



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL, MNDCL-S

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on November 05, 2019 (the "Application"). The Landlord applied as follows:

- For compensation for damage to the rental unit;
- For compensation for monetary loss or other money owed;
- To keep the security deposit; and
- For reimbursement for the filing fee.

The Landlord appeared at the hearing. The Tenant appeared at the hearing with the Witnesses who were outside the room until required. I explained the hearing process to the parties. The parties and Witnesses provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence and no issues arose.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all testimony provided and reviewed the documentary evidence pointed to during the hearing. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Landlord entitled to compensation for damage to the rental unit?
2. Is the Landlord entitled to compensation for monetary loss or other money owed?
3. Is the Landlord entitled to keep the security deposit?
4. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

The Landlord sought the following compensation:

Item	Description	Amount
1	Shower bar	\$48.00
2	Installation of shower bar	\$25.00
3	3 hours of painting and touch ups	\$75.00
4	2 hours of cleaning	\$50.00
5	Utilities	\$162.41
6	Filing fee	\$100.00
	TOTAL	\$460.41

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. The tenancy started September 01, 2018 and was for a fixed term ending August 31, 2019. Rent was \$1,195.00 per month due on the first day of each month. The Tenant paid a \$597.50 security deposit.

The parties agreed the tenancy ended October 31, 2019.

The Landlord testified that he still holds \$460.41 of the security deposit and that the remainder was returned to the Tenant with the hearing package.

The Tenant testified that the Landlord returned \$137.84 of the security deposit within 14 days of the end of the tenancy.

The Tenant testified that she gave the Landlord her forwarding address in writing in a letter dated October 22, 2019 in person. This letter was in evidence.

The Landlord did not know when he received the Tenant's forwarding address and testified that he received it by fax.

The Tenant acknowledged she may have sent the forwarding address by fax on October 22, 2019.

The Landlord confirmed the information on the Condition Inspection Report (CIR) in evidence which shows the parties did a move-in inspection August 29, 2018, completed the CIR and signed the CIR. The Landlord confirmed the rental unit was empty at the time.

The Landlord testified that he believes his agent gave the Tenant a copy of the CIR in person within a week or two of the inspection but cannot say for sure.

The Tenant testified that the move-in inspection did not occur until between September 12 and 15, 2018. The Tenant testified that she had already moved into the rental unit. The Tenant agreed the parties completed the CIR and signed it. The Tenant testified that she received the CIR the same day in person. The Tenant relied on a witness statement in evidence from S.M.

The parties agreed they did a move-out inspection October 31, 2019, completed the CIR and that neither signed it. The parties agreed the rental unit was empty at the time.

The Landlord testified that the move-out CIR was sent to the Tenant as evidence for the hearing.

The Tenant denied receiving the move-out CIR. However, the Tenant submitted a copy of the move-out CIR for the hearing.

Shower bar and installation of shower bar

The Landlord testified as follows. The shower bar was missing at the end of the tenancy and had to be replaced. He could not find a bar that glued on and purchased one that had to be bolted into the wall. The shower bar cost \$48.00 and it took him one hour to install it.

The Landlord submitted a screen shot from a website showing the shower bar cost \$42.99.

The Tenant acknowledged she pulled the shower bar down during the tenancy. She also acknowledged she should be responsible for replacing it. The Tenant took issue with the cost of replacing it and submitted that the Landlord could have purchased a less expensive shower bar.

3 hours of painting and touch ups

The Landlord testified that there were scratches and scuffs on the walls of the rental unit at the end of the tenancy. He relied on four photos in evidence. The Landlord testified that he scrubbed the walls, filled the holes and painted over them multiple times. He

testified that he only painted the damaged sections of the walls. The Landlord sought \$75.00 for his time.

The Tenant denied she caused damage to the walls of the rental unit.

2 hours of cleaning

The Landlord testified that parts of the rental unit were not clean on move-out. The Landlord testified that the kitchen and fridge were messy. He testified that the stove and bathroom sink had to be scrubbed. The Landlord testified that it took him more than two hours to clean the rental unit, but he is trying to be reasonable and is seeking \$50.00 for his time. The Landlord relied on photos in evidence.

The Tenant testified that she submitted photos showing the rental unit was spotless at the end of the tenancy. The Tenant testified that she cleaned the rental unit. The Tenant testified that she did not use the oven during the tenancy and that the oven was in the same state on move-out as when she moved in.

Utilities

The Tenant acknowledged she owes the Landlord \$122.41 for the utility bill submitted in evidence.

At the hearing, the Landlord sought a further \$28.00 rather than a further \$40.00 for October utilities. The Landlord testified that the utilities bill for the following billing period was \$84.00 and he is seeking 1/3 of this for October.

The Tenant submitted that she should not be responsible for paying utilities for October. At first, the Tenant referred to her personal feelings about the Landlord. The Tenant then testified that she did not know she had to pay for garbage and never had a garbage can.

Witnesses

I did not find the testimony of D.W. of assistance to the matters I have to decide and so have not outlined it here.

Witness H.W. testified as follows. The Tenant cleaned the rental unit. The Landlord said all the damage in the rental unit was minor and he would take care of it.

Analysis

Security deposit

Under sections 24 and 36 of the *Act*, landlords and tenants can extinguish their rights in relation to the security deposit if they do not comply with the *Act* and *Residential Tenancy Regulation* (the “*Regulations*”). Further, section 38 of the *Act* sets out specific requirements for dealing with a security deposit at the end of a tenancy.

Based on the testimony of both parties, I accept that the Tenant participated in the move-in and move-out inspections and therefore did not extinguish her rights in relation to the security deposit under sections 24 or 36 of the *Act*.

It is not necessary to determine whether the Landlord extinguished his rights in relation to the security deposit under sections 24 or 36 of the *Act* as extinguishment only relates to claims for damage to the rental unit and the Landlord has claimed for unpaid utilities.

Based on the testimony of both parties, I accept that the tenancy ended October 31, 2019.

I am satisfied the Landlord received the Tenant’s forwarding address by fax as the Landlord testified that this is how he received it and the Tenant acknowledged she might have sent it by fax. I accept the testimony of the Tenant that she sent the fax on October 22, 2019 as the Landlord did not dispute this, the Landlord did not know when he received the forwarding address. I am satisfied the Tenant sent the forwarding address in accordance with section 88(h) of the *Act*. Pursuant to section 90(b) of the *Act*, the Landlord is deemed to have received the forwarding address October 25, 2019.

Pursuant to section 38(1) of the *Act*, the Landlord had 15 days from the later of the end of the tenancy or the date the Landlord received the Tenant’s forwarding address in writing to repay the security deposit or claim against it. Here, the Landlord had 15 days from October 31, 2019. The Application was filed November 05, 2019, within 15 days. I find the Landlord complied with section 38(1) of the *Act*.

Compensation

Section 7 of the *Act* states:

7 (1) If a...tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying...tenant must compensate the [landlord] for damage or loss that results.

(2) A landlord...who claims compensation for damage or loss that results from the [tenant's] non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Pursuant to rule 6.6 of the Rules of Procedure, it is the Landlord as applicant who has the onus to prove the claim. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

Section 37 of the *Act* states:

(2) When a tenant vacates a rental unit, the tenant must

- (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear...

Shower bar and installation of shower bar

I am satisfied the Tenant pulled the shower bar down during the tenancy as the Tenant acknowledged this. I am satisfied this is beyond reasonable wear and tear as it is not natural deterioration that occurs due to aging or other natural forces with the normal use of the rental unit. I am satisfied the Tenant was responsible for repairing the shower bar and that the failure to do so was a breach of section 37 of the *Act*.

I am satisfied the Landlord had to replace the shower bar. I am satisfied based on the screen shot submitted that the shower bar cost \$42.99 plus taxes. The Tenant disputed this and submitted that the Landlord could have purchased a less expensive shower bar. However, the \$42.99 does not seem excessive and the Tenant has not submitted further evidence to support her position. I am satisfied the \$48.00 requested is reasonable.

I am satisfied the Landlord had to use his own time to install the shower bar. I find an hour to be on the high side for such a task. However, I am satisfied the Landlord is entitled to \$25.00 for the time it took to install the shower bar. I find this to be a low amount and have considered that it would likely have cost the Landlord more to hire someone to install the shower bar. I find the Landlord minimized the loss by installing it himself and am satisfied \$25.00 is reasonable.

The Landlord is awarded the \$73.00 sought.

3 hours of painting and touch ups

I have reviewed the photos relied on by the Landlord for his position that the Tenant left scuffs and scratches on the walls that had to be filled and painted. I find the following from the photos. There are very few marks. It is difficult to tell from most of the photos what the photo is showing as an issue. Where the photos do show marks, they are small and most appear to be the type of marks one could clean off the wall. I find from the photos that any marks on the walls are the type of marks the Landlord should expect to occur when someone is living in the rental unit. All marks shown in the photos are reasonable wear and tear. I am not satisfied the Tenant has breached section 37 of the *Act* in this regard. The Landlord is not entitled to compensation for this issue.

2 hours of cleaning

I am satisfied based on the photos from the Landlord that a few areas in the rental unit could have been cleaner on move-out including the fridge and stove. I have looked at the Tenant's photos which either do not show the same areas or are not close enough to the areas to see whether the areas are clean. I am satisfied the Tenant breached section 37 of the *Act* in relation to a few areas of the rental unit including the stove and fridge.

I am satisfied the Landlord had to clean a few areas of the rental unit to bring it to the standard of reasonably clean. However, I am satisfied based on the Tenant's photos that the rental unit was generally clean. I am not satisfied based on the photos that the rental unit required two hours of cleaning to bring it to the standard of reasonably clean. I am satisfied that the stove and fridge needed to be cleaned further. I cannot be satisfied based on the photos that this took any more than 30 minutes to clean. I award the Landlord \$12.50 for cleaning.

I note that the state of the stove at the start of the tenancy is not relevant as the Tenant was required to leave the rental unit clean whether it was at the outset of the tenancy or not.

Utilities

I am satisfied based on the tenancy agreement that the Tenant was responsible for paying for water, sewer and garbage as these were not included in rent. The personal feelings of the Tenant about the Landlord do not affect this. Nor does the fact that the Tenant did not know she had to pay for garbage. Garbage collection was not included in rent as is clear from the tenancy agreement.

The Tenant acknowledged she owes the Landlord \$122.41 for the utility bill submitted and I agree and award the Landlord this amount.

I am not satisfied the Tenant owes the Landlord \$28.00 for October because the Landlord did not submit the applicable utility bill for this. The Landlord had this bill and it should have been submitted.

Filing fee

Given the Landlord was successful in the Application, I award the Landlord reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

Summary

In summary, the Landlord is entitled to the following:

Item	Description	Amount
1	Shower bar	\$48.00
2	Installation of shower bar	\$25.00
3	3 hours of painting and touch ups	-
4	2 hours of cleaning	\$12.50
5	Utilities	\$122.41
6	Filing fee	\$100.00
	TOTAL	\$307.91

The Landlord can keep \$307.91 of the security deposit pursuant to section 72(2) of the *Act*. The parties disagreed about how much of the security deposit the Landlord still holds. I accept that the Landlord holds \$460.41 and order the Landlord to return \$152.50 to the Tenant. The Tenant is issued a monetary order for this amount.

Conclusion

The Landlord is entitled to \$307.91 and can keep this amount from the security deposit. The Landlord is to return the remaining \$152.50 to the Tenant. The Tenant is issued a Monetary Order for this amount. If the Landlord does not return \$152.50 to the Tenant, this Order must be served on the Landlord. If the Landlord fails to comply with this Order, it may be filed in the Small Claims division of the Provincial Court and enforced as an order of that court.

: March 24, 2020