



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Westwood Ridge Development
Corporation and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **MNDL-S, FFL**

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- A monetary Order for Damages and authorization to retain a security deposit pursuant to sections 38 and 67; and
- Authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The landlord attended the hearing, represented by property manager, VL ("landlord"). The tenant attended the hearing, represented by the tenant's spouse, WX ("tenant"). As both parties were present, service of documents was confirmed. The parties acknowledged the exchange of evidence and stated there were no concerns with timely service of documents and were prepared to deal with the matters of the applications.

Background and Evidence

At the commencement of the hearing, pursuant to rules 3.6 and 7.4, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony. While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The landlord provided the following testimony. The rental unit is located in a multi-unit building, built in 2017. The tenant and a co-tenant were the first people to live in the unit in December of 2017. When the tenancy began, a condition inspection report was conducted and a security deposit of \$1,075 and pet damage deposit of \$1,075 was collected. In late November 2018, the co-tenant left, and the remaining tenant signed a new month to month tenancy agreement with the landlord effective January 1, 2019.

On October 25th, the tenant gave the landlord a one month notice to end tenancy effective November 30, 2020. A condition inspection report was conducted on November 28th and both parties were present. The tenant's forwarding address was listed on the condition inspection report.

The landlord noted deficiencies on the condition inspection report at the end of the tenancy. For this hearing, he filed a monetary order worksheet listing the following items:

| Document | Receipt/estimate | For | Amount |
|----------|---------------------|-------------------------------|------------|
| 1 | Marios appliance | Fridge door install | \$189.00 |
| 2 | Reliable parts | Left door fridge | \$328.96 |
| 3 | Prodone contracting | Refinish entry door | \$105.00 |
| 4 | (withdrawn) | | |
| 5 | Westwood | Painting, lightbulbs, cabinet | \$212.58 |
| 6 | RTB | Filing fee | \$100.00 |
| 7 | Estimate | Laminate floors | \$2,673.02 |

During the hearing, the tenant acknowledged the damage to the left side of the fridge (#1 and #2) was attributable to himself and agreed the landlord was entitled to \$517.96 as compensation.

The tenant also acknowledged he had affixed a decoration to the outside door of the rental unit, causing discoloration to wood because the glue couldn't be removed by the tenant. The tenant did not dispute the \$105.00 cost to repair the door.

The landlord testified that he noted two lightbulbs in the kitchen exhaust fan were missing, as was one bulb in the main bathroom and one in the hallway, a total of four bulbs. The landlord testified they were all halogen lightbulbs costing \$10.00 a piece. In his maintenance work order, the landlord notes a total of \$35.00 for 3 kitchen light bulbs and 1 bathroom light bulb. The tenant acknowledged there were lights burned out during the tenancy that were not replaced by him.

The landlord seeks to recover the labour and supplies to repaint the dining room wall that shows scuff marks and provided photographs of the wall as evidence. The landlord also seeks the same for a small area under the bathroom vanity requiring painting due to discoloration. The tenant argues that the 'scuff mark' is discoloration on the wall due to the rental unit's proximity to the river causing humidity and condensation in the air. It

can be attributed to normal wear and tear on a rental unit whose tenancy lasted in excess of two years. He acknowledges the blue stain on the wall under the bathroom vanity was caused by a detergent spill. The landlord seeks \$15.75 for a truck fee, 2.5 hours at \$40.00 per hour for labour and a further \$43.83 for 'parts'.

Lastly, the landlord testified that when the tenant moved in, the laminate flooring was brand new. During the tenancy, the tenants caused damage to the laminate flooring by allowing moisture to sit on it, causing it to bubble. He points to the 'helpful reminders' page given to the tenant when the tenant moved in, which notes:

*Laminate flooring can be penetrated by water very easily. Placing a floor mat down in front of the sink cabinet is highly recommended in order to protect the flooring and underlay. If you notice water has spilled on the flooring, please wipe up the water immediately. When cleaning the floor, only use a damp cloth or Swiffer. **Do not use wet mops or steam mops as they will cause damage to laminate flooring.***

Photos of the bubbles in the flooring were provided as evidence. The landlord testified the most severe bubbles are in the dining area/living room by the master bedroom. Neither this tenant or the tenants in any of the nine other units managed by this landlord have had humidity or condensation complaints. The bubbling of the laminate floor was most likely caused by cat vomit not being cleaned up immediately.

The tenant testified that the building suffers from a known humidity issue, being situated in a river district. The choice of flooring material by the builder is unsuitable for this area. There were 'water loss' events in adjacent units during the tenancy consisting of burst pipes that didn't directly affect the tenant's unit but could have caused excessive moisture in the air. The tenant provided photos of the kitchen area showing no bubbling, indicating the improbability of spills not being cleaned up by them. The areas where the landlord alleges bubbling were covered by furniture or carpets, making the chance of spills unlikely. Lastly, the tenant submits that the relative humidity in the city is consistently above 75% and provided a bar graph to substantiate this. A further document from a floorcare website indicates the ideal environment for laminate is between 35% and 55% humidity and that if the humidity is not within this range the floor will gap at the seams. The tenant provided photos of the laminate 'bubbling around the edges of the planks' to demonstrate this.

This was countered by the landlord who testified that this same laminate is used in over 1000 units in the river district. It's illogical to blame the bubbling on humidity, it has to

be caused by human activity by spills or possibly cat vomit. Even if the flooring was covered by carpets, liquid could penetrate it if left unattended, causing the bubbles.

Analysis

Section 7 of the *Act* states: If a landlord or tenant does not comply with this *Act*, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

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

Rule 6.6 of the Residential Tenancy Rules of Procedure indicate the onus to prove their case is on the person making the claim. The standard of proof is on a balance of probabilities. If the applicant is successful in proving it is more likely than not the facts occurred as claimed, the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; and
4. Steps taken, if any, to mitigate the damage or loss.

- Painting

Section 37(2) of the *Act* states that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

The landlord provided photographs of the 'scuff marks' on the dining room wall. I reviewed these photographs and do not find there is any discernable damage to the walls other than reasonable wear and tear to be expected for a rental unit that has been occupied for a period in excess of two years. I find the landlord has provided insufficient evidence to support the existence of damage to the dining room wall (point #1 of the 4-point test) and the landlord's claim for the painting the dining room wall and the associated costs are dismissed.

The tenant acknowledges the damage done to the wall under the bathroom vanity was caused by a detergent spill. For the repair to this wall, I award the landlord a nominal award of one-half hour at the maintenance worker's fee of \$40.00 per hour, a total of \$20.00. I also award the landlord \$8.00 for paint and supplies. Total: **\$28.00**.

- Light bulbs

The tenant acknowledged the bulbs burned out during the tenancy and he did not replace them. Policy Guideline PG-1 [landlord and tenant responsibility for residential premises] states the tenant is responsible for replacing light bulbs in his or her premises during the tenancy. As such, I award the landlord the **\$35.00** he seeks to replace the light bulbs.

- Agreed to damages

During the hearing, the tenant acknowledged the damage to the left side of the fridge (#1 and #2 of the monetary order worksheet) was attributable to himself and agreed the landlord was entitled to **\$517.96** as compensation.

The tenant also acknowledged he had affixed a decoration to the outside door of the rental unit, causing discoloration to wood because the glue couldn't be removed by the tenant. The tenant did not dispute the **\$105.00** cost to repair the door.

- Flooring

As stated earlier, the landlord bears the burden to prove his claim on a balance of probabilities. The landlord repeatedly indicated the likely reason for the bubbling of the floors was caused by the tenant's failure to clean up cat vomit or possibly ignoring spills to the floors. No other reasons for causing the bubbling was suggested by the landlord. I find that it would be unreasonable to determine any person would leave cat vomit on their floors long enough to cause flooring to bubble. Second, the tenant provided photos of undamaged floors in the kitchen where one would expect spills and water ingress to collect. I find the photos strengthen the tenant's argument that he didn't allow spills to remain on the floors long enough to damage the floors.

I am persuaded by the tenant's reasoning that the humidity in the area close to the river may have caused the flooring to bubble. The tenant provided a graph showing the 75% relative humidity where the rental unit is located and a flooring care webpage that warns homeowners that humidity above 60% will cause flooring to expand and push planks into each other causing them to buckle. Based on the evidence before me, although I am satisfied the flooring was damaged during the time the tenant lived in the rental unit, I am not satisfied the damage or loss was a result of the tenant violating the *Act*, regulations or tenancy agreement (point #2 of the 4-point test). This portion of the landlord's claim is dismissed.

As the greater part of the landlord's claim was unsuccessful, the filing fee will not be recovered.

The landlord continues to hold the tenant's security deposit and pet damage deposit. In accordance with section 72 of the *Act*, the landlord is entitled to retain a portion of the security deposit in full satisfaction of the monetary order.

| Item | Amount |
|-----------------------------------|---------------------|
| Painting | \$28.00 |
| Light Bulbs | \$35.00 |
| Left side fridge door replacement | \$517.96 |
| Repair entry door | \$105.00 |
| Less security deposit | (\$1,075.00) |
| Less pet damage deposit | (\$1,075.00) |
| Total | (\$1,464.04) |

Conclusion

I issue a monetary order in the tenant's favour in the amount of **\$1,464.04**.

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 14, 2020

Residential Tenancy Branch