



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFL MNDCL MNDL**

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 recover the filing fee for this application pursuant to section 72.

The landlord ES attended on behalf of both landlords ("the landlord"). The tenant attended. The hearing process was explained, and an opportunity was given to ask questions about the process. Each party acknowledged receipt of the other party's evidence; each party had the opportunity to call witnesses and present affirmed testimony and written evidence. I find the tenant served the landlord in accordance with section 89 of the *Act*.

During the hearing, the landlord's reception was intermittent requiring the landlord to disconnect and call back in three times. The quality of the reception thereafter was adequate to continue with the arbitration.

At the outset, the landlord requested, and the tenant agreed, to amend the landlord's claim to add a request that any monetary order be deducted from the security deposit held by the landlord pursuant to section 72.

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*;
- Authorization to recover the filing fee for this application pursuant to section 72.

Background and Evidence

The parties agreed the tenancy began November 1, 2018 and ended when the tenant vacated on June 30, 2019. Rent was payable on the 31st of the month in the amount of \$975.00. At the beginning of the tenancy, the tenant provided a security deposit and pet deposit in the total amount of \$700.00 ("the security deposit") which the landlord holds. The tenant has not provided authorization to the landlord to retain any of the security deposit.

A copy of the tenancy agreement was submitted as evidence.

The parties agreed that a condition inspection was conducted on moving in which indicated that the unit was in all material respects in good condition. They also agreed that the inspection on moving out indicated that cleaning was needed and there were small holes in the wall. A copy of the report signed by both parties was submitted.

The tenant submitted photographic evidence including two videos of the unit taken when the tenant vacated.

The landlord claims the following:

ITEM	AMOUNT
Cleaning costs	\$100.00
Wall repairs and painting	\$150.00
One venetian blind – replacement	\$150.00

Reimbursement of the filing fee	\$100.00
Total Monetary Award Requested by Landlord =	\$500.00

Cleaning costs

The landlord testified that the tenant did not leave the unit sufficiently clean. The landlord testified many items required cleaning, such as the microwave, the floors, the toilet and the shower. She stated that, along with one other person, each cleaned for two hours. The landlord claims \$25.00 an hour for 4 hours cleaning for a total of \$100.00 for which she requests compensation from the tenant.

In support of her testimony, the landlord submitted a condition inspection report on moving out which indicated that cleaning was needed in several noted respects. The landlord also submitted photographs of unit taken shortly after the tenant vacated supporting her testimony that cleaning was needed.

The tenant testified that she left the unit reasonably clean and denied there was any need for the cleaning claimed by the landlord. The tenant testified that the videos she submitted of the unit were taken when she vacated showing a reasonably clean unit.

Wall repair and painting

The landlord testified that the unit had been freshly painted before the tenant moved in and the wallpaper was new. When the tenant vacated, the landlord noted an excessive number of small holes, such as holes made for hanging pictures, requiring patching and filling, along with larger holes in the wallpaper.

The landlord stated she had not yet patched and painted the walls as she was waiting to see if she would be awarded compensation at the hearing. The landlord explained that she has a fixed income and limited financial means; she would otherwise not have the resources to carry out the repairs.

In her testimony, the landlord explained the breakdown of time and materials estimated in reaching her calculation of an anticipated cost of \$150.00. The landlord testified she has done work of this nature before and knows the time and cost involved.

In support of her testimony, the landlord submitted the condition inspection report on moving in, which indicated the walls were in good condition, and on moving out, noting the holes; the landlord also submitted photographs.

The unit was occupied by another person as soon as the tenant vacated.

The tenant denied that there were any significant number of holes in the wall or that the repairs were necessary. She stated that her videos of the unit showed that it was reasonably free of wall damage.

Replacement of Blinds

The landlord testified that the tenant glued one venetian blind together thereby requiring the landlord to replace the blind at an anticipated expense of \$150.00. The landlord acknowledged she had not yet replaced the blind for the reasons set out above.

In support of her testimony, the landlord submitted a photograph of the blinds showing a glued area of the blinds. The landlord submitted no documentary estimate of the cost of replacement of the blinds.

The tenant denied she had damaged the blinds or that she was responsible for the cost of replacement.

Analysis

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* allows me to issue a monetary award for loss resulting from a party violating the Act, regulations or a tenancy agreement.

Section 7(1) of the Act provided that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

To claim for damage or loss, the claiming party bears the burden of proof on a balance of probabilities; that is, something is more likely than not to be true. The claimant must establish four elements.

The claimant must prove the existence of the damage or loss. Secondly, the claiming party must show that the damage or loss stemmed directly from a violation of the agreement or a contravention on the part of the other party.

Once those elements have been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally, the claimant has a duty to take reasonable steps to reduce, or mitigate, their loss.

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

Reference to each of the landlord's claims follows.

Cleaning costs

I have considered all the evidence submitted by the parties including their testimony and supporting evidence. I have considered the landlord's photographs taken shortly after the tenant vacated showing the unit needed cleaning and the supporting condition inspection report.

I have considered the tenant's photographic evidence which I find showed general views of the unit and not specific details, such as the inside of the microwave. I therefore prefer the landlord's evidence in this regard to the tenant's evidence and give the landlord's evidence greater weight.

Section 37(2) of the Act states that the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, as follows:

- (2) When a tenant vacates a rental unit, the tenant must*
(a) leave the rental unit reasonably clean, and undamaged except for
reasonable wear and tear, [...]

Considering the evidence and testimony, I find the landlord has met the burden of proof on a balance of probabilities that the tenant did not leave the unit reasonably clean, the unit needed cleaning when the tenant vacated, the tenant is responsible for the lack of

cleanliness, the landlord and another person spent 2 hours cleaning for a total of 4 hours, \$25.00 is a reasonable hourly rate, and the landlord took all reasonable steps to mitigate expenses including looking after the work herself.

Accordingly, I find the landlord is entitled to a monetary award in the amount requested of \$100.00 for this aspect of the claim.

Wall repairs and painting

As stated above, the Act requires a tenant to leave a rental unit undamaged except for reasonable wear and tear.

A key issue with respect to this aspect of the landlord's claim is whether the holes in the wall, as noted by the landlord in 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.

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 #1, 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 and the walls were undamaged. The landlord's evidence is supported by the condition inspection report. The tenant did not provide any evidence contradicting the landlord's evidence in this regard. Accordingly, I accept the landlord has met the burden of proof that the unit was clean and in good repair when the tenant moved in.

Guideline 1 states as follows:

Nail Holes:

1. Most tenants will put up pictures in their unit. The landlord may set rules as to how this can be done e.g. no adhesive hangers or only picture hook nails may be used. If the tenant follows the landlord's reasonable instructions for hanging and

removing pictures/mirrors/wall hangings/ceiling hooks, it is not considered damage and he or she is not responsible for filling the holes or the cost of filling the holes.

2. The tenant must pay for repairing walls where there are an excessive number of nail holes, or large nails, or screws or tape have been used and left wall damage.

3. The tenant is responsible for all deliberate or negligent damage to the walls.

I accept the landlord's evidence with respect to the excessive number and size of the holes for the reasons set out under the immediately preceding heading.

Considering the evidence and testimony, I find the landlord has met the burden of proof on a balance of probabilities that the tenant left the walls of the unit damaged with an excessive number and size of holes causing wall damage, the tenant is responsible for the damage, the landlord's estimate of repair costs is reasonable, and the landlord will take all reasonable steps to mitigate expenses including looking after the work herself.

Accordingly, I find the landlord is entitled to a monetary award in the amount requested of \$150.00 for this aspect of the claim.

One venetian blind – replacement

For the reasons set out above, I find the landlord has met the burden of proof that the blinds were in good condition when the tenant moved in, the tenant is responsible for damaging the blinds, and the blinds need to be replaced. I accept the landlord's testimony supported by photographic evidence.

However, I find the landlord has not met the burden of proof with respect to the replacement cost of the blinds. The landlord has submitted no documentary evidence in support of her testimony that the replacement cost is \$150.00.

Policy Guideline 16: Compensation for Damage or Loss states:

An arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward:

- "Nominal damages" are a minimal award. 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.*

I accept that the landlord incurred the loss of the blinds and will have to replace the blinds. Further to the Act and Guideline above, I find the landlord is entitled to a nominal award in this regard of \$50.00.

Filing fee

As the landlord is successful in this application, the landlord is granted a monetary award for reimbursement of the filing fee of \$100.00.

Summary of award

The landlord is entitled to a monetary award of \$400.00 summarized as follows:

ITEM	AMOUNT
Cleaning costs	\$100.00
Wall repairs and painting	\$150.00
One venetian blind – replacement	\$50.00
Reimbursement of the filing fee	\$100.00
Total Monetary Award Landlord =	\$400.00

Security deposit

Pursuant to section 72, I direct that the monetary award herein be satisfied from the security deposit and the balance returned to the tenant, as follows:

ITEM	AMOUNT
Monetary award (above)	\$400.00
Less security deposit	(\$700.00)
Balance of security deposit to be refunded	(\$300.00)

Conclusion

The landlord is granted a monetary order in the amount of \$400.00 which I direct be paid from the security deposit held by the landlord with the balance of \$300.00 to be refunded to the tenant forthwith.

I accordingly grant the tenant a monetary award in the amount of \$300.00. This order must be served on the landlord. If the landlord fails to comply with this order the tenant may file the order in the Provincial Court to be 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: October 17, 2019

Residential Tenancy Branch