



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Kingston Realty Group Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFL 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 fees from the tenant pursuant to section 72;
- A monetary order for damages to the rental unit and authorization to retain a security deposit pursuant to sections 67 and 38.

The tenant TM attended the hearing ("tenant") and the landlord attended the hearing and was represented by property manager, BK ("landlord").

As both parties were in attendance, service of documents was confirmed. As the tenant confirmed receipt of the Landlord's Application for Dispute Resolution and evidentiary package and stated she had no issues with timely service of documents, I find that the tenant was duly served with these documents in accordance with sections 88 and 89 of the *Act*. The tenant did not provide any documentary evidence.

Issue(s) to be Decided

Is the landlord entitled to:

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

Preliminary Matters

Section 63 of the *Act* allows an Arbitrator to assist the parties settle their dispute and record the settlement in the form of a decision and order if the parties settle their dispute during the dispute resolution proceeding. Accordingly, I attempted to assist the parties to resolve this dispute by helping them negotiate terms of a settlement. The parties could not reach consensus on the terms of a settlement; therefore, I heard testimony, considered the evidence, and issue a decision to resolve this dispute.

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 specific documents presented to me during testimony. While I have turned my mind to all the documentary evidence 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 rental unit in the matter before me is a single family dwelling. A copy of the tenancy agreement was provided as evidence by the landlord. The fixed 8-month tenancy began on March 1, 2018 becoming month to month at the end of the fixed term. Rent was set at \$2,800.00 per month and a security deposit of \$1,400.00 was collected by the landlord. From the security deposit, all but \$648.00 was returned to the tenant at the end of the tenancy. A condition inspection report was conducted when the tenant moved in.

The parties agree that the tenancy ended when the tenant gave a one month notice to end the tenancy. The tenancy ended on November 30, 2019. A condition inspection report was done at the end of the tenancy, however the landlord did not provide a copy of the report to the tenant until the evidence was exchanged for the Application for Dispute Resolution. A copy of the condition inspection report done at the end of the tenancy was provided as evidence.

The landlord gave the following testimony. During the move out condition inspection, the tenant advised her verbally that she would come back and do more cleaning of the rental unit. The landlord remarked to the tenant that there was tree debris left on the property that the tenant is responsible for cleaning up. The landlord showed the house to prospective tenants the same day as the condition inspection report was done and the prospective tenants told her the house looked 'dirty'. Further, there were holes left in the walls from the tenant using screws to affix a baby gate and tv to the walls. The holes were not filled in or patched by the tenant at the end of the tenancy.

The landlord claims the tenant didn't replace burned out or broken light bulbs and seeks \$50.40 to replace them. She hired a cleaning service, owned by her husband to clean the rental unit, rake the tree debris, repair the holes in the wall and paint the rental unit. An invoice for the services, which includes charges for paint supplies, light bulbs and garbage bags was provided as evidence.

The tenant provided the following testimony. She acknowledges the landlord did a condition inspection report with her at the end of the testimony and recalls that only a single notation was made on it saying '*many marks on walls – [tenant] will clean garage*'. The tenant initialled that notation, but disagrees with the landlord's notation that reads '*[landlord] order cleaner to come in*'. The tenant testified that she came back and wiped down the walls as instructed by the landlord.

The tenant submits that the condition inspection report provided at this hearing does not indicate any deficiencies in the cleanliness of the house. No remarks were made regarding the carpets and holes in the wall and there is no mention of tree debris not being raked up.

The tenant testified that she had a nanny doing her cleaning and a professional gardener who did the landscaping of the house. The day of the inspection, there were needles dropped by the tree, however the landscaper had already left. When this was pointed out to the landlord, her response was '*OK fine*' which the tenant interpreted to mean it didn't need to be done. Also, the tenant had hired cleaners who cleaned the rental unit at the end of the tenancy. No invoices from the house cleaner or landscaper were provided as evidence.

The tenant testified that she had the carpets cleaned in parts of the home during the tenancy but not recleaned at the end of the tenancy. The tenant felt they were reasonably clean at the end of the tenancy.

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)(a) 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 or Manufactured Home Park Tenancy Act (the Legislation).** (emphasis added)

The tenant's legal obligation is "reasonably clean" and this standard is less than "perfectly clean" or "impeccably clean" or "thoroughly clean" or "move-in ready". Oftentimes a landlord wishes to turn the rental unit over to a new tenant when it is at this higher level of cleanliness; however, it is not the outgoing tenant's responsibility to leave it that clean. If a landlord wants to turn over the unit to a new tenant at a very high level of cleanliness that cost is the responsibility of the landlord.

The landlord has provided photographs of the rental unit and yard at the end of the tenancy to corroborate her claim. She has further submitted a photograph of dirty floor water to indicate the floors were dirty. I have viewed these photographs and I find the condition of the rental unit was reasonably clean, or at least clean enough to comply with the standard as set out in section 37 of the *Act*. 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 find the landlord has not provided sufficient proof of the tenant failing to comply with section 37 of the *Act* and dismiss her claim for cleaning.

- Yard maintenance

The tenancy agreement includes term 14 which reads:

Tenants are aware they are responsible to maintain the exterior of the property including mowing the lawn...

Turning to Residential Tenancy Policy Guideline PG-1 [Landlord & Tenant – Responsibility for Residential Premises], under the heading of property maintenance, the following is noted:

Generally the tenant who lives in a single-family dwelling is responsible for routine yard maintenance, which includes cutting grass, and clearing snow. The tenant is responsible for a reasonable amount of weeding the flower beds if the tenancy agreement requires a tenant to maintain the flower beds.

To corroborate the claim for raking tree debris, the landlord provided photographs of the front yard on November 28, 2019 as compared to December 9, 2019. The tenant testified she hired a landscaper to do yard maintenance during the tenancy and this was not disputed by the landlord. While the photographs do show a lawn covered with tree needles when the tenant moved out, I do not find the debris to be excessive or uncompliant with the standard of 'reasonably clean' as set out in section 37 of the *Act*. I find the landlord has not shown the tenant has breached the *Act*, regulations or tenancy agreement and I dismiss the landlord's claim for raking tree debris and brown bags.

Residential Tenancy Policy Guideline PG-1 states:

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.

I have reviewed the photographs of the drywall anchors and screws the tenant used to attach a baby gate and a television to the walls of the rental unit. I find the screw holes and anchors to be more than picture hook nail holes, requiring much more repair than simple nail hole filling. The tenant acknowledged the baby gate and tv mount were affixed to the walls during the tenancy. Although the tenant had the opportunity to repair the screw holes and remove the anchors before the tenancy ended and before the condition inspection report was done, she did not. I find the tenant should compensate the landlord for the damage done to the rental unit, however I find hourly rate provided on the invoice for the services of repairing the holes to be excessive. The landlord did not provide any reason why the same person contracted to clean and repair holes chose varying rates for his work. I award the landlord 2 hours at \$30.00 per hour for repairing the holes (\$60.00) plus an additional \$45.00 for paint and supplies to cover the repaired holes. I award the landlord a total of \$105.00.

- Light bulbs

Turning once again to the condition inspection report, I find the report does not indicate any issues with damaged lights not being replaced by the tenant. Section 21 of the Residential Tenancy Regulations (“Regs”) state that in dispute resolution proceedings, a condition inspection report completed in accordance with Part 3 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. Although the landlord has provided receipts for the purchase of new bulbs, I find she has not provided sufficient evidence that the tenant or her family could have broken or burned out \$50.40 in light bulbs during a tenancy that lasted a year and a half. The onus to prove that it is more likely than not that light bulbs were damaged lies upon the person making the claim and I find the landlord has not succeeded in doing so. The landlord’s claim for replacement bulbs is dismissed.

- Carpet Cleaning

PG-1 states that the tenant is responsible for periodic cleaning of the carpets to maintain reasonable standards of cleanliness. Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year.

The tenant acknowledged that the tenancy lasted a year and a half and that the carpets were not steam cleaned or shampooed when the tenancy ended. The landlord has provided an invoice to show she paid \$147.00 to have the carpets professionally

cleaned. I find the cost to be reasonable and I award the landlord this amount pursuant to section 67 of the *Act*.

- Filing fee

The award of the filing fee is discretionary upon the arbitrator pursuant to section 72 of the *Act*. As the landlord was only partially successful in her claim, I decline to award the filing fee.

Item	Amount
Cost to repair screw holes in walls	\$60.00
Paint and supplies to repair walls	\$45.00
Carpet Cleaning	\$147.00
Total	\$252.00

The landlord continues to retain part of the tenant's security deposit in the amount of \$648.00. In accordance with section 72 of the *Act*, I order that the landlord is entitled to retain \$252.00 of the tenant's security deposit and must return the remaining \$396.00 to the tenant.

Conclusion

The tenant is entitled to a monetary order in the amount of \$396.00.

This decision is final and binding upon the parties and 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 19, 2020

Residential Tenancy Branch