



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDL-S, FFL

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss, to keep all or part of the security deposit, and to recover the fee for filing this Application for Dispute Resolution.

The Agent for the Landlord stated that on August 30, 2019 the Dispute Resolution Package and the evidence the Landlord submitted to the Residential Tenancy Branch in August were personally served to the Tenant. The Tenant acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

On December 05, 2019 the Tenant submitted evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was personally served to the Agent for the Landlord on December 05, 2019. The Agent for the Landlord acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each party affirmed that they would provide the truth, the whole truth, and nothing but the truth at these proceedings.

Issue(s) to be Decided

Is the Landlord entitled to compensation for damage to the rental unit and to keep all or part of the security deposit?

Background and Evidence

The Landlord and the Tenant agree that:

- the tenancy began on August 15, 2012;
- the tenancy ended on August 02, 2019;
- the Tenant paid a security deposit of \$1,100.00;
- a condition inspection report was completed at the beginning of the tenancy;
- on July 22, 2019 the Landlord and the Tenant agreed to meet on August 02, 2019, for the purpose of conducting a final inspection of the rental unit;
- the rental unit was jointly inspected on August 02, 2019, although the Landlord did not complete a condition inspection report at that time;
- the Landlord has not repaid any portion of the security deposit; and
- the Tenant gave the Landlord written authority to keep \$78.70 from the security deposit.

The Agent for the Landlord stated that he completed the final condition inspection report on August 03, 2019 and he gave the Tenant a copy of it on August 19, 2019. The Tenant stated that she received a copy of the report on August 20, 2019.

At the hearing the Agent for the Landlord withdrew the claim for replacing a sink stopper, lights, and light switches, as the Tenant agreed those costs could be deducted from the security deposit.

The Landlord is seeking compensation, in the amount of \$400.00, for cleaning the rental unit.

The Landlord submitted photographs of the rental unit, which the Agent for the Landlord stated were taken on August 02, 2019 and August 03, 2019. The Tenant submitted photographs of the unit, which she stated were taken on August 02, 2019.

The Tenant stated that all of these photographs fairly represent the condition of the rental unit at the end of the tenancy. The Agent for the Landlord stated that some of the marks on the wall were darker than they appear in the photographs.

The Agent for the Landlord stated that the Landlord spent 19.5 hours cleaning the rental unit.

The Tenant stated that the Tenant regularly had the rental unit professionally cleaned and that it was professionally cleaned on August 02, 2019. She stated that the carpet was also professionally cleaned on August 02, 2019. The Tenant submitted receipts to corroborate this testimony.

The Landlord is seeking compensation, in the amount of \$500.00, for repairing the scuffs, marks and holes on the walls of the rental unit.

The Agent for the Landlord stated that the rental unit was freshly painted at the start of this tenancy. When asked about the entries on the condition inspection report that was completed at the start of the tenancy, the Agent for the Landlord stated that the report only refers to the walls being cracked, not scuffed.

The Tenant stated that the walls were not freshly painted at the start of the tenancy and that there were a few marks and scuffs on the walls when the tenancy began.

The Agent for the Landlord stated that there were numerous large screw holes in the walls at the end of the tenancy. He estimates there were approximately 40 screw holes and numerous smaller holes which are typically associated to hanging pictures.

The Tenant stated that there were less than 20 screw holes in the walls. She stated the holes were the result of furniture being screwed to the walls for the safety of her children.

The Landlord is seeking compensation, in the amount of \$34.00, for repairing a knob on the stove exhaust fan, which was missing at the end of the tenancy. The Tenant stated that the knob broke as a result of normal use.

The Landlord is seeking compensation, in the amount of \$100.80, for repairing three sets of blinds. The Agent for the Landlord and the Tenant agree that at the end of the tenancy these blinds would not stay up. The Tenant stated that the blinds malfunctioned due to normal wear and tear.

The Landlord is seeking compensation, in the amount of \$78.40, for replacing track lighting. The Agent for the Landlord stated that one of the lights on the lighting could not be reattached.

The Tenant stated that the Tenant's inadvertently packed a piece of the track lighting that is used to secure one of the lights.

Analysis

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

Section 37(2) of the *Residential Tenancy Act (Act)* requires tenants to leave a rent unit reasonably clean at the end of a tenancy. Residential Tenancy Branch Policy Guideline #1 reads, in part:

An arbitrator may also determine whether or not the condition of premises meets reasonable health, cleanliness and sanitary standards, which are not necessarily the standards of the arbitrator, the landlord or the tenant.

I have viewed all of the photographs/videos submitted by the parties. On the basis of those photographs/videos I find that the rental unit was left in reasonably clean condition. Although there are some areas which required some additional cleaning, I am satisfied the Tenant's have met the legislative requirement of leaving the unit in reasonably clean condition. As the rental unit was left in reasonably clean condition, I find that the Landlord is not entitled to compensation for the time she spent cleaning the unit after the tenancy ended. I therefore dismiss the Landlord's claim for compensation of \$400.00 for cleaning.

Section 21 of the *Residential Tenancy Regulation* stipulates that a condition inspection report that is signed by both parties 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. As the condition inspection report that was completed at the start of the tenancy indicates that there were scuffs on the walls in some locations when this tenancy began, I find that there were some marks on the walls when this tenancy began. I find this report contradicts the testimony of the Agent for the Landlord, who stated that the unit was freshly painted at the start of the tenancy, and that it corroborates the testimony of the Tenant, who stated that there were some marks on the walls when the tenancy began.

Section 37(2) of the *Act* requires tenants to leave a rent unit undamaged at the end of a tenancy, except for reasonable wear and tear. Residential Tenancy Branch Policy Guideline #1 reads, in part:

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.

On the basis of the photographs/videos submitted in evidence I find that there were numerous marks and scuffs on the walls when this tenancy ended. I find, however, that these marks constitute normal wear and tear. I find that the scuffs on the walls is consistent with the type of wear that can be expected to occur during a tenancy of almost seven years. I find that the scuffs are not indicative of damage or neglect by the Tenant.

In adjudicating this matter, I was influenced, to some degree, by the fact there were some scuffs on the wall at the start of the tenancy. I therefore cannot conclude that all of the marks on the walls occurred during this tenancy.

In adjudicating this matter, I was influenced, to some degree, by Residential Tenancy Branch Policy Guideline 40, which suggests that the useful life of interior paint is four years. As the rental unit was not painted during this tenancy, which lasted almost seven years, I find that the interior paint has far exceeded its life expectancy. I find that painting the rental unit will be sufficient to remediate the scuffs on the walls.

As I have concluded that the scuffs on the walls constitute normal wear and tear, I dismiss the Landlord's claim for repairing those scuffs.

Residential Tenancy Branch Policy Guideline #1 reads, in part:

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.

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.

On the basis of the photographs submitted in evidence and the testimony of both parties, I find that the walls were damaged by several screws during this tenancy. On the basis of the size and number of those screw holes, I find that this damage exceeds

normal wear and tear. I therefore find that the Tenant failed to comply with section 37(2) of the *Act* when the Tenant failed to repair that damage.

The Landlord submitted a document that indicates it cost \$500.00 to repair the walls. The Agent for the Landlord stated that this included repairing the holes and touching up the paint where the walls were damaged. As this expense included repairing holes, for which I find the Tenant was obligated to repair, and for repairing scuffs, for which I find the Tenant was not obligated to repair, I find it reasonable to conclude that the Tenant is obligated to pay 50% of these costs, which is \$250.00.

On the basis of the testimony of the Tenant and in the absence of any evidence to the contrary, I find that the knob on the stove exhaust fan broke during normal use. I therefore find that the damage to the knob constitutes normal wear and tear, which the Tenant is not obligated to repair. In determining that this damage constitutes normal wear and tear, I was influenced, in part, by the absence of evidence that shows it was misused and, in part, by my understanding that appliances occasionally break during normal use.

As the Tenant is not obligated to repair damage that results from normal wear and tear, I dismiss the Landlord's application to recover the cost of the damaged exhaust fan.

On the basis of the testimony of the Tenant and in the absence of any evidence to the contrary, I find that the blinds malfunctioned due to normal wear and tear, which the Tenant is not obligated to repair. In determining that this damage constitutes normal wear and tear, I was influenced, in part, by the absence of evidence that shows the blinds were misused and, in part, by my understanding that blind mechanisms occasionally break during normal use.

As the Tenant is not obligated to repair damage that results from normal wear and tear, I dismiss the Landlord's application to recover the cost of the damaged blinds.

On the basis of the undisputed evidence, I find that the Tenant inadvertently packed a part of the track lighting. I therefore find that the Tenant is obligated to pay for the cost of replacing the track lighting, which was no longer fully functional as a result of the missing part. The Landlord submitted a receipt to show that it cost \$78.37 to replace the track lighting and I grant the Landlord's application for compensation in this amount.

On the basis of the undisputed evidence, I find that the Landlord also has the right to retain \$78.70 from the Tenant's security deposit, as the Tenant gave the Landlord

written authorization to do so. I note that none of these agreed upon deductions related to damage to the track lighting or the walls.

I find that the Landlord's Application for Dispute Resolution has some merit and that the Landlord is entitled to recover the fee for filing this Application for Dispute Resolution.

Conclusion

The Landlord has established a monetary claim, in the amount of \$428.37, which includes \$250.00 for repairing the walls, \$78.37 for track lighting, and \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution.

Pursuant to section 72(2) of the *Act*, I authorize the Landlord to retain \$428.37 from the Tenant's security deposit in full satisfaction of this monetary claim. The Landlord also has the right to retain \$78.70 from the Tenant's security deposit, as the Tenant gave the Landlord written authorization to do so.

As the Landlord has not established a right to the remaining \$592.93 of the Tenant's security deposit, I find that it must be returned to her. Based on these determinations I grant the Tenant a monetary Order for \$592.93. In the event the Landlord does not voluntarily comply with this Order, it may be served on the Landlord, filed with the Province of British Columbia Small Claims 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 *Act*.

Dated: December 17, 2019

Residential Tenancy Branch