



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFL MNDCL-S MNDL-S**

Introduction

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

- Authorization to recover the filing fee for this application from the tenant pursuant to section 72;
- A monetary order for damages or compensation and authorization to retain a security deposit pursuant to sections 38 and 67; and
- A monetary order for damages to the rental unit and authorization to retain a security deposit pursuant to sections 67 and 38.

The landlord attended the hearing and both the tenants attended the hearing. The tenant JP spoke on behalf of the tenants and will hereinafter be referred to as tenant. The tenant acknowledged receipt of the landlord's Application for Dispute Resolution Proceedings Package and stated he had no issue with timely service of documents.

The landlord advised she received the tenant's evidence late, although the tenant testified he served it by registered mail to the landlord on December 30, 2019 and provided a tracking number as proof (listed on the cover page of this decision). The tenant's evidence is deemed served upon the landlord on January 4, 2020 in accordance with section 88 and 90 of the *Act*, within the 7 day timeline as required by Rule 3.25 of the Residential Tenancy Branch Rules of Procedure.

Issue(s) to be Decided

Is the landlord entitled to:

- Authorization to recover the filing fee for this application from the tenant pursuant to section 72;
- A monetary order for damages or compensation and authorization to retain a security deposit pursuant to sections 38 and 67; and

- A monetary order for damages to the rental unit and authorization to retain a security deposit pursuant to sections 67 and 38.

Background and Evidence

At the commencement of the hearing, pursuant to rules 3.6 and 7.4, I advised the parties that in my decision, I would refer to any of the documents they specifically presented to me during testimony. While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The parties agree on the following facts. The tenancy began on February 1, 2015 as a fixed one-year tenancy becoming month to month at the end of the fixed term. Rent was set at \$1,750.00 per month and remained at that rate throughout the duration of the tenancy. A security deposit of \$875.00 was collected by the landlord which she continues to hold. A condition inspection report was done at the commencement of the tenancy and was provided as evidence in this proceeding.

The landlord provided the following testimony. The tenants verbally ended the tenancy, giving the landlord more than one month's notice. The tenants paid rent until the first day of September, although they had substantially moved out of the rental unit by the middle of August 2019. After getting the notice to end tenancy, the landlord began to show the rental unit. While showing the unit, the landlord noticed many pictures on the walls indicating there were likely holes from nails or screws. The landlord also noticed a chip was made to the quartz countertop that had happened during the tenancy.

By text messaging, a date for the move-out condition inspection report was made for August 27, 2019. During the condition inspection, the landlord noticed holes in the walls that were puttied over but not sanded down prior to painting. This left obvious marks on the walls that would require re-sanding, refilling and repainting which the landlord didn't want to do. The landlord testified there were over 30 patches on the wall and provided photographs of many of them. A closet had been painted pink and the tenants had put duct tape over an access panel that ripped away wallboard paper when removed. The bathroom had textured wallpaper that the tenants used drywall spackle on to repair a screw hole, making it unsightly. The tenants had also painted over the repaired nail holes with paint that didn't match the original color of the walls. The landlord testified she provided the tenants with the paint codes to repaint the closet only, since it was painted pink by the tenants without her permission. The landlord testified the last time

the rental unit was painted was six months prior to the previous tenant who occupied the rental unit for approximately two years before this tenant moved in. The tenants were not supposed to paint over the holes they had patched unevenly; the landlord was going to evaluate the condition of the walls and consider whether she wanted to repaint after the tenants moved out. The landlord hired a contractor to re-sand the wall repairs done by the tenant, reapply filler, re-sand and paint them again. The contractor's invoice of \$682.50 was supplied as evidence.

The tenants never advised the landlord that the countertop was chipped during their tenancy and didn't retain the chip after it was damaged. The landlord contacted the original supplier of the counters who repaired the counter to the best of his skill and charged her \$300.00 for the repair. The repairer's invoice was supplied as evidence.

The landlord testified that after the tenants moved out, she had to clean the tile grout that was left black by the tenants, wipe down all the drawers, walls, floors and cabinets in all the rooms and remove dryer lint from the dryer trap. The blinds were never cleaned during the tenancy and both the kitchen and bathroom were generally unclean. Multiple photographs of the rental unit were provided as evidence. The landlord submits that the tenants never cleaned behind or underneath the fridge and stove at the end of the tenancy although she verbally advised the tenant at the beginning of the tenancy that the stove was on a 'slider' that would make access easy. The landlord claims 12 hours at \$25.00 per hour for cleaning for a claim of \$300.00.

The tenant provided the following testimony. The condition inspection report was scheduled for 11:00 a.m. on August 27, 2019 however the landlord was already there when he showed up at 10:50. The landlord acted aggressively toward him and didn't have the original condition inspection report with her for comparison. From the interaction on August 27th, he understood the landlord wanted the drywall properly fixed and more thoroughly cleaned, so he offered to reschedule the condition inspection report to the following day on August 28th. He had full intentions of addressing the drywall and cleaning issues however when he came back on August 28th, there were already contractors there doing the drywall repairs. He submits that the tenancy was not yet over as rent was paid until the end of the month, keys had not been returned and the condition inspection report was not signed off. Also, some of the tenant's items were still in the rental unit.

The tenant agrees the countertops were chipped during the tenancy however he questions the quality of the repair, inferring that the repair was of such poor quality that it's possible the landlord did it herself.

The tenant testified he purchased the exact same paint the landlord used by taking the code she supplied to him. The mismatch in paint colour is due to the age of the original paint changing over the years. The tenant never had the opportunity to sand down the drywall repairs before the end of his tenancy because the landlord hired contractors to do the work.

Regarding the cleaning, the tenants mopped the floors biweekly. The discoloration of the grout is normal wear and tear. The landlord never advised him that the stove was on 'sliders' so he didn't clean underneath and behind it. He always cleaned the dryer lint screen; the landlord never showed him there was another door to clean dryer lint. He acknowledges the blinds were not cleaned but points out that the contractors were doing repairs, putting drywall dust in the air making blind cleaning irrelevant. Lastly, the tenant claims that the \$25.00 per hour charge for cleaning is excessive since the landlord is not a professional cleaner.

Analysis

Section 7 of the *Act* states: If a landlord or tenant does not comply with this *Act*, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

Rule 6.6 of the Residential Tenancy Rules of Procedure indicate the onus to prove their case is on the person making the claim. The standard of proof is on a balance of probabilities. If the applicant is successful in proving it is more likely than not the facts occurred as claimed, the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; and
4. Steps taken, if any, to mitigate the damage or loss.

- Cleaning

Section 37(2) of the *Act* states that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

This notion is further elaborated in Residential Tenancy Branch Policy Guideline PG-1 which states:

the tenant must maintain "reasonable health, cleanliness and sanitary standards" throughout the rental unit or site, and property or park. The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard. The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises), or for cleaning to bring the premises to a higher standard than that set out in the Residential Tenancy Act...

...

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 reviewed the photographs provided by the landlord to corroborate the claim for cleaning. While the photographs show a suite that was left in a state that may not be described as "move-in ready", I find the unit was left reasonably clean and undamaged except for reasonable wear and tear. I decline to award the landlord a monetary award for cleaning.

- Countertop

The parties agree that the repair made to the countertop chip was less than ideal. The landlord attributes the poor workmanship to the fact that the tenant did not save the missing piece of counter chip that would have made the repair invisible. The tenant submits that it's because the landlord didn't use a qualified professional to do the repairs and questions the legitimacy of the landlord's invoice. I find the tenant's argument to be somewhat dubious as it would be irrational for the landlord to purposefully make unsightly repairs to an expensive quartz countertop. The landlord's contractor repaired the damage to the counters as best he could, given the missing chip. I am satisfied the chip to the countertop happened during the tenancy and that the landlord paid the contractor \$300.00 to perform the repairs. I award the landlord **\$300.00** as compensation pursuant to section 67 of the Act.

- Drywall repairs and painting

PG-1 provides the following guidance:

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.

PAINTING:

The landlord is responsible for painting the interior of the rental unit at reasonable intervals. The tenant cannot be required as a condition of tenancy to paint the premises. The tenant may only be required to paint or repair where the work is necessary because of damages for which the tenant is responsible.

Based on the testimony of the parties and the evidence provided I find that the tenant lived in the rental unit for a period of 4 years and 7 months. The landlord acknowledged the last time the rental unit was painted 6 months before the previous tenancy of 2 years had commenced. This means the last time the rental unit was painted was over 6 years ago. A reasonable interval for interior painting of a rental unit is 4 years, according to PG-40 [Useful life of building elements]. As such, I find the rental unit needed painting and I decline to award the landlord compensation for painting.

Despite this, I find there was damage to the walls caused by the tenants. I find the photographs of the duct tape over the access panel and nail holes that were filled in, not sanded and painted over is compelling evidence of that damage. Also compelling is the textured wallpaper that was puttied over, requiring more extensive repairs. While the tenant submits that he was denied the opportunity to fix the puttied holes throughout the rental unit because the landlord started repairs on August 28th, I do not find this argument to be substantiated by the facts. The photographs show the poorly repaired holes were painted over by the tenant, indicating to me that the tenant felt repairs were complete. Second, the evidence shows the parties agreed to meet on August 27th to conduct the condition inspection report and return the keys, thereby ending the tenancy on that date. It was after the tenant felt the landlord was 'aggressive' that he offered to come back the following day. Further, the tenant did not supply me with any evidence about bringing tools or material to perform wall repairs the following day. I find the

landlord is entitled to compensation for the repairs to drywall and I award the landlord one half the invoice provided by the contractor, or **\$341.25**.

As the landlord was successful in the majority of her claim, I award the landlord the cost of her filing fee, or **\$100.00**.

The landlord continues to hold the tenant's security deposit. In accordance with section 72 of the *Act*, the landlord is to retain the compensation awarded and return the remainder to the tenants.

Item	Amount
Countertop repair	\$300.00
Drywall repairs	\$341.25
Filing fee	\$100.00
Less security deposit	(\$875.00)
Return to tenants	(\$133.75)

Conclusion

I issue a monetary order in the tenants' favour in the amount of \$133.75.

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: January 16, 2020

Residential Tenancy Branch