



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL, MNDCL, FFL

Introduction

This hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for damage or compensation pursuant to section 67 of the *Act*;
- Authorization to recover the filing fee for this application pursuant to section 72 of the *Act*.

The landlord JMS and the tenant JD attended the hearing. The tenant confirmed receipt of the landlord's application for Dispute Resolution and receipt of the evidentiary package after the documents were sent by Canada Post registered mail on February 27, 2020. The tenant affirmed that there had been a delay of a few days, but she did eventually receive the documents.

The landlord confirmed receipt of the tenant's evidentiary materials on March 11, 2020. Also forwarded by registered mail. Pursuant to sections 88 and 89 of the *Act*, both landlord and tenant have been found to have been served with the documents. Registered mailing tracking numbers are listed on the first page of this decision.

Preliminary matter – Amendment

The Residential Tenancy Branch rules of procedure rule 4.2 states that amending an application at the hearing in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing. If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

At the outset, the landlord requested that any monetary order be deducted from the security deposit held by the landlord pursuant to section 72 of the Act. Therefore, pursuant to Rule 4.2, I order that the landlord's application be amended to include the claim for the security deposit.

Issue(s) to be Decided

Is the landlord entitled to the following?

- a monetary order for compensation for damage pursuant to section 67 of the *Act*.
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38 of the *Act*;
- authorization to recover the filing fee for this application pursuant to section 72 of the *Act*.

Background and Evidence

The parties agreed the tenancy began November 1, 2018. Rent was payable on the 1st of the month in the amount of \$1,475.00. At the beginning of the tenancy, the tenant provided a security deposit for the amount of \$737.50 which the landlord holds in Trust. The tenant vacated the rental unit on January 28, 2020.

The parties agreed that a condition inspection was conducted on moving in which indicated that the unit was in a good condition. The tenant did not attend the final move-out inspection, but she testified that the landlord had requested a third party VH to attend the move-out inspection. The landlord did provide the tenant with two opportunities to attend the move-out inspection.

The tenant testified that the carpets were cleaned, and the rental property was left in a clean condition. The move out inspection report indicated that cleaning was needed and there were small holes in the wall. A copy of the tenancy agreement and the move-out report was submitted by the landlord in evidence.

The landlord claims the following:

Item	Amount
Cleaning costs	\$200.00
Wall repairs and painting	\$367.50
Tap replacement	\$341.25
Garbage disposal	\$30.00
Total Monetary Award Requested by Landlord	\$938.75

The landlord testified that the tenant did not leave the unit sufficiently clean. The landlord testified many items required cleaning, such as the fridge, the stove and the unit shelves in the kitchen.

In support of her testimony, the landlord submitted a condition inspection report on moving out which indicated that cleaning was needed in several areas of the kitchen and the bathroom. The landlord also submitted photographs of the kitchen and bathroom taken shortly after the tenant vacated, supporting her testimony that cleaning was needed.

The tenant testified that she left the unit reasonably clean and denied there was any need for the cleaning claimed by the landlord. The tenant testified that the third-party witness that attended the move-out inspection was a friend of the landlord.

The landlord testified that when the tenant vacated, the landlord noted an excessive number of small holes, requiring patching and filling.

In support of her testimony, the landlord submitted the condition inspection report on moving in, which indicated the walls were in good condition, and on moving out, noting the holes; the landlord also submitted numerous photographs.

The tenant denied that there were any significant number of holes in the wall or that the repairs were necessary. She stated that she cleaned the unit but there was an issue of damp and mold in the rental unit and that she had brought this to the attention of the landlord.

The landlord testified that the tenant replaced the faucet in the kitchen without her permission. The tenant testified that she had no alternative as the faucet was leaking and she also required the water to be filtered. The tenant testified that she had communicated with the landlord, but the landlord was of the opinion that it was not “necessary” to replace the faucet.

The tenant affirmed that the landlord had purchased a “Top of the range” faucet after she vacated the rental unit. The landlord responded by affirming that she had to call a plumbing company to replace the tenant’s replacement faucet as it was also leaking.

The landlord also submitted an invoice for the sum of \$30.00 to remove a plant and wall shelf from the garden.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy agreement or the *Act*, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

The purpose of compensation is to put the claimant who suffered the damage or loss in the same position as if the damage or loss had not occurred. Therefore, the claimant bears the burden of proof to provide sufficient evidence to establish all of the following four points:

1. The existence of the damage or loss;
2. The damage or loss resulted directly from a violation – by the other party – of the *Act*, regulations, or tenancy agreement;
3. The actual monetary amount or value of the damage or loss; and
4. The claimant has done what is reasonable to mitigate or minimize the amount of the loss or damage claimed, pursuant to section 7(2) of the *Act*.

In this case, the onus is on the landlord to prove entitlement to a claim for a monetary award. The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

Return of security deposit and pet damage deposit

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Cleaning costs

I have considered all the evidence submitted by the parties including their testimony and supporting evidence. I have considered the landlord's photographs taken shortly after the tenant vacated showing the unit needed cleaning and the supporting condition inspection report.

Section 37(2) of the Act states that the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, as follows:

- (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...*

Considering the evidence and testimony, I find the landlord has met the burden of proof on a balance of probabilities that the tenant did not leave the unit reasonably clean, the kitchen units and some of the appliances required cleaning when the tenant vacated. The tenant is responsible for the lack of cleanliness, the landlord provided an invoice from a cleaning company confirming that the cleaning was undertaken.

Accordingly, I find the landlord is entitled to a monetary award in the amount requested of \$200.00 for this aspect of the claim.

Wall repairs and painting

As stated above, the Act requires a tenant to leave a rental unit undamaged except for reasonable wear and tear.

A key issue with respect to this aspect of the landlord's claim is whether the holes in the wall, as noted by the landlord in testimony and documentary evidence, are "damages", for which the tenant must compensate the landlord, or "reasonable wear and tear", for which the tenant need not compensate the landlord.

Guideline 1. Landlord & Tenant – Responsibility for Residential Premises states in part as follows:

Reasonable wear and tear refers to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. An arbitrator may determine whether or not repairs or maintenance are required due to reasonable wear and tear or due to deliberate damage or neglect by the tenant.

The Guideline #1, referenced above, states that "landlords should provide evidence showing the age of the item at the time of replacement and the cost of the replacement item". The landlord testified the unit had been painted before the tenant moved in and the walls were undamaged. The landlord's evidence is supported by the condition inspection report.

Guideline 1 states as follows:

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.*

Considering the evidence and testimony, I find the landlord has not met the burden of proof on a balance of probabilities that the tenant left the walls of the unit damaged with an excessive number and size of holes causing wall damage.

I have viewed the landlord's photographs and do not accept the landlord's evidence with respect to the excessive number and size of the holes in the living and dining room.

The holes are regarded under the *Act* and the Residential Tenancy Policy Guidelines as "reasonable wear and tear" Accordingly, I find that the landlord is not entitled to any monetary award for the painting and holes in the wall.

Garbage.

The landlord testified that when the tenant vacated, the landlord noted a plant and wooden shelf in the garden which the tenant failed to remove. The landlord produced a receipt for the sum of \$30.00 for the removal of both items. Accordingly, I find that the landlord is entitled to a monetary award for the \$30.00 for disposing of these items.

Tap Replacement

The landlord testified that the tenant replaced the faucet in the kitchen without her permission. The tenant testified during the hearing that the faucet was leaking and requested permission from the landlord to replace it. I note that the parties have provided evidentiary material in the form of texts confirming the communication. I therefore, decline the landlord's request for monetary compensation for the 'new' faucet with labor. I accept that the tenant brought her concerns to the landlord attention and replaced the faucet accordingly. The landlord authorised the replacement of the faucet and suffered no loss.

The landlord failed to mitigate her losses pursuant to section 67 of the *Act*. Accordingly, I find that the landlord is not entitled to any monetary award for the new faucet and labor costs.

As the landlord has been partially successful in this application, the landlord is granted a monetary award for reimbursement of the filing fee of \$50.00

The landlord is entitled to a monetary award of \$280.00 as follows:

ITEM	AMOUNT
Cleaning costs	\$200.00
Garbage	\$30.00
Reimbursement of the filing fee	\$50.00
Security deposit	(\$737.50)
Total to be returned to Tenant	\$475.50

Security deposit

Pursuant to section 72, I direct that the monetary award herein be satisfied from the security deposit and the balance returned to the tenant, as follows:

Conclusion

The landlord is granted a monetary award in the amount of \$280.00 which I direct be paid from the security deposit held by the landlord with the **balance of \$475.50 to be refunded to the tenant** within 14 days of receiving this decision.

Should the landlord fail to pay this amount the tenant is at liberty to file an Application for Dispute Resolution seeking a monetary order.

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: April 10, 2020

Residential Tenancy Branch