



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL MNDCL MNDL MNRL

Introduction

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

- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of \$5,660.00 pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 11:10 am in order to enable the tenant to call into this teleconference hearing scheduled for 11:00 am. The landlord's agent attended the hearing and was 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 Reconvened Hearing. I also confirmed from the teleconference system that the landlord's agent and I were the only ones who had called into this teleconference.

This hearing was reconvened from a hearing previously scheduled for March 19, 2019. At this hearing (and in the ensuing Interim Decision of the same date), I ordered that the landlord may serve the tenant with the notice of dispute resolution package and supporting evidence (the "**Documents**") as follows:

- 1) The landlord sends a link to a DropBox or similar cloud-based file sharing service folder to the tenant via iMessage, which contains:
 - a. the Documents;
 - b. a copy of this Interim Decision; and
 - c. a copy of the Notice of Reconvened Hearing attached to this Interim Decision.

- 2) The landlord sends a photograph of the page of the Interim Decision containing these instructions (i.e. this page) to the tenant via iMessage.
- 3) The landlord sends this link and this photograph to the tenant by **March 29, 2019 at 4:00 pm.**

The landlord's agent testified that the tenant was served with the Documents in accordance with this order, and uploaded a screenshot of an iMessage he sent to the tenant indicating as much. Accordingly, I find that the tenant has been properly served with the Documents in accordance with my interim decision.

Issue(s) to be Decided

Is the landlord entitled to:

- 1) A monetary order in the amount of \$5,660.00; and
- 2) Recover the filing fee for this application?

Background and Evidence

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

The parties entered into a written, fixed term tenancy agreement starting July 16, 2018. Monthly rent is \$2,600.00 and is payable on the sixteenth of each month. The tenant paid the landlord a security deposit of \$1,300.00. The landlord still retains this deposit.

Unpaid Rent

The landlord claims \$2,600.00 for rent which the tenant allegedly did not pay.

The landlord's agent testified that the tenant did not pay rent for the period of December 16, 2018 to January 15, 2019 (the "**December/January Rent**"). He testified that, shortly after New Years', the tenant texted him that she would be moving out and would not pay rent for this period. He testified that she told him that he could retain the security deposit as compensation for the December/January Rent. The landlord did not submit screenshots of this text message into evidence.

The landlord's agent testified that, on January 7, 2019 he served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent by posting it on the rental unit's door. The Notice had an effective date of January 17, 2019. He testified that the tenant vacated the rental unit by this date. He testified that she did not provide a forwarding address.

The landlord's agent testified that the December/January Rent remains unpaid.

Furniture

The landlord claims \$1760.63, as compensation for furniture allegedly taken by the tenant when she vacated the rental unit.

The landlord's agent testified that the rental unit was rented to the tenant partially furnished. The tenancy agreement indicates that "furniture" was included in the monthly rent.

The landlord's agent testified that, upon moving out, the tenant removed a number of pieces of furniture from the rental unit that belonged to the landlord. The landlord's agent submitted into evidence a screen shot of an IKEA webpage, he testified, sets out the value of each item of furniture taken by the tenant. He testified that all the items of furniture were purchased from IKEA three years ago, and that he did not retain the receipts. The furniture in question and their claimed values are as follows:

Description	Quantity	Unit price	Subtotal	Tax	Total
Shoe cabinet	1	\$39.99	\$39.99	\$4.80	\$44.79
Floor lamp	1	\$119.00	\$119.00	\$14.28	\$133.28
Desk	1	\$199.00	\$199.00	\$23.88	\$222.88
Dining chair	4	\$139.00	\$556.00	\$66.72	\$622.72
Bed frame with storage	1	\$399.00	\$399.00	\$47.88	\$446.88
Dining table	1	\$259.00	\$259.00	\$31.08	\$290.08
				Total	\$1,760.63

The landlord also submitted photos of the missing furniture which were in the rental unit before the tenant moved into the rental unit.

Damage to Rental Unit

In its application, the landlord claims \$1,300.00 to repair damages which the tenant allegedly caused to the rental unit. At the hearing, the landlord's agent testified that this

amount was an estimate, and, subsequent to the application being filed, the repairs were made, and the actual amount it cost to have the repairs done was \$960.00. He did not submit any copy of an invoice or receipt which corroborates this amount.

The damage to the rental unit that the landlord claims reimbursement for is comprised of three categories:

- 1) repair of nail and screw holes in wall;
- 2) removal of unauthorized curtain rods and repair of holes in ceiling made by their installation; and
- 3) repainting of walls on areas damaged by the tenant.

The landlord's agent testified that this damage was present in the bedroom, the den, the living room and the dining room areas. He testified that the tenant installed curtain rods in front of windows in each of these rooms, and in so doing, affixed them directly to the rental unit's ceiling. He submitted photos into evidence of the damaged areas.

The landlord's agent was not able to provide a breakdown as to what percentage of the repair costs incurred was for which type of repair.

Analysis

Unpaid Rent

I find that monthly rent for the rental unit is \$2,600.00. I accept the landlord's agent's testimony that the tenant failed to pay the December/January Rent in the amount of \$2,600.00.

Section 26(1) of the Act states:

Rules about payment and non-payment of rent

26 (1)A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Accordingly, I find that the tenant breached the Act by failing to pay the December/January Rent, and, as such, the landlord is entitled to a monetary order against the tenant in the amount of \$2,600.00.

Furniture

I accept the landlord's agent's uncontroverted testimony that the tenant removed the furniture from the rental unit without permission of the landlord, and has not returned it. I accept his testimony that the furniture in question was purchased three years ago. Based on my review of the landlord's documentary evidence, I accept the replacement cost of the furniture provided by the landlord (\$1,760.63).

However, pursuant to Policy Guideline 40, the landlord is not entitled to a full recovery of the replacement cost of the furniture. Rather, Policy Guideline 40 sets out the "useful life" of a variety of "building elements". The amount a landlord is entitled to recover for damage caused to these elements is prorated based on the percentage of the useful life the damaged (or in this case, removed) items that has elapsed.

The purpose for this policy is ensure that a landlord is not placed in a better position than they were had the tenant's action not been taken. Essentially, it aims to prevent a landlord from having the windfall of an upgrade to an item damaged by the tenant. The purpose of damage awards is to put a landlord in the position it would be in had the tenant's breach of the Act not occurred. In this case, the position of having three year old IKEA furniture in the rental unit, as opposed to brand new furniture.

Policy Guideline sets the useful life of Furniture as 10 years. As the furniture in question is three years old (that is, 30% of its useful life), the landlord is entitled to recover 70% of the value of the furniture. Accordingly, I order that the tenant pay the landlord \$1,232.44.

Damage to Rental Unit

Based on the landlord's agent's testimony and the documentary evidence submitted, I accept that the rental unit was damaged as alleged by the landlord.

I accept the landlord's agent's uncontroverted testimony that the landlord paid \$960.00 for repairs to the rental unit. I make this finding despite the lack of a receipt for these repairs being entered into evidence as:

- 1) this amount seems reasonable for the damage done to the rental unit (as evidenced by the photographs of the damage provided by the landlord); and
- 2) this amount is less than the amount that was originally claimed by the landlord in the application for dispute resolution (if the landlord were to fabricate the amount

it paid for repairs, I think it is unlikely that the amount would be for less than what was claimed).

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.

The tenancy agreement does not contain any rules regarding the use of nails to the hang pictures. As such, the landlord is not entitled to recover damages in compensation for the repair of nail holes (provided that there were not an excessive number). This would include the painting of walls/area where repairs occurred. In this case, upon my review of the documentary evidence provided by the landlord, I find that there were not an excessive number of nail holes in the walls. As such, I find that the landlord is not entitled to recover any amount for their repairs. The cost of such repairs is an expected cost of doing business for any landlord.

Upon my review of the documentary evidence, and upon considering the landlord's agent's uncontroverted testimony, I find that curtain rods were installed by the tenant without the landlord's authorization (they do not appear in the photos of the rental unit taken before the tenant moved in), and that their installation caused damage to the rental unit.

I find that the damage caused to the rental unit by the tenant installing the curtain rods is recoverable against the tenant by the landlord.

Residential Tenancy Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

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. 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.

I find that, by installing the curtain rods in the rental unit and not removing them and repairing the damage, the tenant breached section 32(3) of the Act, which states:

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 also find that the landlord was damaged by this non-compliance, and that the landlord acted reasonably to minimize the damage.

I have already found that the cost to repair of all damage to the rental unit was \$960.00. However, on the evidence before me, it is not possible to tell what portion of this amount is attributable to the removal of the curtain rods and the repair of the damage caused by their installation. I find that 50% is a reasonable portion of this cost attribute to such work. Accordingly, I order that the tenant pay the landlord \$480.00.

Section 72(2) of the Act states:

Director's orders: fees and monetary orders

72(2) If the director orders a party to a dispute resolution proceeding to pay any amount to the other, including an amount under subsection (1), the amount may be deducted

(b) in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant.

As such, I order that the landlord may retain the security deposit in partial satisfaction of the monetary awards I have made above.

As the landlord has been successful in this application, I order, pursuant to section 72(1), that she may recover the filing fee from the tenant.

Conclusion

I order that the tenant pay the landlord \$3,112.44, representing the following:

December/January Rent	\$2,600.00
Replacement of Furniture	\$1,232.44
Curtain Rod Removal/Repairs	\$480.00
Filing Fee	\$100.00
Security Deposit Credit	-\$1,300.00
Total	\$3,112.44

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: April 11, 2019

Residential Tenancy Branch