



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ARDENT PROPERTIES INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

FFL MNDCL-S MNDL-S MNRL-S

Introduction

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

- a Monetary Order for compensation for damage or loss under the *Act* pursuant to section 67 of the *Act*;
- authorization to retain the tenant's security deposit in partial satisfaction of this claim pursuant to sections 38 and 67 of the *Act*; and
- recovery of the filing fee for this application from the tenant pursuant to section 72 of the *Act*.

The landlord's agent W.M. (herein referred to as "the landlord") attended at the date and time set for the hearing of this matter and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenant did not attend this hearing, although I left the teleconference hearing connection open until 2:11 p.m. in order to enable the tenant to call into this teleconference hearing scheduled for 1:30 p.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

As only the landlord attended the hearing, I asked the landlord to confirm that the tenant had been served with the Notice of Dispute Resolution Proceeding for this hearing. The landlord testified that the tenant was served with the landlord's notice of this hearing and evidence by Canada Post registered mail on July 22, 2019, and provided a Canada Post registered mail tracking number as proof of service, which I have noted on the cover sheet of this decision. The landlord testified that the tenant provided the landlord with their forwarding address by email on July 5, 2019, and as such the landlord sent the notice of hearing package to the tenant's forwarding address.

Section 90 of the *Act* sets out when documents that are not personally served are considered to have been received. Unless there is evidence to the contrary, a document is considered or 'deemed' received on the fifth day after mailing it is served by mail (ordinary or registered mail).

Residential Policy Guideline 12. Service Provisions provides guidance on determining deemed receipt, as follows:

Where a document is served by Registered Mail, the refusal of the party to accept or pick up the Registered Mail, does not override the deeming provision. Where the Registered Mail is refused or deliberately not picked up, receipt continues to be deemed to have occurred on the fifth day after mailing.

Therefore, I find that the tenant was served with the notice of this hearing and the landlord's evidence on July 27, 2019, the fifth day after mailing, in accordance with sections 89 and 90 of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for compensation for damage or loss?
Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. Only the aspects of this matter relevant to my findings and the decision are set out below.

A written tenancy agreement was submitted into documentary evidence by the landlord, and the landlord confirmed the following information pertaining to this tenancy:

- This tenancy began October 1, 2016.
- Monthly rent of \$975.00 was payable on the first of the month.
- The tenant paid a security deposit of \$487.50, which continues to be held by the landlord.
- The landlord testified that the landlord and tenant participated in condition inspections of the rental unit at the beginning and end of the tenancy and submitted a copy of the reports into evidence. However, the landlord could not confirm when or if a written copy of the move in condition inspection report was provided to the tenant at the beginning of the tenancy as a different landlord was managing the rental unit at that time. The landlord confirmed the tenant received copies of the move in and move out condition inspection reports with the landlord's evidence for this hearing.

The landlord testified that the tenant vacated the rental unit on July 5, 2019 and provided their forwarding address by email on that same date.

The landlord filed an Application for Dispute Resolution on July 16, 2019, seeking to retain the tenant's security deposit against the claims for unpaid hydro costs, damage to the walls and blinds, carpet cleaning and cleaning costs.

In support of their claim, the landlord submitted into evidence invoices for damage and cleaning costs, historical hydro costs, condition inspection reports, and photographic evidence of the condition of the rental unit at move-out.

The landlord did not know exact age of the rental unit but estimated it to be approximately 10 years old. The landlord also did not have information on whether the rental unit had been painted or if any building elements in the rental unit had been updated since the rental unit was built.

Analysis

Section 67 of the *Act* provides that, where an arbitrator has found that damages or loss results from a party not complying with the *Act*, regulations, or tenancy agreement, an arbitrator may determine the amount of that damage or loss and order compensation to the claimant. The claimant bears the burden of proof. The claimant must show the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* by the other party. If this is established, the claimant must provide evidence of the monetary amount of the damage or loss. The amount of the loss or damage claimed is subject to the claimant's duty to mitigate or minimize the loss pursuant to section 7(2) of the *Act*.

Where the claiming party has not met each of the above-noted four elements, the burden of proof has not been met and the claim fails.

I have addressed my findings on each of the landlord's heads of claim.

1) Unpaid Hydro Costs

The written tenancy agreement required the tenant to pay 35% of the hydro costs. The landlord submitted a hydro bill from the previous 2018 year as an estimate of \$298.00 for hydro costs owed by the tenant from April 10, 2019 to the end of June 2019. However, since submitting the Application for Dispute, the landlord obtained the actual hydro bill for the period of April 10 to June 10, 2019 in the amount of \$402.86. As such, the landlord amended his claim to reflect the actual costs of hydro of \$141.00 (35% of \$402.86). As this is a reduction in the amount of claim sought and reflects the actual hydro cost incurred by the landlord, I find that this amendment to the landlord's Application is not prejudicial to the tenant and is allowed.

I accept the landlord's unchallenged testimony and the submitted documentary evidence of the written tenancy agreement that the agreed upon terms of the tenancy required the tenant to pay 35% of the hydro costs and that the tenant failed to make this payment.

Therefore, based on the testimony and evidence before me, on a balance of probabilities, I find the landlord is entitled to a monetary award of \$141.00 for unpaid hydro costs owed by the tenant.

2) Wall Repairs and Window Blind Replacement

The landlord's claim sought reimbursement of costs for repair of walls and replacement of window blinds. As explained at the beginning of the "Analysis" section, the claimant must meet all of the four elements of the test for compensation to be successful in their claim. Therefore, the landlord must provide sufficient evidence to establish the actual monetary loss incurred and that reasonable action was taken to mitigate the loss. Further, in determining damages pertaining to the repair or replacement of building elements, such as drywall or window coverings, I refer to Residential Tenancy Policy Guideline 40. Useful Life of Building Elements, which provides the following guidance:

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.

In this matter, the landlord took over management of the rental unit at some point during the tenancy, and as such, he was unable to provide evidence of the age of the building elements at time of replacement. The landlord estimated the age of the rental unit at 10 years. Given that the useful life of window coverings is 10 years, I find that the landlord's claim on this item, based on an estimate of 10 years of age of the rental unit is depreciated to the point that there is no value attributable to the landlord to establish a monetary loss for the repair or replacement of this item.

The useful life of gypsum board (drywall) is 20 years. The landlord submitted a receipt for "patching and priming of walls" and photographic evidence of a hole, the size of a door knob, in the wall of one of the bedrooms, behind the door. It appeared as if the door had been pushed against the wall and the door knob went through the drywall. In reviewing the condition

inspection reports with the landlord during the hearing, it was confirmed that the move in condition inspection report indicated that there was no existing damage to the wall at move in, and that the only wall noted as “damaged” on the move out condition inspection report was the master bedroom wall, as a result of the hole caused by the door knob. As such, I have limited the landlord to any entitlement to reimbursement for damage to the walls to what was noted on the condition inspection report.

The landlord submitted photographic evidence of a small hole in the bottom of a bedroom door, however, I do not find that the invoice for the wall repair makes any reference to repair work done to the door, and as such, I find that the landlord has failed to establish if the damage to the door was repaired, and if so, the landlord has failed to establish the actual amount of the monetary loss for that repair.

Therefore, based on the testimony and evidence before me, on a balance of probabilities, I find that the landlord is entitled to a nominal monetary award of \$50.00 as compensation for the repair of the damage caused by the tenant resulting in a hole in the wall in the master bedroom.

3) Cleaning and Carpet Cleaning Costs

Section 37(2) of the *Act* sets out the requirements for a tenant to fulfill when vacating the rental unit, as follows, in part:

- 37(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,...

Based on:

- the unchallenged testimony of the landlord that the tenant failed to have the carpets cleaned and failed to clean the fridge, oven, cabinets, sink and floors to a reasonable standard;
- photographic evidence of cleaning deficiencies;
- notations of stains in the carpet and dirty notations in the condition inspection report;
- receipts for carpet cleaning and cleaning of the rental unit submitted by the landlord in support of their claim;

I find that there is sufficient evidence that the tenant failed to leave the rental unit reasonably clean. As such, based on the testimony and evidence before me, on a balance of probabilities, I find that the claimant has shown that the damage or loss claimed stemmed directly from a violation of the agreement or a contravention of the *Act* by the other party, and the amount of the loss has been established through the submitted receipts.

Therefore, I find the landlord is entitled to a monetary award of \$241.50 for the claimed costs of carpet cleaning and cleaning of the rental unit.

Set-off Against Security Deposit

In summary, I find that the landlord is entitled to a monetary award of \$432.50. Further to this, as the landlord was successful in obtaining a monetary award from this application, I find that the landlord is entitled to recover the \$100.00 filing fee from the tenant. As such, the landlord is entitled to a total monetary award of \$532.50.

I find that the landlord submitted an Application for Dispute Resolution in accordance with the requirements of section 38 of the *Act* to retain the tenant's security deposit in partial satisfaction of their claim for compensation.

The landlord continues to retain the tenant's \$487.50 security deposit. In accordance with the offsetting provisions of section 72 of the *Act*, I set-off the total amount of the monetary award owed by the tenant to the landlord of \$532.50, against the tenant's security deposit of \$487.50 held by the landlord, in partial satisfaction of the total monetary award in favour of the landlord.

As such, I issue a Monetary Order in the landlord's favour for the remaining amount of the monetary award owing in the amount of \$45.00.

A summary of the monetary award is provided as follows:

Item	Amount
Monetary award in favour of landlord	\$432.50
Recovery of the filing fee from the tenants	\$100.00
LESS: Security deposit held by landlord	(\$487.50)
Total Monetary Order in Favour of Landlord	\$45.00

Conclusion

I order the landlord to retain the \$487.50 security deposit for this tenancy in partial satisfaction of the monetary award granted to the landlord for compensation for loss and damage.

I issue a Monetary Order in the landlord's favour against the tenant in the amount of \$45.00 in full satisfaction of the remaining amount of loss owed, and to recover the landlord's filing fee for this application.

The landlord is provided with this Order in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant 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: November 06, 2019

Residential Tenancy Branch