



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Hollyburn Properties
Limited and [tenant name suppressed to protect
privacy]

DECISION

Dispute Codes **FFL, MNDL-S**

Introduction

This hearing dealt with the landlord's application for compensation for damage and cleaning; and, authorization to retain the tenant's security deposit. The landlord's agent appeared at the hearing; however, there was no appearance on part of the tenant.

Since the tenant did not appear, I explored service of hearing documents upon the tenant. The landlord submitted that the proceeding package and evidence was sent to the tenant, at his forwarding address, via registered mail on November 9, 2019. The landlord sent a "revised" Monetary Order worksheet to the tenant and additional evidence via registered mail on December 26, 2019. Both of the registered mail packages were successfully delivered. I was satisfied the tenant was served with documents, putting the tenant on notice as to this proceeding, in a manner that complies with the Act and I continued to hear from the landlord without the tenant present.

With respect to the landlord's "revised" Monetary Order worksheet, the landlord's agent confirmed that the landlord is seeking to increase its claim against the tenant but that the landlord did not prepare and serve the tenant with an Amendment to an Application for Dispute Resolution. Preparing and serving an Application for Dispute Resolution is required under Rules 4.1 and 4.6 of the Rules of Procedure, especially where a claim is being increased or added to. In the absence of an Amendment and considering the tenant was not present for the hearing so that I could confirm with the tenant that the understood the landlord was seeking to increase its claim against him, I declined to permit the Amendment. The landlord's agent stated that the landlord still wanted to proceed with the original claim, as filed in November 2019. I proceeded to consider the claim originally made and served.

Issue(s) to be Decided

1. Has the landlord established an entitlement to compensation as claimed against the tenant?
2. Is the landlord authorized to retain the tenant's security deposit?

Background and Evidence

The tenancy started on December 1, 2018 and ended on October 31, 2019. The tenant paid a security deposit of \$887.50. The building manager prepared a move-in and move-out condition inspection report with the tenant and provided the tenant copies of the reports.

The building manager sought compensation from the tenant at the move-out inspection in the sum of \$1335.00, based on estimates and "standard charges". The tenant did not agree with the manager's assessment and did not authorize any deductions from the security deposit. The tenant provided his forwarding address at the move-out inspection and the landlord proceeded to make its claim against the tenant within 15 days. In filing its Application for Dispute Resolution, the landlord indicated it was seeking compensation of \$1335.00 as indicated on the move-out inspection report, and recovery of the \$100.00 filing fee paid for the Application for Dispute Resolution.

The landlord's claim for compensation of \$1335.00 is the sum of \$180.00 for four hours of cleaning; \$500.00 for painting; and, \$655.00 for repairs. Below, I have summarized the landlord's claim for each of these components.

As for the cleaning charge, the landlord's agent testified that it appears the tenant just moved his furniture out of the unit at the end of the tenancy and did very little cleaning. The landlord described the need to clean the kitchen appliances, the bathroom fixtures, the floors, smoke stains on the walls and ceiling, among other things. The landlord's agent explained that the charge for cleaning is based upon the "standard charges" that the tenant was notified of but that actual cleaning costs are greater.

With respect to the claim for painting, the landlord submitted that the tenant had applied a lot of drywall mud to the walls and left it at that. The landlord had to sand and repaint these areas. In addition, the tenant painted some walls a different colour that was not approved by the landlord and the landlord had to paint the walls to return the wall colour to the landlord's standard colour. The landlord testified that the unit was painted just prior to the start of the tenancy and there was significant damage to the walls

considering the tenancy was less than one year in duration. The move-out inspection report indicates the cupboards, walls and trim requires painting. The landlord provided several photographs in an effort to demonstrate the damage.

As for repairs, the landlord's agent testified that at the move-out inspection a mirrored bi-fold door was found to be broken; the toilet seat and toilet bowl were broken; the tenant had removed the landlord's bathroom light fixture and replaced it with another one that is not to the landlord's standard fixture; the blinds were broken and a compost bin lid was missing. An estimate to repair the damage was made in the amount of \$655.00 but the landlord's agent testified the actual costs were greater. The landlord provided photographs and invoices in support of the claim for damage.

Analysis

Section 32 of the Act provides that a tenant is required to repair damage caused to the rental unit or residential property by their actions or neglect, or those of persons permitted on the property by the tenant. Section 37 of the Act requires the tenant to leave the rental unit undamaged at the end of the tenancy. However, sections 32 and 37 provide that reasonable wear and tear is not considered damage. Accordingly, a landlord may pursue a tenant for damage caused by the tenant, or a person permitted on the property by the tenant due to their actions or neglect, but a landlord may not pursue a tenant for reasonable wear and tear or pre-existing damage.

Section 37 also requires the tenant to leave the rental unit "reasonably clean" at the end of the tenancy. This standard is less than perfectly clean or impeccably clean and the landlord may only seek compensation to bring the unit to a reasonably clean condition. Should the landlord choose to bring the unit up to a cleaner state that cost is born by the landlord.

Where a tenant fails to leave the rental unit undamaged or reasonably clean at the end of the tenancy, the landlord may pursue the tenant for compensation to recover its losses that resulted from the tenant's breach.

Upon consideration of everything presented to me, I provide the following findings and reasons.

Cleaning

In support of its cleaning claim the landlord provided the move-out inspection report but the tenant indicated he did not agree with the landlord's assessment on the move-out inspection report. As such, I do not find it to be the best evidence as to the state of cleanliness. Considering the tenant indicated he did not agree with the landlord's assessment of the property, I would expect the landlord would provide photographs to demonstrate the lack of cleanliness or have the agent who inspected the unit or did the cleaning testify at the hearing. I was provided photographs; however, they appear to be taken to demonstrate damage and I do not see dirty areas in the photographs presented to me. Nor, was I provided a copy of a cleaning invoice or the "standard charges" described by the landlord even though "standard charges" do not necessarily constitute losses. Rather, the only support for the cleaning charge of \$180.00 was an invoice generated by the landlord reflecting four hours at an hourly rate of \$45.00. The hourly rate for cleaning services appears excessive to me. For all of these reasons, I find I am not satisfied the landlord is entitled to recover \$180.00 for cleaning and I dismiss this portion of the landlord's claim.

Painting

The move-out inspection report indicates walls, trim and cupboards required painting and there appears to be a notation on the move-out inspection report that the tenant may have been in agreement with the landlord's assessment of the condition of the walls. When I turn to the landlord's photographs, I see significant areas of damage and patches that would undoubtedly require a fair amount of additional patching, sanding and painting. Although the only invoice provided to support the amount claimed is actually an invoice generated by the landlord, indicating the landlord had this work performed "in house", I find the landlord's claim for \$500.00 to be within reason given the extent of damage that I see in the photographs and I grant the landlord's request for \$500.00.

Repairs

The move-out inspection report describes damages to the rental unit, but the tenant indicated he did not agree with the assessment with the exception of some wall damage. However, when I turn to the photographs, in addition to the wall damage described above, I see evidence of broken trim and cupboards, a broken bi-fold door and broken blinds. The landlord provided an invoice to replace the bi-fold door and

blinds which exceeds the claim for \$655.00 and it appears the wall damage and other repairs to the trim and cupboards was done "in house". All these things considered, I find the landlord's claim for \$655.00 for damage to be justified and I grant the landlord's request to recover this amount from the tenant.

Filing fee, Security deposit and Monetary Order

The landlord's claim had merit and I award the landlord recovery of the \$100.00 filing fee paid for this Application for Dispute Resolution.

The landlord is authorized to retain the tenant's security deposit in partial satisfaction of the amounts awarded to the landlord with this decision.

In keeping with all of the findings and awards above, I provide the landlord with a Monetary Order to serve and enforce upon the tenant, calculated as follows:

Painting	\$500.00
Repairs	655.00
Filing fee	100.00
Less: security deposit	<u>(887.50)</u>
Monetary Order for landlord	\$367.50

Conclusion

The landlord is authorized to retain the tenant's security deposit and is provided a Monetary Order for the balance of \$367.50 to serve and enforce upon the tenant.

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: March 25, 2020

Residential Tenancy Branch