



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 an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- Authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*; and
- Authorization to recover the filing fee for this application pursuant to section 72.

The tenant and the advocate AM ("the tenant"), as well as both landlords, attended the hearing and had full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions. The male landlord represented both landlords at the hearing ("the landlord").

The tenant acknowledged receipt of the landlord's Notice of Hearing and Application for Dispute Resolution. The landlord acknowledged receipt of the tenant's materials. Neither party raised issues of service. I find each party served the other with their materials pursuant to the *Act*.

Issue(s) to be Decided

Is the landlord entitled to the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;

- Authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the Act; and
- Authorization to recover the filing fee for this application pursuant to section 72.

Background and Evidence

The hearing lasted 85 minutes and each party, particularly the landlord, submitted substantial documentary evidence.

The parties agreed on the following. They entered into a fixed term tenancy beginning September 30, 2014 which converted to a month-to-month tenancy after one year. The tenancy ended on March 28, 2019. Rent was \$1,845.00 monthly payable at the first of the month. The unit is a townhouse and was 7 years old when the tenancy began.

At the beginning of the tenancy, the tenant provided a security deposit of \$900.00 which the landlord holds. The tenant provided his forwarding address in writing to the landlord at the end of the tenancy.

The landlord testified that a condition inspection was conducted on moving in and moving out. The unit is noted to be in good condition in all relevant aspects on moving in. On moving out, the report noted that the unit required cleaning in some areas and there was damage to the carpet and the walls which required repair. The landlord and the tenant signed the report on both moving in and moving out each providing notes on the report to which reference is made later.

The landlord submitted a copy of the tenancy agreement and a copy of the condition inspection report.

The tenant stated that the relationship between the parties deteriorated when the tenant protested an unlawful rent increase from the landlord in January 2019. The tenant submitted a copy of the Notice to Increase Rent. After the tenant said that the increase was in contravention of the allowable rent increase, the landlord issued a Two Month Notice to the tenant in February 2019 for landlord's use requiring the tenant to vacate by April 30, 2019. The tenant submitted a copy of the Notice in evidence. The tenant submitted substantial evidence including an exchange of texts in which the tenant asked if the landlord would "consider canceling your plans to move in here if we agree to an additional rent increase?" The landlord rejected the proposal.

The tenant asserted that the Notice for landlord's use and this application were motivated by the landlord's retaliation for the tenant's initial reluctance to accept the unlawful rent increase. The tenant alleged that the landlord went over the unit inch by inch during the condition inspection on moving out and, in this application, inflated and exaggerated the damage upon which the landlord requested compensation.

The landlord denied this application is motivated by reprisal; the landlord testified they intend to occupy the unit, although they have not moved back in to date.

In the landlord's application, the landlord stated the following regarding the claim:

Repair of damages due to trades hired to move/carpet clean by tenant. Cleaning of blinds, baseboards and behind fridge not done. Replacement of mailbox lock due to missing key. Tenant claims all damaged "Regular wear and tear" although attempted to repair damages with crayons in numerous areas, this has to be removed now to properly repair multiple area. Replacement of some carpet due to staining that can not be removed. Burnt out light bulb not replaced. All damages not fully quoted for yet.

The landlord submitted hundreds of documents; these included many photographs taken at the time of the condition inspection report on moving out illustrating the need for cleaning, particularly the blinds in the kitchen, the replacement of carpet for three stains on the carpet, and repairs and painting to the drywall.

The landlord testified the landlord is a professional carpenter. The landlord submitted estimates only for each of the items for which the landlord claims reimbursement except for the claim for light bulbs. The landlord testified the cleaning and repairs have not taken place because the landlord wanted a decision from an arbitrator before proceeding with the work. It was unclear if the landlord intended to do the repairs himself or to hire others to do the work.

The landlord submitted a Monetary Order Worksheet itemizing the landlord's claim. The landlord claimed the following damages to the unit and requests authorization to apply the security deposit to the damages and a monetary award for the balance, as follows:

ITEM	AMOUNT
Cleaning costs for blinds – estimate submitted	\$282.45

Replacement lock – estimate submitted	\$144.00
Carpet replacement – estimate submitted	\$1,812.30
Drywall repairs and painting – estimate submitted	\$3,234.00
Light bulb – receipt submitted	\$16.16
Reimbursement of the filing fee	\$100.00
Total Monetary Award Requested by Landlord =	\$5,588.91

The tenant submitted many photographs of the unit at the time of vacating in support of his claim that the unit was clean and undamaged throughout.

Each of the landlord's claims is addressed.

Cleaning costs for blinds

The condition inspection report stated the condition of the blinds was good at the time the tenancy began and the unit was clean. The report on moving out noted cleaning was required. The landlord submitted many photographs of staining and spots on the blinds and on the baseboards for which the landlord requested compensation.

The landlord submitted an estimate of \$282.45 for the cost of cleaning the blinds. The landlord testified the blinds have not yet been cleaned and the landlord did not submit evidence of any expenditure under this heading. The landlord testified the unit remains vacant after the tenant vacated.

The tenant stated that the blinds were in the same condition upon moving out as they were on moving in. The tenant acknowledged the condition inspection report does not refer to the blinds needing cleaning upon moving in and being stained. However, the tenant explained that this was his first time renting a unit in Canada and he did not understand the significance of the condition inspection report when he moved in to the unit.

The tenant offered to pay \$100.00 for the cleaning of the blinds.

Replacement lock

The parties agreed the tenant would reimburse the landlord \$20.00 under this heading.

Carpet replacement

The landlord submitted many photographs showing some stains to the carpet caused by the tenant for which the landlord seeks replacement of the carpet; this included two small stains on the entryway carpet and one on the carpet outside the laundry room, being about 3-4" in diameter.

The condition inspection report does not refer to these stains that the landlord claimed were caused by the tenant. The landlord explained that the carpet was damp from a professional cleaning at the time of the inspection and the landlord was unable to see the stains which became visible later when the carpet dried.

The landlord did not attempt to clean the spots on the carpet; he testified that he believed one spot, outside the laundry room, was from a bleaching substance and no cleaning was possible.

The landlord stated the carpet is "at least" ten years old.

The tenant stated he had lived in the unit with his family for almost five years; any damage was due to reasonable wear and tear for which the landlord has no compensable claim.

The landlord submitted an estimate of \$1,812.30 to replace the sections of damaged carpeting. The landlord has not actually incurred any expense with respect to the claimed damages to the carpet. The landlord testified the carpet has not been replaced and the landlord has incurred no expenses to date in this regard.

Drywall repairs and painting

The landlord claimed \$3,234.00 under this heading based on an estimate submitted as evidence for the repair and painting of damaged drywall. The total amount consisted of \$300.00 for site protection, \$380.00 for drywall, and \$2,400.00 for preparation and painting.

The landlord submitted a detailed description of damages which was given to the contractor requested to provide an estimate, the list summarized as follows:

- The top floor damages included a chip out of baseboard, damages to the casing as light switch height, and black lines (some dented) from carpet cleaner;
- The main floor damages include damage to powder room bifold and a living room window seat; and
- Lower stairwell and entry required painting to “multiple areas of walls on both sides of stairs” and repairs to several door jambs.

The landlord testified the unit had been painted immediately before the tenant moved in 2014, almost five years ago. The condition inspection report on moving in stated the walls were in good condition.

The condition inspection report on moving out was completed by the landlord; the word “gouged”, or variations thereof, was used many times to describe the condition of the walls. The landlord wrote in the margin that the estimate of the damage was \$1,000.00.

Before signing the report, the tenant noted, “the gouges showed are minor, there was no single nail hole done, painting and minor [indecipherable] is expected after [indecipherable]

The landlord submitted many photographs of the walls which show damage primarily to the drywall in the stairwell and including folding doors. The damage includes scuff marks, dents, scrapes, scratches, indentations and the like. There are no holes. The landlord, a professional carpenter, explained that the damage required proper repair – filling, sanding, priming and painting.

The landlord testified that the carpet cleaning company hired by the tenant before moving out had caused some damage for which the tenant is responsible. The landlord claimed that the carpet washing machine touched the edges of the drywall throughout the unit causing black scrape marks and parallel indentations to the drywall.

The tenant stated that he did not notice the scuff marks and indents caused by the carpet washing machine until they were pointed out by the landlord during the condition inspection on moving out. The tenant stated that he offered to clean the scuff marks and was not afforded the opportunity to do so. He said that any damage caused by the carpet washer is so minor as to be inconsequential and the damage was barely noticeable.

The tenant stated that any damage to the drywall was normal wear and tear for which the landlord is not entitled to compensation. The tenant stated the landlord is exaggerating any damage and the estimate is unreasonable and unsubstantiated.

The landlord has not incurred any expenses under this heading. The landlord submitted an estimate of the cost of repair and did not submit a receipt. The landlord testified that the repairs have not taken place as the landlord wanted to wait for the outcome of the arbitration.

Light Bulb

The parties agreed the tenant would reimburse the landlord \$16.16 for the landlord's claim for lightbulbs.

Analysis

Each party submitted substantial evidence in a hearing that last 85 minutes, including lengthy text exchanges covering multiple issues, as well as many photographs and documents. I have considered all the submissions and evidence presented to me, including those provided in writing and orally. I will only refer to certain aspects of the submissions and evidence in my findings.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy agreement or the *Act*, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

The purpose of compensation is to put the person who incurred the damage or loss in the same position as if the damage or loss had not occurred. The person claiming compensation must establish **all** the following four points:

1. The existence of the damage or loss;
2. The damage or loss resulted directly from a violation – by the other party – of the *Act*, regulations, or tenancy agreement;
3. The actual monetary amount or value of the damage or loss; and
4. Everything reasonable was done to reduce or minimize (mitigate) the amount of the loss or damage as required under section 7(2) of the *Act*.

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

In this case, the onus is on the landlords to prove the landlord is entitled a claim for a monetary award.

Reference to each of the landlord's claims follows.

Cleaning costs for blinds

Under section 37(2) of the *Act*, the tenant must leave a rental unit *reasonably clean*.

I have considered all the evidence submitted by the landlord, including the condition inspection report, the estimate of \$282.45 and the photographs. I have considered the evidence submitted by the tenant including photographs of the unit at the end of the tenancy.

Considering all the evidence, including the acknowledgement of some responsibility by the tenant, I find the landlord has met the burden of proof on a balance of probabilities that the blinds required cleaning at the end of the tenancy.

However, I find the landlord has not met the burden of proof as to the monetary value of the cleaning necessary. My decision is heavily influenced by the landlord's testimony that the landlord has not actually incurred any expense for cleaning, has not submitted a receipt, or tried to clean the blinds. The landlord has submitted only an estimate of the cleaning costs; I find the estimate to be excessive and unjustified by the level of uncleanness I observed in the photographs and evidence. I do not accept the landlord's estimate as being a reasonable estimate of the costs of cleaning the blinds.

I find that a nominal award of \$25.00 to be reasonable in the circumstances. I accordingly grant the landlord a monetary award in the amount of \$25.00 under this heading.

Replacement lock

The parties have agreed to a monetary award of \$20.00 under this heading.

Carpet

In determining damages related to repair and replacement costs for building elements, my assessments are determined in accordance with *Residential Tenancy Policy Guideline 40. Useful Life of Building Elements*. This Guideline notes:

Useful life is the expected lifetime, or acceptable period of use, of an item under normal circumstances...if the arbitrator finds that a landlord makes repairs to a rental unit due to damage caused by the tenant, the arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant's responsibility for the cost or replacement.

Based on the Guideline, the useful life of carpet is ten years.

The Guideline states that "landlords should provide evidence showing the age of the item at the time of replacement and the cost of the replacement item". The landlord testified the carpet was at least ten years old and probably older.

Applying the Guideline, I therefore find that the carpet had no remaining useful life.

I accordingly dismiss the landlord's claim under this heading without leave to reapply.

Drywall repairs and painting

A key issue with respect to this aspect of the landlord's claim is whether the marks, indentations, gouges and so on, as noted by the landlord in his testimony and documentary evidence, are "damages", for which the tenant must compensate the landlord, or "reasonable wear and tear", for which the tenant need not compensate the landlord.

Section 32(4) of the Act states that a tenant is not required to make repairs for reasonable wear and tear. The section states as follows:

(4) A tenant is not required to make repairs for reasonable wear and tear.

Guideline 1. Landlord & Tenant – Responsibility for Residential Premises states in part as follows:

Reasonable wear and tear refers to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. An arbitrator may determine whether or not repairs or maintenance are required due to reasonable wear and tear or due to deliberate damage or neglect by the tenant.

The Guideline #40, referenced above, states that “landlords should provide evidence showing the age of the item at the time of replacement and the cost of the replacement item”. The landlord testified the unit had been painted before the tenant moved in, almost five years ago.

The Guideline with respect to the useful life of building elements states that paint has a useful life of 4 years. Applying the Guideline, I therefore find that the paint had no remaining useful life.

My finding under this heading is heavily influenced by the fact the landlord has not incurred any expense to repair the drywall or paint the unit and the paint is past its useful life.

I have considered all the evidence submitted by the landlord, including the condition inspection report, the estimate of \$3,234.00, the age of the paint (over four years), the photographs from both parties, and the duration of the tenancy. I have considered that the paint was past its useful life and that the tenant occupied the unit for almost five years. My decision is heavily influenced by the fact that the landlord has not actually incurred any expenses. I find the submitted estimate, given the photographic and other evidence, to be inflated and overstated.

I find that the landlord has failed to meet the burden of proof on a balance of probabilities that the tenant is responsible for all the damages under this heading; I also find the landlord has failed to establish the value of the damage attributable to the tenant which is beyond reasonable wear and tear. I find most of the damage under this heading is reasonable wear and tear or involved paint that is past its useful life.

I accept there is some minor damage for which the tenant is responsible for which I make a nominal award of \$100.00.

Accordingly, I grant the landlord a monetary award in the amount of \$100.00.

Light bulb

The parties have agreed the tenant will reimburse the landlord in the amount of \$16.16 under this heading. Accordingly, I grant the landlord a monetary order in the amount of \$16.16 for this aspect of the landlord's claim.

Filing Fee

As the landlord has been largely unsuccessful in the landlord's claim, I do not award reimbursement of the filing fee.

The tenant is entitled to the return of the security deposit. Under section 72, the landlord is entitled to offset this award against the security deposit to be returned forthwith to the tenant.

Therefore, the tenant is granted a monetary order in the amount of **\$738.84** for the return of the security deposit less the amounts awarded above to the landlord calculated as follows:

ITEM	AMOUNT
Security deposit held by landlord	\$900.00
(Less award for cleaning)	(\$25.00)
(Less award for drywall repairs and painting)	(\$100.00)
(Less agreed amount for lock)	(\$20.00)
(Less agreed amount for light bulb)	(16.16)
Total Monetary Order - Tenant	\$738.84

Conclusion

The tenant is granted a monetary order in the amount of **\$738.84**. This order must be served on the landlord. This order may be filed in the Small Claims Division of the British Columbia Supreme 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: May 13, 2019

Residential Tenancy Branch