



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Twenty One Holdings Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL -S, FFL

Introduction

This hearing was scheduled to deal with a landlord's application for monetary compensation for damage to the rental unit and authorization to retain the tenants' security deposit. Both parties appeared or were represented at the scheduled hearing time.

The hearing was held over two dates and an Interim Decision was issued on May 21, 2020. The Interim Decision should be read in conjunction with this decision.

As seen in the Interim Decision, I had authorized and ordered the tenants to resubmit their evidence. The tenants complied with my instructions and their re-submitted evidence was viewable by me and admitted into evidence for consideration in making this decision.

The parties informed me that they did not reach a settlement agreement during the period of adjournment.

Shortly after the reconvened hearing started, the tenant raised another issue. The tenant requested that the landlord re-serve its photographic evidence upon the tenants via email. The tenant stated that they had received the landlord's photographs that were printed on paper and the tenant was concerned that I had received the landlord's photographs by digital upload and that I could see more detail than the tenants, such as depth of dents in the walls. The tenant and I reviewed a photograph together and compared what was visible in the version I had versus the paper version the tenants had. I assured the tenants that I was unable to gauge depth of a wall dent or gouge with a digital photograph alone and in performing this exercise the tenant indicated she was satisfied that the same detail was in both forms of the photograph. Accordingly, I did

not order the hearing adjourned and the landlord to re-serve the tenants with evidence in a digital format.

In the remainder of the allotted hearing time, I heard the tenants' response to the landlord's claims; however, the hearing time expired before the landlord had the opportunity to rebut the tenants' positions. I gave the landlord the opportunity to request an adjournment so that the landlord would be afforded the opportunity to rebut; however, the landlord's agents elected to end the hearing and have me make a decision based on what I had heard and been presented thus far. Accordingly, I did not order the hearing adjourned and I make this decision considering what I had heard from the parties on May 21, 2020 and June 23, 2020 only, and their documentary evidence.

Issue(s) to be Decided

1. Has the landlord established an entitlement to the amounts claimed for cleaning and damage?
2. Is the landlord authorized to retain all or part of the tenants' security deposit?

Background and Evidence

The one year fixed term tenancy started on October 11, 2018. The tenants paid a security deposit of \$925.00 and were required to pay rent of \$1850.00 on the first day of every month. The tenancy ended on November 30, 2019.

A move-in and move-out inspection report was completed together. The tenants signed the move-out inspection report indicating they did not think the inspection report fairly represented the condition of the rental unit as they did not consider it necessary to repaint all of the walls.

The tenants did not authorize the landlord to make any deductions from the security deposit and the tenants provided their forwarding address to the landlord by way of letter delivered on December 12, 2019. The landlord made its Application for Dispute Resolution on December 17, 2019.

Below, I have summarized the landlord's claims against the tenants and the tenants' responses.

Repainting walls and door -- \$1312.50

The landlord submitted that the rental unit is currently 2.5 years old. The rental unit was painted when it was newly constructed and the landlord had the unit repainted on October 3, 2018 following the previous tenancy due to fingerprints and damage. After the subject tenancy ended on November 30, 2019 the landlord had the rental unit repainted again. The landlord's agent submitted that several walls were repainted after the subject tenancy ended because the tenants caused damage to the walls beyond reasonable wear and tear and the bedroom door was damaged. The landlord's agents explained that the landlord maintains a very high standard for the building and that they ordinarily expect to repaint rental units every three years due to ordinary wear and tear.

The landlord submitted that the tenants caused a number of dents in the walls that required filling, sanding and then repainting of the entire wall to achieve a satisfactory result. In addition, the bedroom door had been punched and the tenant's attempt to patch it was unsatisfactory. The claim for \$1312.50 includes re-painting the damaged walls and filling, sanding and repainting the bedroom door.

I noted that the painting invoice indicates 500 square feet was painted. The landlord stated the rental unit is 537 square feet but that the 500 square feet referenced on the painting invoice represents the area of walls repainted. The painter charged \$2.50 per square foot, plus taxes.

I noted that the painting invoice does not provide a breakdown of repainting the walls verses the repair and repainting of the door. The landlord's agent stated that of the \$1312.50 charged by the painter, \$200.00 was incurred for repairing the door.

The landlord provided nine photographs of walls that showed wall filler applied to the walls before the photographs were taken. The landlord's agents explained this was done so that the wall damage was more visible in the photographs.

The tenants were of the position they are responsible for some of the wall damage and repainting the bedroom door but that other areas of walls that were filled amounted to reasonable wear and tear. The tenants argued that the landlord's photographs, showing the walls after filler was applied, is misleading and many areas were not very apparent before the filler was applied.

The tenants were agreeable to compensating the landlord the cost of \$2.50 per square foot to repaint the door and to touch up areas of wall damage they acknowledge but not the cost to repaint the entire wall. The tenants took responsibility for damage to the walls identified in their photographs labelled K2, E1, K4 and K1.

During the hearing, a great amount of time was spent reconciling the labelling of photographs of walls submitted by the landlord to those provided by the tenants so that I could compare the photographs after the hearing.

Cleaning -- \$240.00

The landlord's agents submitted that the tenants failed to sufficiently clean many areas in the rental unit, despite providing the tenants with a move-out check list. The landlord's agent testified that she held the tenants to a "reasonably clean" standard. The move-out inspection report indicates several areas of the rental unit required cleaning and the landlord produced a cleaning invoice showing the areas cleaned, at a cost of \$240.00 for four hours.

The tenants were of the position they had substantially completed the cleaning requirements although they acknowledge some areas required more cleaning such as windows, backsplash, cabinets and some wall washing. The tenants stated they did not clean behind the fridge and stove because they did not know they had to and because they were uncertain the appliances had rollers but they acknowledge they did not make any enquires with the landlord about the appliances have rollers. The tenants denied that the box seen in the landlord's photograph was still there after the tenants left the move-out inspection. The tenants denied an oily residue was left on the bathtub. The tenants were of the position that 1.5 hours would have been sufficient to clean the few areas that required additional cleaning.

Fridge/freezer door dents -- \$200.00

The landlords submitted the tenants caused dents to the fridge/freezer door and repair of the door cost \$262.50 although the estimated cost was \$200.00 when the landlord filed its Application for Dispute Resolution.

The tenants took responsibility for this damage and agreed to pay the landlord compensation of \$200.00 as claimed.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Section 32 of the Act provides that a tenant is required to repair damage caused to the rental unit or residential property by their actions or neglect, or those of persons permitted on the property by the tenant. Section 37 of the Act requires the tenant to leave the rental unit undamaged at the end of the tenancy. However, sections 32 and 37 provide that reasonable wear and tear is not considered damage. Accordingly, a landlord may pursue a tenant for damage caused by the tenant or a person permitted on the property by the tenant due to their actions or neglect, but a landlord may not pursue a tenant for reasonable wear and tear or pre-existing damage.

It is important to point out that monetary awards are intended to be restorative. A landlord is expected to repair and maintain a property at reasonable intervals. Where a building element is so damaged it requires replacement, an award will generally take into account depreciation of the original item. I have referred to Residential Tenancy Branch Policy Guideline 40: *Useful Life of Building Elements* to estimate depreciation where necessary.

Wall and door repair and repainting

The tenants took responsibility for some of the wall and door damage but objected to paying for all of the areas that were filled and repainted. I find their argument that the damaged areas require just a touch up is insufficient and unrealistic. Paint colours are often never exactly the same even if the same paint code is used. Also, drywall filler absorbs paint differently than the painted wall surface. As such, just touching up the filled area will result in an unsatisfactory result. Therefore, I find it reasonable that where a wall is damaged it is reasonable to repaint the entire wall so adequately repair the damage.

Despite the above, I also find the landlord's request to recover the entire painting bill from the tenants to be unreasonable. The landlord acknowledged that it maintains a very high standard and a tenant is not obligated to ensure the unit is maintained to the landlord's very high standard. Rather, the landlord's business decision to turn over units in a condition that is of a very high standard is a decision for which the landlord must bear at least some cost because it is the landlord that obtains the benefit of such high standards by way of the rent it receives for its units. Also of consideration is that Residential Tenancy Policy Guideline 40 provides that interior paint has an average useful life of four years and the landlord acknowledged that it ordinarily repaints its rental unit every three years where a tenant causes ordinary wear and tear. Accordingly, if it were to grant the landlord's request, to recover the entire painting invoice from the tenants, the landlord would achieve a betterment in that the walls would be returned to a state of near perfection yet the tenants resided in the rental unit for over 13 months and it is not reasonable to expect they are in perfect condition after 13 months of occupancy.

Given the landlord's acknowledged high standard, and upon review of all of the photographs, I am of the view that the landlord's application of wall filler and repainting of the walls included areas of damage but also of minor blemishes that I consider wear and tear.

In light of the above, I find it appropriate to award the landlord a portion of the painting invoice. The difficulty lies in determining a reasonable allocation especially since the painter's invoice is based on area of walls painted and the sum of the area that is damaged verses the area that suffered wear and tear is not readily known. Neither party provided a breakdown per wall and the painter did not provide a breakdown between the wall painting and the door repair. The landlord had submitted that the door repair cost approximately \$200.00 because it required additional filler, sanding and painting. I accept the landlord's estimation as being reasonable as the need for additional filling and sanding is evident in the photographs.

Rather, than provide the landlord with no award due to the difficulty in determining a reasonable apportionment, given the landlord bears the burden of proof, I estimate the tenant's liability conservatively as \$200.00 for the door repair and 1/3 of the remaining balance of the invoice for an award calculated as follows:

Door repair	\$200.00
Wall repair (\$1312.50 – \$200.00) x 1/3	<u>370.83</u>
Tenant's portion of painting invoice	\$570.83

Cleaning

The move-out inspection report indicates several areas required additional cleaning. The tenants did not indicate they disagreed with the landlord's assessment with respect to cleaning on the move-out inspection report. Also, the landlord's photographs show several areas requiring additional cleaning. The cleaner's invoice also indicates several areas required cleaning and the cleaner charged for four hours of cleaning. Upon consideration of all of this evidence, I find four hours to clean the rental unit is reasonable and I hold the tenants responsible to pay for four hours of cleaning. However, I find the cleaner's charge out rate of \$60.00 per hour is very high and I am of the view that if the landlord chooses a cleaner with such a high charge out rate that is the landlord's prerogative, but the cost of that choice is something that the landlord must also absorb. Therefore, I limit the landlord's award to four hours at \$30.00 per hour as being a reasonable claim, for an award of \$120.00.

Fridge/freezer door damage

The tenants agreed to pay the landlord compensation of \$200.00 as claimed and I award the landlord this amount.

Filing fee, security deposit and Monetary Order

In keeping with my findings above, the landlord has established an entitlement to compensation in the sum of \$890.83 [\$570.83 + \$120.00 + \$200.00]. Section 72 of the Act provides me discretion to further award a party recovery of the filing fee paid for an Application for Dispute Resolution. In this case, I further award the landlord a portion of the filing fee paid for this Application for Dispute Resolution given the landlord's partial success. I am of the view the arguments of both parties had some merit but that both parties were also unreasonable in their expectations for resolution. I award the landlord recovery of \$34.17 for the filing fee to bring the landlord's total award to \$925.00 which is the amount of the security deposit held by the landlord. Therefore, I authorize the landlord to retain the tenant's security deposit in full satisfaction of its claims against the tenants and I do not provide a Monetary Order to either party with this decision.

Conclusion

The landlord is authorized to retain the tenants' security deposit in full satisfaction of its claims against 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: June 24, 2020



C. Reid, Arbitrator
Residential Tenancy Branch



Residential Tenancy Branch

RTB-136

Ministerial Order M089 issued March 30, 2020, pursuant to the State of Emergency declared on March 18, 2020, prohibits the enforcement of certain Residential Tenancy Branch orders made during the state of emergency. Enforcement of other Residential Tenancy Branch orders may be affected by the suspension of regular court operations of the BC Supreme Court and Provincial Court.

Now that you have your decision...

All decisions are binding and both landlord and tenant are required to comply.

The RTB website (www.gov.bc.ca/landlordtenant) has information about:

- How and when to enforce an order of possession:
Visit: www.gov.bc.ca/landlordtenant/orders
- How and when to enforce a monetary order:
Visit: www.gov.bc.ca/landlordtenant/orders
- How and when to have a decision or order corrected:
Visit: www.gov.bc.ca/landlordtenant/review to learn about the correction process
- How and when to have a decision or order clarified:
Visit: www.gov.bc.ca/landlordtenant/review to learn about the clarification process
- How and when to apply for the review of a decision:
Visit: www.gov.bc.ca/landlordtenant/review to learn about the review process
Please Note: Legislated deadlines apply

To personally speak with Residential Tenancy Branch (RTB) staff or listen to our 24 Hour Recorded Information Line, please call:

- Toll-free: 1-800-665-8779
- Lower Mainland: 604-660-1020
- Victoria: 250-387-1602

Contact any Service BC Centre or visit the RTB office nearest you. For current information on locations and office hours, visit the RTB web site at www.gov.bc.ca/landlordtenant

Residential Tenancy Branch

#RTB-136 (2014/12)

