



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes : FFL, MNDL-S (tenants); MNDCT-DR, FFT (landlord)

Introduction

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

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- Authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*;
- Authorization to recover the filing fee for this application pursuant to section 72.

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

- An order for the landlord to return the security deposit pursuant to section 38;
- An order requiring the landlord to reimburse the tenants for the filing fee pursuant to section 72.

The hearing was conducted by teleconference. Both parties attended the hearing and provided affirmed testimony. The hearing process was explained, and both parties had to opportunity to ask questions. Each party had the opportunity to make submissions, present documentary evidence, call witnesses and cross examine the other party.

Each party acknowledged receipt of the other party's Notice of Hearing and Application for Dispute Resolution. Neither party raised issues of service. I find each party served the other in accordance with section 89 of the Act.

Issue(s) to be Decided

Is the landlord entitled to the following:

- ☐ A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- ☐ Authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*;
- ☐ Authorization to recover the filing fee for this application pursuant to section 72.

Are the tenants entitled to the following:

- ☐ An order for the landlord to return the security deposit pursuant to section 38;
- ☐ An order requiring the landlord to reimburse the tenants for the filing fee pursuant to section 72.

Background and Evidence

The parties agreed the tenancy began on October 1, 2016 for monthly rent of \$2,275.00 and ended when the tenants vacated at the end of January 2020. At the beginning of the tenancy, the tenants paid a security deposit of \$1,075.00 and a pet deposit of the same amount, together being \$2,150.00 ("the deposit") which is held by the landlord. A copy of the tenancy agreement was submitted.

The parties conducted a condition inspection report on moving in which indicated the unit was in good condition in all aspects relevant to the hearing. On moving out, the parties completed a condition inspection which indicated the unit required cleaning, repairs and painting. A copy of the report was submitted on moving in and moving out as signed by the parties.

The landlord testified that he is in the renovation business and was competent, experienced and capable of doing the work well and in a timely manner. About two weeks before the end of the tenancy, the parties agreed that the landlord would carry out the work necessary to get the unit in a condition suitable for the next occupant. The parties agreed that there was cleaning and wall repair/painting necessary.

The landlord told the tenants he would do the work for \$100.00 an hour. The parties did not estimate the time or cost of the work. No total price was discussed or agreed upon. The tenants did not restrict the landlord in the carrying out of this job, did not supervise the work, and left it to the landlord to do the cleaning and the repairs

Accordingly, the landlord did the cleaning, wall repair work, patching and repainting. He submitted an invoice to the tenants in the amount of \$3,894.26, a copy of which was submitted. The landlord stated that he reduced the time the work took by several hours and only charged \$85.00 an hour instead of the \$100.00 an hour quoted to the tenants as the parties were friends.

During the hearing, the landlord estimated the proportioning of the amount of the invoice as follows:

- ☐ cleaning – 50% of the invoice value (\$1,950.00)
- ☐ wall repairs – 35% (\$1,363.00), and
- ☐ painting – 15% (\$584.00).

The tenants testified they were shocked at the amount of the invoice and have refused to pay. The tenants did not submit photographs.

Each claim by the landlord is addressed.

Cleaning

The landlord testified that the tenants had permission to have a pet. He stated that there was “cat hair everywhere”. There were a lot of dead flies and moths, a bathroom wall needed to be washed, and the washer/dryer had to be pulled out and the surrounding area cleaned.

The landlord testified he rented a carpet cleaning machine and washed the carpet twice to get it reasonably clean. He said the patio had to be cleaned with bleach “on hands and knees with a scrub brush”.

The landlord testified that \$1,950.00 of his invoice was a reasonable charge for the work he had to do. He submitted photographs showing cat hair in the window troughs. No pictures of the patio were submitted.

However, the tenants asserted that the only significant necessary cleaning was the carpets. The tenants denied the landlord was entitled to compensation for anything else.

Wall repair

The landlord stated that there were dozens of small holes in the walls requiring filling, sanding and repainting. The landlord submitted photographs of the work at the end of the patching stage, which showed many filled white holes on a darker painted background throughout the unit. The landlord stated that the entire walls had to be repainted because of the scale of the patching.

The tenants acknowledged responsibility for the holes in the wall but objected to the compensation requested by the landlord. The tenants stated the holes were “pin holes”, there were not as many as the landlord alleged, and it was not a big job to fill, sand and touch up the walls.

The landlord testified that \$1,363.00 was a reasonable charge for the work he did, the scale of which was partially linked to the paint job the tenants carried out described in the next section.

Painting

The parties agreed that when the tenants moved in, they decided the tenants could paint the unit and the landlord would pay for the paint. The tenants did some of the painting and hired a contractor to do the rest; a copy of a letter from the painter they hired dated March 1, 2020 was included with the tenants’ evidence which stated as follows:

[I ...] confirm that I painted the walls in your apartment [address] on or about January 21, 2017. I have been a professional painter for 27 years and in my opinion, the walls were painted in a professional manner in keeping with a high standard.

The landlord testified that when the tenants vacated, he discovered that the painting job for which the tenants were responsible at the beginning of the tenancy was of poor quality and had to be completely redone. In some areas, the landlord claimed that only one coat had been applied, and the lighter color underneath was still visible; two coats was the standard coverage necessary if a darker color was being applied over a lighter color, as in this case.

The landlord stated that brush marks were visible in places. As well, the landlord surmised that if furniture was in front of a baseboard, the painting abruptly stopped, and the older color was not painted over. Only one side of one door was painted with a new color and the landlord had to repaint both sides of both doors.

The landlord submitted many photographs in support of his claim that the painting job was inadequate, the filling was extensive, and the unit required repainting.

The landlord stated that the unit had been previously painted ten or more years before the tenants moved in.

The tenants disagreed that the landlord should be compensated for painting. The tenants asserted that the painting job for which they were responsible was adequate and they did the job the landlord would normally do. The tenants stated that the landlord's photos made it appear worse than it was. Finally, they said it was the landlord's responsibility to paint the unit when they vacated as they had been there almost four years.

Security deposit

The tenants claimed return of the deposit held by the landlord and reimbursement of the filing fee.

The parties agreed the landlord applied for a monetary order before the expiration of the 15-day period.

Filing fee

Each party claimed reimbursement of the filing fee.

Analysis

While I have turned my mind to the documentary evidence and the testimony of the landlord and tenants, not all details of the submissions and arguments are reproduced here. The hearing lasted 105 minutes. Only the relevant and important aspects of the claims and my findings are set out below.

In this section reference will be made to the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, and the *Residential Tenancy Policy Guidelines*, which can be accessed via the Residential Tenancy Branch website at:

www.gov.bc.ca/landlordtenant.

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the *Act*, regulations or a tenancy agreement.

Section 7(1) of the *Act* provided that if a landlord or tenants does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

To claim for damage or loss, the claiming party bears the burden of proof on a balance of probabilities; that is, something is more likely than not to be true. The claimant must establish four elements.

1. The claimant must prove the existence of the damage or loss.
2. Secondly, the claiming party must that the damage or loss stemmed directly from a violation of the agreement or a contravention on the part of the other party.
3. Once those elements have been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.
4. Finally, the claimant has a duty to take reasonable steps to reduce, or mitigate, their loss.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

In this case, the onus is on the landlord to prove the landlord is entitled a claim for a monetary award as requested.

I have considered all the evidence submitted by the parties, including the testimony, the documentary evidence, the condition inspection report, the landlord's invoice, and the photographs showing the unit needed cleaning, repairs and painting.

I found that both parties were credible and genuine. However, I find the tenant underestimated the time involved in the repairs. I also find the landlord expected the unit to be in the best condition possible, which is not required of tenants when they vacate a unit. I find the tenants genuinely believed the painting job they paid for was adequate and the landlord, while having to touch up small holes and do some cleaning, is charging them for work which is essentially a landlord's obligation.

Cleaning

Under section 37(2) of the *Act*, the tenant must leave a rental unit *reasonably clean*.

The landlord estimated that \$1,950.00 of his invoice related to cleaning. I have considered all the evidence submitted by the landlord, including the condition inspection report and the photographs.

Considering all the evidence, including the acknowledgement of some responsibility by the tenant, I find the landlord has not met the burden of proof as to the monetary value of the cleaning necessary. I find the claim (\$1,950.00) seems disproportionate to what I viewed in the photographs and what I heard in the testimony.

The parties both agreed that the landlord was entitled to some cleaning expenses, particularly with respect to the carpet.

I find that an award of \$600.00 to be reasonable in the circumstances. I accordingly grant the landlord a monetary award in the amount of \$600.00 under this heading.

Wall repairs

Policy Guideline 1. Landlord and Tenant – Responsibility for Residential Premises provides guidance with respect to a tenant's obligation to compensate for nail holes, stating, in part:

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.*

I find the tenants hung pictures in a reasonable manner and are not responsible for the costs of repair for a reasonable number of holes. However, I accept the landlord's testimony that there were an excessive number of holes as evidenced by the photographs he submitted. However, I find the amount of compensation of (\$1,363.00) requested to be disproportionately high in the circumstances,

I find that an award of \$800.00 to be reasonable in the circumstances. I accordingly grant the landlord a monetary award in the amount of \$800.00 under this heading.

Painting

The policy guidelines state that it is the landlord's responsibility to paint the interior of the rental unit at reasonable intervals. The guideline states in part as follows:

PAINTING

The landlord is responsible for painting the interior of the rental unit at reasonable intervals. The tenant cannot be required as a condition of tenancy to paint the premises. The tenant may only be required to paint or repair where the work is necessary because of damages for which the tenant is responsible.

Policy Guideline 40 – Useful Life of Building Elements states that interior paint has a useful life of 4 years. The landlord acknowledged the unit had not been painted for many years before the tenants moved in; the tenants lived in the unit for almost 4 years. The parties agreed that the tenants painted the unit at their own expense, the landlord providing the paint. The letter from the tenants' painter confirmed that a professional painter did the work. I find the landlord has not assumed the job of painting the interior for many years, other than to compensate the tenants for the cost of paint.

While the landlord maintained that the painting job for which the tenants were responsible was not up to a professional standard, I find that the photographs indicated the job was reasonably well done. While there may have been some deficiencies in the work, I do not find the deficiencies warrant the landlord's claim of \$584.00.

However, I acknowledge that the landlord had many holes to touch up and paint. Accordingly, I find the landlord is entitled to nominal damages under this heading in the amount of \$200.00.

Filing Fee

As the landlord is successful in the claim, I direct that the landlord may recover the filing fee of \$100.00. and the tenants may not recover the filing fee.

Summary

In summary, I award the landlord the following:

ITEM	AMOUNT
Cleaning	\$600.00
Repairs	\$800.00
Painting	\$200.00
Filing fee	\$100.00
TOTAL MONETARY AWARD	\$1,700.00

Security deposit

Further to the offsetting provisions of section 72, I authorize the landlord to apply the security deposit to the award as follows:

ITEM	AMOUNT
Monetary Award (above)	\$1,700.00
(Security deposit)	(\$2,150.00)
Security deposit to be returned to tenants	(\$450.00)

The landlord is directed to return \$450.00, the balance of the security deposit, to the tenants.

Conclusion

The landlord is entitled to a monetary order in the amount of \$1,700.00 and authorization to apply the security deposit to the award. The landlord is directed to return \$450.00, the balance of the security deposit, to the tenants.

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 06, 2020

 Residential Tenancy Branch