



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:

- a monetary order for compensation for monetary loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The tenant confirmed receipt of the landlord's dispute resolution application ('Application'). In accordance with section 89 of the *Act*, I find that the tenant was duly served with the Application. All parties confirmed receipt of each other's evidentiary materials and that they were ready to proceed.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation for money owed or losses?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

This month-to-month tenancy began on September 1, 2017, and ended on August 31, 2019. Monthly rent was set at \$5,800.00, payable on the first of every month. The tenants paid a security deposit in the amount of \$2,900.00, which the landlord still holds.

The landlord is requesting monetary compensation as follows:

1. Master bedroom 2 x 36" bifold door	\$180.00 plus GST
2. Entrance bi fold door	90.00 plus GST
3. Upstairs Bedroom 2 x 36" bifold door	180.00 plus GST
4. Upstairs kitchen storage closet door	70.00 plus GST
5. 30" door kitchen door hallway to front bedroom	90.00 plus GST
6. Downstairs kitchen door 30 hardboard	85.00 plus GST
7. Entrance closet bi-fold door 30 " x 2	180.00 plus GST
8. Dining Room damaged fixture	120.00 plus GST
9. Kitchen nook area light fixture	120.00 plus GST
10. Master bedroom repaint (to cover pink paint)	300.00 plus GST
11. 3 lock set	90.00 plus GST
12. Door Hinge x 9	54.00 plus GST
13. Door paint	70.00 plus GST
14. Labour-installation 7 bi-fold doors	120.00 plus GST
15. Labour- painting 7 bi-fold doors and 3 hardboard door	240.00 plus GST
16. Labour-install cut out hinge & lock	120.00 plus GST
17. Blind repair	89.60
18. Bulbs/fixture	186.28
19. Court Summons-city violation (amended from \$2,000.00 to \$400.00)	400.00
20. Kitchen cabinet repair (1/3 of cost- \$3,500.00 estimate provided)	1,166.66
21. Cleaning	280.00
22. Oven Door Repair	100.00
23. Filing fee	100.00
Total Monetary Award Requested	\$4,536.99

The landlord's monetary claims were discussed during the hearing, and the landlord amended his claim of \$2,000.00 for the violation ticket to \$400.00. The tenant also agreed to compensate for the items above in bold. The tenant is disputing the remaining items claimed by the landlord.

The landlord testified that their monetary claim was made based on the move-in and move-out inspection reports, which were submitted in evidence, accompanied with invoices, quotations, and photos. The landlord testified in the hearing that all repairs have been completed, and they are seeking compensation for the losses arising from this tenancy. The following are the items disputed by the tenant:

1. Upstairs kitchen storage closet door

The landlord testified that the kitchen storage closet door is missing, and is seeking compensation for the replacement of this door. The landlord notes that this observation was noted on the move-out inspection report, and that the landlord was unable to locate this door. The tenant admits that he had removed the door, but that it was not damaged, or missing.

2 & 3. Dining Room damaged fixture & Kitchen nook area light fixture

The tenant testified that the chandelier had fallen down on its own, and that this incident and damage was reported during the tenancy as supported in an email submitted by the tenant. The email dated June 11, 2019 was to inform the landlord that the of the broken chandelier.

4. Master bedroom repaint (to cover pink paint)

The landlord testified that the tenancy agreement clearly states that the tenant must return the home to the landlord in the same condition, which the tenant failed to do. The tenant admitted to painting the wall, but stated they had considered the colour to be a neutral colour, and as the previous colour was a darker burgundy, the tenant considered it ok to leave the wall painted. The tenancy agreement reads that the "tenant is responsible for returning the condition of the property back to its original state, which may include reverting alterations".

5. Bulbs/fixture

The tenant is disputing this claim, stating that the landlord is attempting to recover the replacement of 17 light bulbs/fixtures, when at move-in 12 were burnt out. The tenant testified that the actual number should be 5 bulbs, rather than 17 that should be charged to the tenant.

6. Kitchen cabinet repair (1/3 of cost-\$3,500.00 estimate provided)

The landlord provided an estimate of \$3,500.00 to repair the kitchen cabinets. The landlord testified in the hearing that the cabinets were approximately 7 to 8 years old, and this is why the landlord is asking for the tenant to compensate the landlord for a 1/3 of the cost of repairs. The tenant testified that the damage was strictly wear and tear, and dispute damaging the laminate surface of the cabinets, stating that the laminate was peeling off on its own.

7. Oven Door Repair

The tenant testified that the oven door was not inspected during the move In, and that the damage was pre-existing. The tenant also argued that the damage was aesthetic, and did not affect the function of the oven. The landlord responded that that the damage was not there at the beginning of the tenancy, and this is reflected in the fact that no damage was noted on the inspection report. The landlord testified that a thorough inspection was done at the beginning and end of the tenancy, and the reports accurately reflect the true condition of the rental unit.

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)(a) of the *Act* stipulates that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean, and undamaged condition except for reasonable wear and tear. I have reviewed the landlord's monetary claim for damages, and have taken in consideration of the evidential materials submitted, as well as the sworn testimony of both parties.

I allow the landlord to recover the losses as admitted by the tenant in the hearing. I will assess the remaining items claimed by the landlord:

1. Upstairs kitchen storage closet door

I find that the tenant admitted to removing this closet door, which the landlord noted as missing at the end of the tenancy. I am satisfied that the loss of this door is attributed to the removal of the door by the tenant. I find the landlord did make a note of this missing item during the move-out inspection. On this basis, I am satisfied that the landlord had to replace this closet door due to the tenant's actions, and the landlord is entitled to this monetary claim for this loss.

2 & 3. Dining Room damaged fixture & Kitchen nook area light fixture

These two items were disputed by the tenant, noting that the chandelier had fallen on its own. I find that the tenant had provided an email to support this testimony. Furthermore, I am not satisfied that although these damages may have occurred during this tenancy, that they could be attributed to the tenant's actions. Accordingly, I dismiss this portion of the landlord's claim without leave to reapply.

4. Master bedroom repaint (to cover pink paint)

The find that the tenant admitted to painting the wall, and not changing the colour back despite the fact that the tenancy agreement does clearly state that the tenant is to return the condition back to its original state. There is not reference or exception indicated in the tenancy agreement that excuses the tenant if the colour is considered "neutral". On this basis, allow the landlord's monetary claim for the re-painting.

5. Bulbs/fixture

I accept the testimony of the tenant that many of the bulbs and fixtures were burnt out at the beginning of the tenancy. I allow the landlord's monetary claim for 5/17 of the amount claimed in the sum of \$54.79, to reflect the actual number of bulbs that were burnt out at the beginning and end of the tenancy.

6. Kitchen cabinet repair (1/3 of cost-\$3,500.00 estimate provided)

As noted above, the burden of proof is on the landlord to support that the damage was caused by the tenant beyond wear and tear. In this case, although the damage may have taken place during this tenancy I am not satisfied that the landlord had provided sufficient evidence that damage to the kitchen cabinets can be was caused by the tenant, as opposed to other factors such as wear and tear. Accordingly, I dismiss this portion of the landlord's monetary claim without leave to reapply.

7. Oven Door Repair

I accept the landlord's testimony that the oven door is damaged. However, In light of the disputed testimony by the tenant, I am not satisfied that the exceeds normal wear and tear. On this basis, I dismiss this portion of the landlord's monetary claim without leave to reapply.

The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. As the landlord was only partially successful in their application, I find that the landlord is entitled to recover half of the \$100.00 filing fee paid for this application.

The landlord continues to hold the tenant's security deposit of \$2,900.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain a portion of the tenant's security deposit in satisfaction of the monetary claim. The remainder shall be returned to the tenant.

Conclusion

I issue a Monetary Order in the amount of \$53.26 in the tenant's favour. This is to reflect the return of the remaining portion of the tenant's security deposit in accordance with the offsetting provisions of the *Act* in satisfaction of the landlord's monetary award as set out in the table below. The remainder of the landlord's monetary claim is dismissed without leave to reapply.

Master bedroom 2 x 36" bifold door	\$180.00 plus GST
Entrance bi fold door	90.00 plus GST
Upstairs Bedroom2 x 36" bifold door	180.00 plus GST
Upstairs kitchen storage closet door	70.00 plus GST
30" door kitchen door hallway to front bedroom	90.00 plus GST

Downstairs kitchen door 30 hardboard	85.00 plus GST
Entrance closet bi-fold door 30 " x 2	180.00 plus GST
Master bedroom repaint (to cover pink paint)	300.00 plus GST
3 lock set	90.00 plus GST
Door Hinge x 9	54.00 plus GST
Door paint	70.00 plus GST
Labour-installation 7 bi-fold doors	120.00 plus GST
Labour- painting 7 bi-fold doors and 3 hardboard door	240.00 plus GST
Labour-install cut out hinge & lock	120.00 plus GST
Sub-total for above items with GST:	\$1,962.45
Blind repair	89.60
Bulbs/fixture	54.70
Court Summons-city violation (amended from \$2,000.00 to \$400.00)	400.00
Cleaning	280.00
Filing fee	50.00
Less Security Deposit	-2,900.00
Total Monetary Order to Tenant	\$63.26

The tenant is provided with this Order in the above terms and the landlord (s) must be served with a copy of this Order as soon as possible. Should the landlord (s) 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: February 10, 2020

Residential Tenancy Branch