



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding AL STOBBER CONSTRUCTION LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S FFL

Introduction

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

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

The landlord appeared at the hearing and was given the opportunity to make submissions as well as present affirmed testimony and evidence.

The landlord testified that the tenant was served with the Application for Dispute Resolution by registered mail sent on January 21, 2020. Registered mailing is deemed received on the fifth day after it was mailed to the tenant that is on January 26, 2020 in accordance with section 89 and 90 of the *Act*. The landlord provided the Canada Post tracking numbers referenced on the cover page of the decision.

The tenant did not appear at the hearing. I kept the teleconference line open from the time the hearing was scheduled for an additional 15 minutes to allow the tenant the opportunity to call. The teleconference system indicated only the landlord and I had called into the hearing. I confirmed the correct participant code for the tenant had been provided.

Residential Tenancy Policy Rules of Procedure 7.3 states:

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

I find that the tenant was served with the landlord's application and evidentiary documents. I proceeded with this hearing as per Rule of Procedure 7.3

Issue(s) to be Decided

Is the landlord entitled to retain the security deposit pursuant to sections 38 and 67 of the *Act*?

Is the landlord entitled to reimbursement of the filing fee pursuant to section 72(1) of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the landlord's testimony, not all details of the submissions and arguments are reproduced here. The relevant aspects of this matter and my findings are set out below.

The landlord testified the tenancy began on December 16, 2011. At the end of the tenancy the rent was \$908.50 monthly payable on the first of the month. A copy of the tenancy agreement was submitted in evidence. The landlord confirmed that at the beginning of the tenancy, a move-in condition inspection was conducted.

At the outset of the tenancy, the tenant provided a security deposit in the amount of \$400.00 which is held in Trust by the landlord.

The landlord testified that the tenant attended the move-out condition inspection and signed pages 13/14 indicating that the unit required cleaning and painting.

The landlord testified that at the outset of the tenancy, the tenant was told that there was no smoking in the rental unit and the no smoking terms were incorporated into the tenancy agreement. The landlord testified that when the tenant vacated the rental unit, the unit smelled of smoke. The landlord testified that the tenant was reluctant to pay for the smoke seal paint charges from his security deposit.

The landlord testified that the carpet in the rental unit required cleaning and the key fob needed to be replaced

The landlord therefore requested a monetary order list of claimed expenses. The landlord submitted invoices for the cleaning and painting.

ITEM	AMOUNT
Cleaning	\$ 110.00
Carpet- Cleaning	\$46.18
Painting materials	\$488.00
Key fob	\$25.00
TOTAL	\$669.18

The landlord requested authorization to apply the deposit in the amount of \$400.00 to offset against the damage and replacement costs incurred in the rental unit.

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.

Key Fob

The landlord testified and submitted in evidence that the key fob required replacing. There appears to be two key fobs issued at the beginning of the tenancy in 2011, and there is no evidence to indicate that the tenant returned them.

Leaving the rental unit at the end of a tenancy

37 (1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.

(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, and

(b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

It is the tenant's responsibility to accept the cost in replacing them in accordance with the tenancy agreement. I allow the landlord the sum of \$25.00 to replace one key fob.

Cleaning

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

I have considered the tenant's photographic evidence which I find showed and depicted the shelving upper level units covered with tar and grease.

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 unit needed cleaning when the tenant vacated, the tenant is responsible for the lack of cleanliness, the landlord testified that the cleaners took several hours to clean the unit.

Accordingly, I find the landlord is entitled to a monetary award in the amount requested of \$110.00 for this aspect of the claim.

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 painting in the unit 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.

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

Reasonable wear and tear refer 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, 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.

The Residential Policy Guideline 1 indicates that a tenant is only required to paint or repair where damage has occurred or where the work is necessary, otherwise it not enforceable.

Residential Tenancy Policy Guidelines section 40 indicates that it is appropriate for the landlord to paint the interior of a rental unit every 4 years. I find that the tenant has been residing in the rental unit since 2011.

The landlord has not brought up the issue of the smoking in the rental unit previously. I am not satisfied that the tenant has damaged the walls and paint in the rental unit. I decline the monetary award for the painting of the walls as normal wear and tear in accordance with the Policy Guideline section 40

Filing Fee

As the landlord has been partially successful in her application, the landlord may recover \$50.00 of the filing fee pursuant to section 72 of the *Act*.

ITEM	AMOUNT
Cleaning	\$110.00
Key fob	\$25.00
Filing fee	\$ 50.00
Total	\$185.00
Deduct the security deposit	(\$400.00)
Total due back to tenant.	\$215.00

Conclusion

I grant the landlord a monetary amount of \$185.00 against the tenant. The landlord must return the tenant the sum of \$215.00 comprising of the partial security deposit 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 07, 2020

Residential Tenancy Branch