



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: MND MNSD FF
Tenant: MNSD FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “*Act*”).

The Landlord’s Application was made on January 12, 2019 (the “Landlord’s Application”). The Landlord applied for the following relief pursuant to the *Act*:

- a monetary order for compensation for damage to the unit, site or property;
- an order allowing the Landlord to retain all or part of the security deposit or pet damage deposit; and
- an order granting recovery of the filing fee.

The Tenants’ Application was made on April 2, 2019 (the “Tenants’ Application”). The Tenants applied for the following relief pursuant to the *Act*:

- an order that the Landlord return all or part of the security deposit or pet damage deposit; and
- an order granting recovery of the filing fee.

The Landlord attended the hearing on her own behalf, as did the Tenants. The parties provided affirmed testimony.

The Landlord testified that her Application package was served on the Tenants by registered mail on January 16, 2019. Canada Post registered mail receipts were submitted in support. Pursuant to section 89 and 90 of the *Act*, documents served by registered mail are deemed to be received 5 days later. I find the Landlord’s Application package is deemed to have been received by the Tenants on January 21, 2019.

The Tenants testified that the Tenants' Application package was served on the Landlord by registered mail on ~~December 8, 2016~~ **April 3, 2019**. Canada Post registered mail receipts were submitted in support. Pursuant to section 89 and 90 of the *Act*, documents served by registered mail are deemed to be received 5 days later. I find the Tenants' Application package is deemed to have been received by the ~~Tenants~~ **Landlord** on ~~January 21, 2019~~ **April 8, 2019**.

Neither party raised any issues with respect to service or receipt of the above documents and evidence. The parties were in attendance and were prepared to proceed. The parties were given the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me. At the conclusion of the hearing, the parties were given a final opportunity to provide further evidence or make additional submissions. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Landlord entitled to a monetary order for compensation for damage to the unit, site or property?
2. Is the Landlord entitled to an order allowing the Landlord to retain all or part of the security deposit or pet damage deposit in partial satisfaction of the Landlord's claim?
3. Is the Landlord entitled to an order granting recovery of the filing fee?
4. Are the Tenants entitled to an order that the Landlord return all or part of the security deposit or pet damage deposit?
5. Are the Tenants entitled to an order granting recovery of the filing fee?

Background and Evidence

The parties confirmed the tenancy began on December 1, 2015, and ended when the Tenants vacated the rental unit on December 15, 2018. Rent in the amount of \$1,600.00 per month was due on the first day of each month. The Tenants paid a security deposit of \$750.00 and a pet damage deposit of \$750.00. The Landlord returned the pet damage deposit and holds the security deposit.

The Landlord's Claim

The Landlord's monetary claim was summarized on a Monetary Order Worksheet, dated ~~May 6, 2017~~ **January 8, 2019**. First, the Landlord claimed \$3,843.00 for wall repairs and painting, and cabinet repairs.

With respect to the wall repairs and painting, the Landlord acknowledged the walls were not freshly painted at the beginning of the tenancy. However, they testified that 40 wall anchors had to be removed. One ceiling anchor in particular left a 1/2" hole. Photographs depicting anchor holes in the bedroom, living room, dining room, and entrance were submitted in support. The Landlord also testified there were roughly 200 pinholes in the walls and referred to photographic evidence in support.

With respect to the cabinet repairs, the Landlord referred to photographs of the base of several cupboards. These depicted drill holes which the Landlord testified were difficult to repair.

The Landlord also relied on move-in and move-out condition inspection reports dated November 26, 2015, and December 15, 2018, respectively. One or both of the Tenants attended each inspection, although the Tenants did not sign either of the reports. The move-in condition inspection report notes "poor wall repair above t.p." in the main bathroom, and "a few paint scratches" in the master bedroom, but no other issues with walls or cabinets.

The move-out condition inspection report notes holes from anchor bolts in the entry, living room, dining room, main bathroom, master bedroom, and second bedroom. In addition, the report notes scratches on walls in the master bedroom and screw holes in the utility room.

The Landlord also submitted a type-written letter from the previous tenant of the rental unit, P.I., dated April 8, 2019. In it, P.I. confirmed that he and the Landlord completed a move-out condition inspection and that "[t]he cabinets and walls were in normal, clean condition with no disrepair." He advised that the damage deposit was returned to him.

In support of the cost of repairs, the Landlord submitted a quote from the contractor, dated January 2, 2019. The Landlord also submitted a written statement from the contractor, dated April 10, 2019, confirming the work completed:

The following scope of work was done: Filling all holes, sanding, priming and painting entire unit including ceiling and repairing the holes in the lower kitchen cabinets. We had to redo this area as well. The entire repair cost for labour and material was a total of \$ 3,843.00 including taxes.

[Reproduced as written.]

In reply, the Tenants confirmed they received a copy of the move-in condition inspection report by email, but that they did not sign it because they were not asked to do so. However, during the hearing, K.R. acknowledged that the move-in condition inspection report submitted accurately represented the condition of the rental unit at the beginning of the tenancy.

On behalf of the Tenants, K.R. also confirmed during the hearing that the Tenants used wall anchors and created holes in the walls. However, they disagreed with the move-out condition inspection report. They testified that photographs submitted by the Landlord do not accurately represent the condition of the rental unit at the end of the tenancy. The Tenants also testified that the Landlord should have removed the wall anchors in a way that would have minimized damage.

In support, the Tenants submitted photographs of the master bedroom, guest bedroom, living room, and dining room. The Tenants submit that these images more accurately depict the condition of walls in the rental unit although the Tenants did not articulate when the photographs were taken.

Second, the Landlord claimed \$300.00 for cleaning required in the rental unit at the end of the tenancy. The Landlord testified that she performed roughly 10 hours of cleaning but that the amount claimed was based on an emailed estimate, dated January 7, 2019, which was provided based on the Landlord's description of the rental unit, not an on-site visit.

Specifically, the Landlord testified the area under and beside the stove was not adequately cleaned, and that the stove top and hood were dirty. In addition, the Landlord testified that the area under the fridge was not cleaned. Further, the Landlord testified that the dishwasher and the shower needed to be cleaned. Photographic evidence included images depicting range filters, a shower tile, the base of the fridge and the floor beneath the fridge, the dishwasher, and the stove top and floor beneath the stove. The Landlord also testified that much of the amount claimed was for time spent de-greasing grout in the kitchen.

In reply, with respect to the fridge and stove, the Tenants testified that the Residential Tenancy Branch Policy Guidelines require large appliances to be on rollers. If they are not on rollers, landlords are required to provide instructions. The Tenants submitted that the fridge and stove were not on rollers and that the Landlord did not provide specific instructions for cleaning them. In addition D.B. testified that he cleaned the oven personally. In response, the Landlord stated that the fridge is on rollers and moves with ease.

In addition, the Tenants submitted that the items included on the quote obtained by the Landlord were not substantiated in the evidence.

The Tenants' Claim

The Tenants sought to recover the security deposit held by the Landlord. According to the Tenants, the Landlord was sent a forwarding address in writing by registered mail on January 3, 2019, and that delivery information confirms it was received by the Landlord on January 8, 2019. A copy of the letter was submitted in support.

In reply, the Landlord confirmed the Tenants' forwarding address was received on January 8, 2019.

The parties agreed the pet damage deposit was returned to the Tenants at the end of the tenancy.

Analysis

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find:

Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

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 for in sections 7 and 67 of the *Act*. 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 case, the burden of proof is on each party to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement. Once that has been established, the party must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the party did what was reasonable to minimize the damage or losses that were incurred.

The Landlord's Claim

With respect to the Landlord's claim for \$3,843.00 for wall repairs and painting, section 37(2) of the *Act* confirms a tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear. Further, Policy Guideline #1 confirms that tenants must pay for repairing walls where there are an excessive number of nail holes, and is responsible for all deliberate or negligent damage to walls.

In this case, I find there is sufficient evidence before me to conclude the Landlord is entitled to the relief sought. I accept the Landlord's evidence. The Landlord made statements against her own interest by acknowledging the rental unit was not freshly painted at the beginning of the tenancy, and drawing my attention to pre-existing damage. Further, the Landlord provided photographic images depicting the interior of the rental unit at the beginning of the tenancy, and detailed photographic evidence relating to damage caused by the Tenants. The Landlord also provided a statement from the previous tenant, who described the condition of the rental unit at the end of his tenancy. The Landlord's evidence was also supported by a statement from a contractor describing the work completed and the cost to the Landlord.

Further, the Tenants acknowledged they created holes in the walls throughout the rental unit. However, they suggested the Landlord should have completed the repairs in a way they believed would have minimized damage. However, I find there is insufficient evidence before me to conclude the Landlord or their contractor did not follow appropriate methods for repairing the damage.

Balancing the above, I find the Tenants created an excessive number of nail and anchor holes, resulting in damage to walls and cabinets, contrary to section 32 of the *Act* and Policy Guideline #1. I also find that the Landlord incurred a loss, the amount of which was confirmed in the contractor's statement. With respect to the Tenants' submission that the Landlord exacerbated the damage, I find there is insufficient evidence to make this conclusion. Rather, it appears the Landlord acted reasonably to repair the damage.

With respect to the Landlord's admission that the rental unit was not freshly painted at the beginning of the tenancy, I find this does not impact the monetary award. Whether or not the rental unit was freshly painted at the beginning of the tenancy, I find the evidence confirms there were no significant issues with the paint at the beginning of the tenancy. Further, I find that the damage caused by the Tenants was beyond reasonable wear and tear, and that they bear the responsibility for the cost incurred by the Landlord. Therefore, I find the Landlord is granted the full amount of wall repair and repainting costs in the amount of \$3,843.00.

With respect to the Landlord's claim for \$300.00 for cleaning, Policy Guideline #1 states:

The tenant must maintain "reasonable health, cleanliness and sanitary standards" throughout the rental unit or site, and property or park. The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard.

[Reproduced as written.]

I find there is sufficient evidence before me to conclude the Tenants met the standard set out in the *Act*. The Landlord's testimony was supported by photographic images of the interior of the rental unit. Areas around the fridge and stove, and the dishwasher, appeared to be particularly dirty. Although the Landlord also submitted an email quote for cleaning services, I give this evidence little weight as it was not based on an on-site visit. In light of the contradictory testimony, I find there is insufficient evidence before me to conclude the fridge and stove could not be moved. In any event, I find the Landlord is had to clean the rental unit and is entitled to a monetary award in the amount of \$300.00, which I find to be reasonable in the circumstances.

In light of the above, and pursuant to section 67 of the *Act*, the Landlord is granted a total monetary award in the amount of \$4,143.00, which is comprised of \$3,843.00 for wall and cabinet repairs, and repainting, and \$300.00 for cleaning.

The Tenants' Claim

With respect to the Tenants' claim for the return of the security deposit, section 38(1) of the *Act* requires a landlord to repay deposits or make an application to keep them by making a claim against them by filing an application for dispute resolution within 15 days after receiving a tenant's forwarding address in writing or the end of the tenancy, whichever is later. When a landlord fails to do one of these two things, section 38(6) of the *Act* confirms the tenant is entitled to the return of double the amount of the deposits.

In this case, the parties agreed the Tenants provided the Landlord with a forwarding address in writing, which was sent via registered mail and was received by the Landlord on January 8, 2019. Therefore, pursuant to section 38 of the *Act*, I find the Landlord had until January 23, 2019, to repay the security deposit or make a claim against it by filing an application for dispute resolution. The Landlord's Application was made on time on January 12, 2019, which entitled the Landlord to retain the security deposit pending the outcome of this hearing.

In light of my findings above, I find that Tenants' Application is dismissed, without leave to reapply.

Summary of Claims

The Landlord has demonstrated an entitlement to a monetary award in the amount of \$4,143.00 for wall repairs and painting, and cleaning.

Having been successful, I find the Landlord is also entitled to recover the \$100.00 filing fee paid to make the Landlord's Application.

In the circumstances, I find it appropriate to order that the security deposit held be applied in partial satisfaction of the Landlord's claim. Therefore, as noted above, the Tenants' request for the return of the security deposit held is dismissed, without leave to reapply.

Pursuant to section 67 of the *Act*, I grant the Landlord a monetary order in the amount of \$3,493.00, which has been calculated as follows:

Claim	Award
Wall and cabinet damage:	\$3,843.00
Cleaning:	\$300.00
Filing fee:	\$100.00
<i>LESS</i> security deposit:	(\$750.00)
TOTAL:	\$3,493.00

Conclusion

The Tenants' Application is dismissed, without leave to reapply.

The Landlord is granted a monetary order in the amount of \$3,493.00. The order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: June 25, 2019~~

Date of Corrected Decision: July 22, 2019

Residential Tenancy Branch