



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL

Introduction

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

- a Monetary Order for damage, pursuant to section 67;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee from the tenant, pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 1:43 p.m. in order to enable the tenant to call into this teleconference hearing scheduled for 1:30 p.m. The property manager 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 Hearing.

The property manager testified that the tenant was served the notice of dispute resolution package by registered mail on April 15, 2019. The property manager provided the Canada Post Tracking Number to confirm this registered mailing. I find that the tenant was deemed served with this package on April 20, 2019, five days after its mailing, in accordance with sections 89 and 90 of the *Act*.

Issues to be Decided

1. Is the landlord entitled to a Monetary Order for damage, pursuant to section 67 of the *Act*?
2. Is the landlord entitled to retain the tenant's security deposit, pursuant to section 38 of the *Act*?

3. Is the landlord entitled to recover the filing fee from the tenant, pursuant to section 72 of the *Act*?

Background and Evidence

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

The property manager provided the following undisputed testimony. This tenancy began on September 1, 2018 and ended on March 31, 2019. Monthly rent in the amount of \$1,950.00 was payable on the first day of each month. A security deposit of \$975.00 was paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application. The application for dispute resolution was filed on April 15, 2019, 15 days after the end of this tenancy.

The property manager testified that both parties completed a joint move in condition inspection report on September 1, 2018.

The property manager testified that he telephoned the tenant and both parties agreed to attend at the subject rental property on March 31, 2019 to complete the move out condition inspection report. The property manager testified that the tenant called him on March 31, 2019 just before the move out condition inspection report was to be completed and informed him that he was on his way out of the country for work and would not be able to complete the move out condition inspection report.

The property manager testified that he completed the move out condition inspection report without the tenant. The move in and move out condition inspection reports (the "condition inspection reports") are contained on one document which was entered into evidence. The condition inspection reports provided the landlord with the tenant's forwarding address in writing.

Carpets

The property manager testified that the tenant did not have the carpets cleaned when he moved out. The property manager testified that the carpets required cleaning and entered into evidence a carpet cleaning receipt in the amount of \$308.70. The property manager testified that the owner of the subject rental property is seeking this amount from the tenant. The property manager entered into evidence video footage of the carpets in the subject rental property which look dirty in some areas.

The move in and move out condition inspection reports state:

	Move In	Move Out
Entry- floor/carpet	Stained	Stained
Kitchen- floor/carpet	Good	Good
Living room- floor/carpet	Good	Not indicated
Dining room- floor/carpet	Good	Good
Stairwell and hall- floor/carpet	Not indicated	Stairs and landing soiled, dirty, scratched
Main bathroom- floor/carpet	Good	Not indicated
Master bedroom (1)- floor/carpet	Good	Good
Bedroom (2)- floor/carpet	Good	Good

Handyman Repairs

The property manager testified that the tenant damaged the door frames in the subject rental property and that the upper portion of a door frame in the garage was missing. The property manager testified that the door frames required repair and repainting. The property manager testified that the tenant broke a towel hanger and drawer door handle in the bathroom. The move in and move out condition inspection reports record the condition of the subject rental property as follows:

	Move In	Move Out
Entry- walls and trim	Dirty	Dirty

Kitchen- walls and trim	Writing, scratched, dirty, stained	Writings, scratched, dirty, stained
Living room- walls and trim	Baseboard- scratched	scratched
Dining room- walls and trim	Good	Good
Stairwell and hall- walls and trim	Good	Scratched and dented- stained, damaged
Main bathroom- walls and trim	Good	Good
Main bathroom- cabinets and mirror	Good	On one side the drawer handle came off- broken Towel hanger- broken
Master bedroom (1)- walls and trim	Good	Baseboard stained
Bedroom (2)- walls and trim	Good	Good
Garage or parking area	Walls patched, dirty, stained	Missing door knob from hot water tank room door, missing top trim

The property manager entered into evidence an estimate in the amount of \$560.00 for the following work: the repair and painting of the door frames and the repair of the towel hanger and drawer handle in the master bathroom. The property manager testified that the owner of the subject rental property is seeking this amount from the tenant.

The property manager testified that the owner of the subject rental property hired a different handyman to complete the required work than the author of the estimate entered into evidence. The property manager testified that the handyman who was actually hired did a substantive amount of work at the subject rental property, over and above the work outlined above. The receipt for actual work completed was not entered into evidence.

Stovetop

The property manager testified that the tenant damaged the stovetop at the subject rental property. The move in condition inspection report states: "scratch on glass top".

The move out condition inspection report states: “scratches on glass top”. The property manager testified that the stove top had scratches on it when the tenant moved in and that it had many more scratches when the tenant moved out.

The property manager entered into evidence an estimate for the repair of the stove top in the amount of \$593.60. The property manager testified that the stove top was not replaced as per the estimate. The property manager testified that the owner may have purchased a new stove, not just a new stove top, but he did not know for certain.

Analysis

Section 21 of the *Residential Tenancy Act Regulation* states that in dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

I find that the move in and move out condition inspection reports were completed in compliance with the *Act*.

Carpets

Residential Tenancy Policy Guideline #1 states that the tenant is responsible for periodic cleaning of the carpets to maintain reasonable standards of cleanliness. Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year. Where the tenant has deliberately or carelessly stained the carpet he or she will be held responsible for cleaning the carpet at the end of the tenancy regardless of the length of tenancy.

In this case, the tenancy was only seven months long. The condition inspection report states that the carpet was in the same condition at the beginning of the tenancy as the end of the tenancy in every room except the stairwell and hallway. The move in condition inspection report is silent on the condition of the stairwell and hallway. The move out condition inspection report states that the stairwell and hallway were soiled, dirty and scratched.

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that 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. The onus to prove their case is on the person making the claim.

It is the property manager's responsibility to complete the move in condition inspection report in full, which he failed to do. The move in condition inspection report was blank for the move in section for the stairwell and hallway. I find that the property manager has failed to prove that the condition on the carpet on move in was different than on move out. I find that the property manager has not provided a preponderance of evidence contradicting the move in and out condition inspection reports.

This tenancy was less than one year, pursuant to Residential Tenancy Branch Policy Guideline #1, the tenant is not required to clean the carpets unless they were intentionally or carelessly stained. As I have found that the property manager has not proved that the carpets were stained by the tenant, I dismiss the claim for the cost of carpet cleaning.

Handyman Repairs

Residential Tenancy Policy Guideline #16 states that 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.

The property manager testified that the receipt for the handyman repairs completed at the subject rental property was not entered into evidence. The property manager testified that the repair work was not done by the same handyman whose estimate was entered into evidence.

I find that the property manager failed to quantify the damage or loss to the subject rental property by not entering into evidence the actual receipt/invoice for work completed. Therefore, pursuant to Residential Tenancy Policy Guideline #16, the property manager is not entitled to recover the cost of the estimate for handyman

repairs entered into evidence.

Residential Tenancy Policy Guideline 16 states that nominal damages may be awarded where there has been no significant loss, or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

The condition inspection reports state that the following areas were in worse condition on move out than they were on move in:

	Move In	Move Out
Stairwell and hall-walls and trim	Good	Scratched and dented-stained, damaged
Main bathroom-cabinets and mirror	Good	On one side the drawer handle came off- broken Towel hanger- broken
Master bedroom (1)- walls and trim	Good	Baseboard stained
Garage or parking area	Walls patched, dirty, stained	Missing door knob from hot water tank room door, missing top trim

Based on the condition inspection reports, I accept that the above areas were in worse condition at the end of the tenancy than the beginning of the tenancy. I find that the property manager has proved that a loss was suffered. I find that the property manager is entitled to recover \$200.00 in nominal damages from the tenant for the above damages.

Stovetop

Section 37 of the *Act* states that when tenants vacate a rental unit, the tenants must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

The move in condition inspection report states: “scratch on glass top”. The move out condition inspection report states: “scratches on glass top”. I find that the property manager failed to prove that the condition of the stove top was in worse condition at the end of the tenancy than the beginning of the tenancy, considering reasonable wear and tear. I find that the stove top was scratched at the beginning of the tenancy. I find that the property manager has not proved that the stovetop had more scratches at the end of the tenancy that went beyond reasonable wear and tear. I therefore dismiss the

claim for the cost of the replacement of the stove top.

In addition, I find that the property manager has failed to properly quantify the value of the loss or damage as a receipt for the actual replacement of the stove and or stovetop was not entered into evidence and the property manager did not know for certain if the stovetop was replaced. I dismiss the claim for the cost of replacement of the stove top on this ground as well.

As the property manager was partially successful in this application, I find that he is entitled to recover the \$100.00 filing fee from the tenant, pursuant to section 72 of the *Act*.

Security Deposit

Section 38 of the *Act* states that within 15 days after the later of:

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing, the landlord must do one of the following:
 - (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
 - (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

I find that the application for dispute resolution claiming against the security deposit was made within 15 days after the end of this tenancy in accordance with section 38 of the *Act*.

Section 72(2) states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit or pet damage deposit due to the tenant. I find that the landlord is entitled to retain \$300.00 of the tenant's security deposit.

I Order the landlord to return the remainder of the tenant's security deposit, in the amount of \$675.00, to the tenant.

Conclusion

I issue a Monetary Order to the tenant in the amount of \$675.00

The tenant is provided with this Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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: August 13, 2019

Residential Tenancy Branch