



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 landlords' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for damage to the rental unit pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

As Tenant KB (the tenant) confirmed that the tenants received copies of the landlords' dispute resolution hearing package sent by the landlords by registered mail well in advance of this hearing, I find that the tenants were duly served with this package in accordance with section 89 of the *Act*. Since both parties confirmed that they had received one another's written evidence, I find that the written evidence was served in accordance with section 88 of the *Act*.

Issues(s) to be Decided

Are the landlords entitled to a monetary award for damage arising out of this tenancy?
Are the landlords entitled to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary award requested? Are the landlords entitled to recover the filing fee for this application from the tenants?

Background and Evidence

On July 8, 2017, the parties signed a month-to-month Residential Tenancy Agreement (the Agreement) which enabled the tenants to take possession of the rental unit on July 15, 2017. The parties agreed that the landlords allowed the tenants to move into the rental unit a few days before July 15, 2017. Monthly rent was initially set at \$1,400.00, payable in advance on the first of each month. The rent was subsequently reduced to \$1,350.00. The landlords continue to hold the tenants' \$700.00 security deposit.

The parties agreed that Tenant SC and the landlords undertook a joint move-in condition inspection on July 15, 2017. There was also a joint move-out condition inspection on April 1, 2019. Copies of the landlords' reports of these inspections were entered into written evidence and were provided to the tenants shortly after these inspections.

In late February 2019, the tenants gave the landlords their notice to end this tenancy by April 1, 2019. When the tenants vacated the premises on April 1, 2019, the tenants provided the landlords with their forwarding address in writing for the purpose of obtaining a return of their security deposit.

The landlords applied for a monetary award of \$483.29 for damage arising out of this tenancy and to recover their \$100.00 filing fee on April 11, 2019. They also applied to retain part of the security deposit to recover these amounts. In their application, the landlords provided a Monetary Order Worksheet, which outlined the details of their claim as follows:

Item	Amount
Repair of Damage to Hardwood Floors	\$175.00
Repair and Painting of Walls	250.00
GST on Above Two Items	21.25
Purchase of Cleaning Supplies and Cleaning Oven by Landlord	37.04
Total of Above Items	\$483.29

In addition to the copies of their move-in and move-out reports showing the condition of the rental unit before and after this tenancy, the landlords provided receipts and photographs relating to this matter. The landlords gave undisputed sworn testimony that the floors were redone and the walls were repainted shortly before this tenancy began, as the previous tenants living there had remained there for seven years before they decided to move.

The tenants also supplied photographs in support of their assertion that the damage claimed by the landlords was minor in nature and represented reasonable wear and tear that had arisen during the course of this almost two year tenancy. One of the tenants' photographs was submitted in support of their assertion that part of the landlords' floor was already damaged when they moved into this rental unit. The tenant said that they tried earnestly to patch over holes created to hang their artwork and matched the paint on the walls as best they could.

Some of the tenants' written evidence also pertained to other issues that arose during this tenancy (e.g., the tenant's emergency plumbing repair when the landlords were out of town; an alleged rodent infestation which caused the tenants grief, etc.,). I noted that only the landlords' monetary claim was properly before me.

Analysis

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 directly 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 amount of the loss or damage. In this case, the onus is on the landlords to prove on the balance of probabilities that the tenants caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

There is undisputed written evidence that Tenant SC inspected the rental unit when this tenancy first began, and before Tenant KB arrived at the rental unit, with the landlords. The report of that joint move-in condition inspection reveals no deficiencies in the condition of the rental unit. Although the tenant submitted a photograph showing a small chip in one of the pieces of wood flooring taken when the tenant arrived on July 17, 2017, this photograph was not taken when the premises were first occupied by the tenants. The joint move-out condition inspection report, although recorded in a different manner than the original report, was signed by the landlords and the tenants and identified problems with the flooring, the walls and the cleanliness of the oven, all of the items listed in the landlord's Monetary Order Worksheet.

While I have taken into consideration the tenants' claims that the holes in the walls were, with one exception, very small and the tenants did their best to repair and repaint them, I find on a balance of probabilities that damage did occur during the course of this tenancy for which the tenants are responsible.

In deciding the extent to which the damage that occurred represented reasonable wear and tear, I have taken into consideration RTB Policy Guideline #40, which provides guidance to arbitrators in determining the Useful Life of Building Elements in a residential tenancy. This Guideline reads in part as follows:

This guideline is a general guide for determining the useful life of building elements for considering applications for additional rent increases and determining damages which the director has the authority to determine under the Residential Tenancy Act ... Useful life is the expected lifetime, or the acceptable period of use, of an item under normal circumstances. ..

Damage(s)

When applied to damage(s) caused by a tenant, the tenant's guests or the tenant's pets, the arbitrator may consider the useful life of a building element and the age of the item. Landlords should provide evidence showing the age of the item at the time of replacement and the cost of the replacement building item. That evidence may be in the form of work orders, invoices or other documentary evidence.

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...

As it pertains to this application, there is undisputed sworn testimony that the walls had been freshly painted shortly before this tenancy began and the hardwood floors were newly installed. As this tenancy ended roughly two years after this work had been done, the landlords repainted the damaged walls about two years after they were last painted. According to Policy Guideline #40, the typical useful life of an internal paint job in a residential tenancy is four years. Since I accept that the landlords' repainting costs plus the applicable GST resulted in an overall cost of \$262.50, I allow the landlords a monetary award of \$131.75 for damage to the walls that had to be repainted at the end of this tenancy {i.e.. $(\$250.00 \times 1.05) \times 50\% = \131.75 }.

The useful life of hardwood flooring as established in RTB Policy Guideline #40 is 20 years. Using this guidance, the landlords would be entitled to recover 90% of their costs of repairing damage to their floors, which would result in a monetary award of \$165.38. However, this Policy Guideline is only provided as general guidance for arbitrators. Based on the photographic evidence provided, I find that the damage involved appears to have been relatively minor and there may very well have been some deficiencies in some of this flooring even a few days after the tenancy began. On this basis, I allow the landlords a monetary award of \$125.00 as the eligible amount of their monetary claim to repair damage to the hardwood floor in this rental unit.

Based on the landlords' undisputed photographic and written evidence and the notation in the joint move-out condition inspection report, I allow the landlords' claim of \$37.04 for the cleaning of the oven in this rental unit.

Since the landlords have been successful in their claim, I allow them to recover their \$100.00 filing fee from the tenants.

I allow the landlords to retain the above monetary awards from the tenants' security deposit.

Conclusion

I allow the landlords a monetary award totalling \$393.79 for the damage arising out of this tenancy and to recover their filing fee for this application. I allow the landlords to retain this amount from the tenants' security deposit. I order the landlords to return the remainder of the tenants' \$700.00 security deposit to the tenants as soon as possible. This results in a monetary Order in the tenants' favour in the amount of \$306.21, under the following terms:

Item	Amount
Repair of Damage to Hardwood Floors	\$125.00
Repair and Painting of Walls	131.75
Purchase of Cleaning Supplies and	37.04

Cleaning Oven by Landlord	
Less Tenants' Security Deposit	-700.00
Plus Filing Fee for this Application	100.00
Total of Tenants' Monetary Order	-\$306.21

The tenants are provided with these Orders 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: July 16, 2019

Residential Tenancy Branch