Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDLS, FFL

Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution ("application") seeking remedy under the *Residential Tenancy Act* (*"Act"*). The landlord applied for a monetary order in the amount of $1,518.23 for damage to the unit, site or property, for authorization to keep all or part of the tenant's security deposit, and to recover the cost of the filing fee.

The landlord and tenant appeared at the teleconference hearing and gave affirmed testimony on July 12, 2019. The hearing process was explained to the parties and they were given the opportunity to ask questions about the hearing process. After 57 minutes, the hearing was adjourned to allow additional time to hear further evidence from the parties. In Interim Decision dated July 12, 2019 was issued which should be read in conjunction with this decision.

On September 6, 2019, the parties reconvened and after an additional 56 minutes, the hearing concluded. During the hearing the parties were given the opportunity to provide their evidence orally. A summary of the evidence is provided below and includes only that which is relevant to the hearing.

Preliminary and Procedural Matter

The parties confirmed their email addresses at the outset of the hearing. The parties also confirmed their understanding that the decision would be emailed to both parties and that any applicable orders would be emailed to the appropriate party for service on the other party.

Issues to be Decided

- Is the landlord entitled to a monetary order under the *Act,* and if so, in what amount*?*
- What should happen to the tenant's security deposit under the *Act?*
- Is the landlord entitled to the recovery of the cost of the filing fee under the *Act?*

Background and Evidence

The parties confirmed that there was no written tenancy agreement, which I will address later in this decision. The parties formed a verbal tenancy agreement and agreed that a month to month tenancy began on June 3, 2018. Originally, monthly rent was $1,000.00 per month and by the end of the tenancy, rent had increased to $1,200.00 per month. Rent was due on the first day of each month during the tenancy. The tenant paid a security deposit of $500.00 at the start of the tenancy, which the landlord continues to hold. The parties agreed that the tenant vacated the rental unit on March 30, 2019.

The landlord's monetary claim of $1,518.23 is comprised of the following:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Replace locks and keys	$90.00
2. Excess on-demand movie charges unpaid	$14.00
3. Excess cleaning and supplies	$255.87
4. Replace damaged kitchen countertops, broken ceiling fan, missing closet doors (labour $420.00; materials $738.36)	$1,158.36
TOTAL	**$1,518.23**

At the start of the hearing, the parties confirmed that the landlord did not complete an incoming Condition Inspection Report ("CIR"), which I will address later in this decision.

Regarding item 1, the landlord has claimed $90.00 for the cost to have the locks re-keyed and for new keys to the rental unit. During the hearing, the landlord testified that the outgoing CIR was attempted to be arranged by text, but that the tenant did not respond to the texts. As a result, the landlord sent a Final Opportunity to Schedule a Condition Inspection form to the tenant by registered mail on March 25, 2019, and the date scheduled for the outgoing CIR was March 31, 2019 at 1:30 p.m. The registered mail tracking number has been included on the cover page of this decision for ease of

reference. According to the online Canada Post registered mail tracking website, the tenant signed for and accepted the registered mail package, but did not attend the outgoing CIR.

The tenant testified that she left one key on the counter of the rental unit and made the decision to mail the 2nd key to the rental unit to the landlord. As a result, the landlord had not received both rental unit keys by the outgoing CIR on March 31, 2019, the landlord had to rekey the rental unit and provide keys. The landlord submitted a receipt dated March 31, 2019, which supports the amount of $90.00 as claimed.

Regarding item 2, the landlord has claimed $14.00 for excess on-demand movies ordered by the tenant. The landlord claims the tenant was responsible for the on-demand movies selected by the tenant. The tenant disputed the landlord's testimony and stated that on-demand movies were included in the verbal tenancy agreement. This item was dismissed during the hearing as the landlord has failed to meet the burden of proof to support the four-part test for damages or loss under the *Act,* which will be addressed later in this decision.

Regarding item 3, the landlord has claimed $255.87 for excess cleaning and supplies. The landlord referred to a receipt submitted in evidence, which indicates 10 hours of cleaning at $20.00 per hour, which appears to have $4.00 as a tax as the amount is listed as $204.00. However, there is no business or tax registration numbers on the receipt submitted. Also indicated on the receipt is cleaning supplies of $24.46, which appears to include tax on the receipt the words "+ tax" are written. The landlord testified that the cleaning was completely by HB cleaning, a local business. The landlord also referred to several photos that the landlord stated were taken after the tenant moved out of the rental unit. One photo was of a pantry cupboard, which the landlord testified was dirty. A second photo was of a door fixture, which the landlord testified was paint from the door that went onto the door handle and was a poor painting job.

The tenant questioned why there was tax on the receipt yet no business name. The tenant also questioned why there were no receipts for the cleaning supplies being charged by the cleaner and that cleaners normally charge for their time and not the supplies on top of their time. The landlord stated that HB is a small company and she does not control how they issue receipts.

Regarding a photo presented by the landlord showing a rusty nail inside the washing machine, the tenant denied that she put a nail in the washing machine. The tenant also could not explain how the nail got into the washing machine. In relation to the "goop on

the walls” claimed by the landlord, the tenant stated that there was some “silly string” left on a wall. The tenant claims the area was 1 inch square in size. A photo of the goop/silly string was submitted for my consideration.

Regarding item 4, the landlord has claimed a total of $1,158.36, comprised of labour and materials related to replacing damaged kitchen countertops, repairing a broken ceiling fan, and replacing missing closet doors. The landlord denied that she provided the tenant with permission to repaint the interior of the rental unit. Later in the hearing; however, the landlord stated that the tenant was given permission to paint if she could do the job property and green paint was provided. The landlord confirmed that the blue paint used by the tenant in the kitchen area was not provided by the tenant and was not completed either. In one photo, the landlord explained that the tenant partially painted behind the stove and did not finish the painting job so repainting was necessary.

Regarding the age of the interior paint, the landlord testified that the interior was painted in 2017 and was all white in colour. At the end of the tenancy, the tenant had painted the basement green and the main area blue. There was also what appears to be grey stain used on the bookshelf and the doors, which the tenant stated was an improvement on the original colour. The landlord stated that the grey stain appeared to be smeared on and was not done well or consistently at all.

Regarding the kitchen countertops, the tenant admitted that she painted the wood-grain simulated laminate countertops with a white paint. The tenant claims the landlord provided verbal permission for the tenant to repaint the countertops. The landlord vehemently denied that she permitted the tenant to repaint the countertops as the original laminate countertops were in good condition and the tenant’s painting job was peeling and was not food safe either. The landlord testified that the countertops were ruined as chemicals were used to remove the paint, which damaged the finish on the laminate countertops, and scraping was not possible as that would further damage the countertops. In terms of the value, the landlord submitted a quote from a home improvement store in the amount of $253.30. The landlord testified that she was unsure of the age of the countertops but estimated that they would be seven years old. The landlord clarified that she purchased the home in 2004 and installed the laminate countertops in either 2011 or 2012.

Regarding the damaged ceiling fan claimed by the landlord, the landlord claims the tenant broke the chain to the ceiling fan. The tenant denied that she broke the chain and that it was not only rusty but sent a request to the landlord to advise that the chain did not appear to be working and that the landlord did not respond to her request. The tenant stated that as a result, she did not use or rely on the light from the ceiling fan.

Regarding the missing closet doors, the landlord testified that one door was found removed and in the rental unit so the landlord has not claimed for the third closet door, just the two missing closet doors. The tenant denies that closet doors were in the rental unit at the start of the tenancy and stated that she preferred to hang curtains so did not seek the installation of closet doors from the landlord. The landlord referred to a letter submitted in evidence from the tenant, which makes reference to the landlord advising the tenant before the tenant moved in that the closet doors were coming off the tracks and were very old so were removed and that even though the landlord had offered to put closet doors in "at some point" that they would be bi-fold doors and the tenant declined as she did not like bi-fold doors.

Analysis

Based on the testimony of the parties provided during the hearing, the documentary evidence presented and on the balance of probabilities, I find the following.

Test for damages or loss

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

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

I will first address that the landlord did not have a written tenancy agreement. Section 13(1) of the *Act* applies and states:

> **Requirements for tenancy agreements**
>
> **13** (1) A landlord **must** prepare in writing every tenancy agreement entered into on or after January 1, 2004.
>
> [Emphasis added]

I find the tenant breached section 13(1) of the *Act* and as a result, I caution the landlord to ensure that all future tenancy agreements comply are in writing as required by section 13(1) of the *Act.*

I will now address that the landlord failed to complete an incoming CIR. Section 23 of the *Act* applies and states:

> **Condition inspection: start of tenancy or new pet**
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> **23** (1) The landlord and tenant together **must** inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.
> (3) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.
> (4) The landlord **must** complete a condition inspection report in accordance with the regulations.
> (5) Both the landlord and tenant **must** sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.
> (6) The landlord must make the inspection and complete and sign the report without the tenant if
>
> (a) the landlord has complied with subsection (3), and
> (b) the tenant does not participate on either occasion.
>
> [Emphasis added]

Based on the above, I find the landlord breached section 23 of the *Act* by failing to complete an incoming CIR in writing. I caution the landlord to ensure that an incoming CIR is completed at the start of all future tenancies.

Item 1 - The landlord has claimed $90.00 for the cost to have the locks re-keyed and for new keys to the rental unit. As the landlord sent a Final Opportunity to Schedule a Condition Inspection form to the tenant by registered mail on March 25, 2019, and the date scheduled for the outgoing CIR was March 31, 2019 at 1:30 p.m., section 90 of the *Act* states that documents served by registered mail are deemed served five days after they are mailed. Therefore, I find the tenant was deemed served as of March 30, 2019 and failed to attend the outgoing condition inspection. In addition, section 37(2)(b) of the *Act* applies and states:

> **Leaving the rental unit at the end of a tenancy**
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> **37** (2) When a tenant vacates a rental unit, the tenant must
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> (b) **give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.**
>
> [Emphasis added]

Based on the above, I find the tenant breached section 37(2)(b) by failing to leave both keys with the landlord or an agent for the landlord and that the landlord suffered a loss of $90.00 to rekey the locks and create 2 new keys. Therefore, I find the landlord has met the burden of proof and I grant the landlord **$90.00** as claimed for this item.

Item 2 - The landlord has claimed $14.00 for excess on-demand movies ordered by the tenant. The landlord claims the tenant was responsible for the on-demand movies selected by the tenant. The tenant disputed the landlord's testimony and stated that on-demand movies were included in the verbal tenancy agreement. As noted above, this item was dismissed during the hearing as the landlord has failed to meet parts one and two of the four-part test described above. In reaching this decision I have considered that the landlord failed to create a written tenancy agreement to indicate what was included with on-demand movies and that the tenant did not agree with the landlord's version of events for this item. Therefore, I dismiss this item due to insufficient evidence, without leave to reapply.

Item 3 - The landlord has claimed $255.87 for excess cleaning and supplies. The landlord submitted a receipt in evidence, which was questioned by the tenant. I have

reviewed the photos submitted by the parties and I find the tenant did not leave the rental unit in reasonably clean condition at the end of the tenancy, which is a breach of section 37 of the *Act*, which requires the tenants to leave the rental unit in reasonably clean condition, except for reasonable wear and tear.

I find the tenant did a poor painting job that was not properly cleaned up after it was completed, that the tenant left a rusty nail inside the washing machine, and I find the tenant's version of the silly string/goop on the walls left behind by the tenant being 1 inch square in size, does not match the photographic evidence. Rather, I find that the photographic evidence is that the amount of silly string/goop on the walls was more likely than not several feet wide and went from one wall and cross the corner onto another wall, which I find is not close to 1 inch square. Therefore, I find the tenant's testimony to be unbelievable and inconsistent, which I will address later in this decision. As a result, I prefer the landlord's testimony over that of the tenant's and I find the landlord has met the burden of proof and I grant the landlord **$255.87** as claimed for this item.

Item 4 - The landlord has claimed a total of $1,158.36, comprised of labour and materials related to replacing damaged kitchen countertops, repairing a broken ceiling fan, and replacing missing closet doors. While I have considered the testimony of both parties, I note that the landlord provided consent for the tenant to paint using the colour green. I am not satisfied that the tenant was provided consent to use the blue colour and I note that the blue painting job was not completed by the tenant and left partially white and partially blue with the painting job ending behind the stove and not completed. I also disagree with the tenant that their painting job added value as I find the tenant's painting job was of poor quality and was unfinished. As result, I find the tenant is responsible for the cost to repaint a portion of the rental unit.

The cost; however, is a different matter. I am not satisfied that the landlord has provided sufficient evidence to support as the blue portion and green portion are not differentiated in the invoice. Therefore, I find the tenant breached section 37 by not completing the blue paint job and performing a poor quality paint job using the grey paint or stain on the bookshelf and doors, I grant the landlord a nominal amount of **$100.00** reflect that the tenant breached the *Act*, but also to reflect that I am not satisfied on the value of the total cost claimed for the painting.

Regarding the ceiling fan portion, I am not satisfied that the landlord has provided sufficient evidence to support parts one to four of the test for damages or loss.

Consequently, I dismiss the ceiling fan portion of this item without leave to reapply, due to insufficient evidence.

Regarding the missing closet doors, by failing to have an incoming condition inspection report to support that the doors were there at the start of the tenancy, I find the landlord has failed to meet the burden of proof for that portion of this item. Consequently, I dismiss the missing closet door portion of this item without leave to reapply, due to insufficient evidence.

Finally, regarding the kitchen countertops, I find it highly unlikely that the landlord provided consent to paint kitchen countertops, regardless of age, as house paint would not be food safe and therefore I prefer the landlord's version of events and find that it is more likely than not that the tenant painted the countertops without the landlord's permission. As a result, I find that the landlord is entitled to the entire amount of $253.30 as the tenant's actions were purposeful and not approved, and were negligent. I agree with the landlord that the countertops would not be able to be repaired or reused once painted by the tenant. Accordingly, I do not apply Policy Guideline 40 relating to the useful life of countertops as I find the tenant negligently damaged the countertops beyond repair by deciding to use house paint on countertops, which is not reasonable as house paint is not food safe. Accordingly, I find the tenant breached section 37 of the *Act,* and I award the landlord **$253.30** as claimed for the damaged countertops.

Given the above, I find the total amount awarded to the landlord for item four is **$353.30** as noted above.

As the landlord's application had some merit, I grant the landlord the recovery of the filing fee of **$100.00** pursuant to section 72 of the *Act.*

I find that the landlord has established a total monetary claim in the amount of **$799.17** pursuant to section 67 of the *Act,* which is comprised of $90.00 for item 1, $255.87 for item 3, $353.30 for item 4, plus the $100.00 filing fee.

The landlord continues to hold the tenant's security deposit of $500.00, which has accrued $0.00 in interest since the start of the tenancy. I find the total monetary award of **$799.17** meets the criteria under section 72(2)(b) of the *Act* to be offset against the tenant's security deposit. I authorize the landlord to retain the tenant's full security deposit of $500.00 in partial satisfaction of the landlord's monetary claim. I grant the landlord a monetary order under section 67 for the balance due to the landlord by the tenant in the amount of **$299.17.**

Conclusion

The landlord's application is partially successful.

The landlord has established a total monetary claim in the amount of $799.17. The landlord has been authorized to retain the tenant's full security deposit of $500.00, which has accrued no interest, in partial satisfaction of the landlord's claim. The landlord has been granted a monetary order for the balance due to the landlord by the tenant in the amount of $299.17. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision will be emailed to the parties. The monetary order will be emailed to the landlord only for service on the tenant.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: September 23, 2019

Residential Tenancy Branch