



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL

Introduction

On December 5, 2019, the Landlord applied for a Dispute Resolution proceeding seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the “*Act*”), seeking to apply the security deposit towards these debts pursuant to Section 38 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Landlord attended the hearing and the Tenant attended as well, with A.P. attending the hearing later as a witness for the Tenant. All parties in attendance provided a solemn affirmation.

The Landlord advised that she served the Tenant the Notice of Hearing package by registered mail on December 9, 2019 and the Tenant acknowledged that she received this package. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenant was served the Landlord’s Notice of Hearing package.

She also advised that she served her evidence to the Tenant by registered mail on April 18, 2020 and the Tenant confirmed that she received this package. As service of this evidence complied with the timeframe requirements of Rule 3.15 of the Rules of Procedure, I have accepted this evidence and will consider it when rendering this decision.

The Tenant advised that she served her evidence to the Landlord by registered mail on April 24, 2020 and the Landlord confirmed that she received this package; however, she was not able to view the video evidence. As the Tenant did not confirm if the Landlord could view the digital evidence pursuant to Rule 3.10.5 of the Rules of Procedure, I have accepted only the Tenant’s documentary evidence and will only consider that when rendering this decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me;

however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to a Monetary Order for compensation?
- Is the Landlord entitled to apply the security deposit towards these debts?
- Is the Landlord entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on April 1, 2017 and the tenancy ended when the Tenant gave up vacant possession of the rental unit on November 30, 2019. Rent was established at \$2,129.30 per month and was due on the first day of each month. A security deposit of \$980.00 was also paid. A signed copy of the tenancy agreement was submitted as documentary evidence.

All parties agreed that a move-in inspection report was conducted on March 29, 2017 and that a move-out inspection report was conducted on November 30, 2019. A copy of the move-in and move-out inspection report was submitted as documentary evidence.

As well, all parties also agreed that the Tenant provided a forwarding address in writing on her notice to end her tenancy dated October 30, 2019, and on the move-out inspection report on November 30, 2019.

The Landlord advised that she is seeking compensation in the amounts of **\$182.70** and **\$30.00** for the cost to repair and paint wall damage that the Tenant left behind. She submitted a receipt to demonstrate that the walls were repaired and painted immediately prior to the Tenant moving in, so the walls were in brand new condition. She then referenced pictures which demonstrate the damage to the walls caused by the Tenant due to objects that were hung on the walls. She stated that the Tenant mudded these holes prior to vacating and there were “smudges” left that made this repair job more visible. She stated that a painter was brought in to evaluate this repair job prior to the Tenant vacating and he noted the damage. She cited clause 15 of the tenancy agreement which she says required the Tenant to seek permission before hanging items on the wall and she noted that the Tenant never sought permission to hang her items. She advised that due to the size of the holes and the poor attempt at mudding them, the damage was worse and more visible, which necessitated that the entire walls needed to be repainted.

The Tenant refuted these claims and said that the holes in the walls were reasonable wear and tear after living there for two and a half years. She stated that the inspection by the painter and contractor went well and that they did not mention that the mudding job done by her boyfriend, who used to be a painter, was inadequate. In fact, they complimented this work. She cited the Landlord's painter's invoice for the work completed and she noted that only "touch-up patching and sanding" was done and that there was no note of repair of any damage. This is in contrast to the invoice of the painting for the previous tenant which noted that damaged areas were repaired. She also stated that the professional cleaner that was brought in complimented her about the condition of the rental unit. She referenced the Landlord's move-out inspection report and noted that it contradicts the Landlord's claim as the walls were noted to be in satisfactory condition. She referenced her photos submitted of the condition of the walls at the end of the tenancy and she stated that the holes were not as big as the Landlord alleged, that they were insignificant and patched, and she would have painted it if the Landlord wanted her to, but she did not.

The Landlord stated that she made a mistake on the move-out inspection report and marked the damage on the wrong column because there were many of the Tenant's friends in the rental unit at the time, all attempting to talk to her. As well, she was rushed and she was under pressure from these people. She also confirmed the note in her "To Vacating Tenant(s)" form, that was submitted as documentary evidence, that she prohibited the Tenant from fixing or painting the walls.

The Tenant's witness A.P. advised that he was present during the move-out inspection report and that the Landlord's accusations of the wall damage were wrong as what was left was reasonable wear and tear. He stated that he mudded the holes to a professional level and that painting the entire walls would have been unnecessary as touch up painting would have been all that was required.

Analysis

Upon consideration of the testimony before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

Section 38 of the *Act* outlines how the Landlord must deal with the security deposit at the end of the tenancy and Section 38(1) of the *Act* requires the Landlord, within 15 days of the end of the tenancy or the date on which the Landlord receives the Tenant's forwarding address in writing, to either return the deposit in full or file an Application for Dispute Resolution seeking an Order allowing the Landlord to retain the deposit. If the Landlord fails to comply with Section 38(1), then the Landlord may not make a claim against the deposit, and the Landlord must pay double the deposit to the Tenant, pursuant to Section 38(6) of the *Act*.

Based on the consistent and undisputed evidence before me, the Tenant provided the Landlord with her forwarding address twice, once prior to giving up vacant possession of the rental unit and once at the move-out inspection. Moreover, the tenancy ended on November 30, 2019 and the Landlord made an Application, using this address, to keep the deposit on December 5, 2019. As the Landlord's Application was made within the timeframe to deal with the deposit pursuant to Section 38 of the *Act*, and as the Landlord was entitled to claim against the deposit because the move-in and move-out inspection reports were conducted, I am satisfied that the Landlord did not breach the requirements of Section 38. Therefore, I find that the doubling provisions of the *Act* do not apply in this instance.

With respect to the Landlord's claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

With respect to the Landlord's claims for compensation in the amounts of **\$182.70** and **\$30.00** for the cost to repair and paint wall damage that the Tenant left behind, when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

While it is the Landlord's position that the Tenant should be responsible for what she considers to be damage to the walls, I find it important to note that the Tenant is responsible for returning the rental unit in as close to the same condition that it was rented to her. Furthermore, Policy Guideline # 1 states that "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. The tenant is responsible for all deliberate or negligent damage to the walls."

In reviewing the evidence before me, I find it important to first rely on the move-out inspection report. The Landlord advised that she was distracted and accidentally marked the deficiencies of the condition of the walls in the wrong column; however, when reviewing the report where the Landlord indicated, it appears as if she had placed a check mark in that wrong column, and then wrote "P" over top of that. If she had indeed believed that the walls needed painting, but she accidentally marked this in the wrong column, then it is not clear to me why she would have initially placed a check mark in this wrong column. This causes me to doubt the reliability of the Landlord's submissions on this point.

Moreover, as stated above, it is the Tenant's responsibility to return the rental unit in as close to the same condition as it was rented in and if the Tenant does not, then the

Tenant can be held responsible for this. In addition, the Tenant should be afforded this opportunity to return the rental unit in as close to the same condition as it was rented in and if those efforts are insufficient, then the Landlord can make a claim against the Tenant to recover this cost. Based on the Landlord's "To Vacating Tenant(s)" form, the Landlord has stated that "I am not giving you permission to fix and paint the walls." I find that this prevents the Tenant from having the opportunity to return the rental unit in as close to the same condition as it was rented in. Therefore, I find that this statement would be unfair to the Tenant.

Most importantly, the Landlord has the burden to provide sufficient evidence over and above their testimony to establish that the condition of the walls would be considered damage. When reviewing the photographs before me, I find it difficult to see anything significant that I would consider to be damage, and I am satisfied that this is supported by the Landlord's own claims that the areas that she considered damaged were more noticeable as there were "smudges". While I accept that the colour of mud that the Tenant used to repair and cover up the holes in the walls may have been a different colour than the paint on the walls, even the Landlord's photos show this difference in colour minimally. As such, I am not satisfied that it was necessary for the Landlord to have the entire walls painted as simply covering up the mudded areas with new paint would have likely sufficed.

Based on the above, I am not satisfied that the Landlord has sufficiently substantiated this claim. However, I am satisfied that the mudded areas likely needed to be sanded, touched up, and re-painted, and I grant the Landlord a nominal monetary award in the total amount of **\$25.00** to offset these costs.

As the Landlord was partially successful in her claims, I find that the Landlord is entitled to recover \$25.00 of the filing fee paid for this Application. Under the offsetting provisions of Section 72 of the *Act*, I allow the Landlord to retain a portion of the security deposit in satisfaction of the amount awarded.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Tenant a Monetary Order as follows:

Calculation of Monetary Award Payable by the Landlord to the Tenant

Spot sanding, touch up, and re-painting	\$25.00
Recovery of filing fee	\$25.00
Security deposit	-\$980.00
TOTAL MONETARY AWARD	\$930.00

Conclusion

The Tenant is provided with a Monetary Order in the amount of **\$930.00** in the above terms, and the Landlord must be served with **this Order** as soon as possible. Should the Landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: May 12, 2020

Residential Tenancy Branch