the entirety of the \$840.00 claim. I am granting the landlord ½ of the amount claimed due to the damage caused by spray-painting, which I find would have required sanding, filling and repainting. I find that

\$420.00 is a reasonable amount for such damage and that the landlord has met the burden of proof for that amount as a result. Given the above, I grant the landlord **\$420.00** accordingly.

As the landlord's application had merit, I grant the landlord the recovery of filing fee in the amount of **\$100.00** pursuant to section 72 of the *Act*.

The landlord continues to hold the tenant's security deposit of \$550.00, which has accrued \$0.00 in interest since the start of the tenancy.

Monetary Order – I find that the landlord has established a total monetary claim in the amount of **\$520.00** and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the tenant's security deposit which has accrued \$0.00 in interest as follows:

Item #	Description	Amount Granted
1	Repainting	\$420.00
8	Recovery of the cost of the filing fee	\$100.00
SUB-TOTAL		\$520.00
<i>(Less tenant's security deposit of \$550.00)</i>		<i>-\$550.00</i>
SECURITY DEPOSIT BALANCE OWING BY LANDLORD TO TENANT		<i>-\$30.00</i>

Pursuant to section 72 of the *Act*, I authorize the landlord to retain \$520.00 of the tenant's security deposit of \$550.00 in full satisfaction of the landlord's monetary claim.

I ORDER the landlord to immediately return the tenant's remaining security deposit balance of **\$30.00**. Should the landlord fail to comply with my order, I grant the tenant a monetary order pursuant to section 67 of the *Act* for the balance owing by the landlord to the tenant in the amount of \$30.00.

Conclusion

The landlord's application is partially successful.

The landlord has established a total monetary claim of \$520.000. The landlord has been authorized to retain \$520.00 of the tenant's \$550.00 security deposit leaving a balance owing by the landlord to the tenant of \$30.00. The landlord has been ordered to immediately return that amount to the tenant. Should the landlord fail to comply with my order, the tenant has been granted a monetary order under section 67 for the balance due in the amount of \$30.00. Should the tenant require enforcement of this monetary order the tenant must first serve the landlord with the monetary order and the monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: April 17, 2019

Residential Tenancy Branch