



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFL, MNDL-S**
 MNSD, FFT

Introduction

This hearing dealt with applications filed by both the landlord and the tenant pursuant to the *Residential Tenancy Act* (“Act”).

The landlord applied for:

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

The tenant applied for:

- An order for the return of a security deposit or pet damage deposit pursuant to section 38; and
- Authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both the landlord and the tenant attended the hearing. The tenant was represented by her lawyer, AC. Both parties acknowledge being served with one another’s Notice of Dispute Resolution Proceedings Packages and stated there were no issues with timely service of documents. The landlord stated he could not open an attachment in the tenant’s evidence, however the parties agreed that this document was already in the landlord’s evidence package.

Preliminary Matters

Section 63 of the *Act* allows an Arbitrator to assist the parties settle their dispute and record the settlement in the form of a decision and order if the parties settle their dispute during the dispute resolution proceeding. Accordingly, I attempted to assist the parties to resolve this dispute by helping them negotiate terms of a settlement. The parties

could not reach consensus on the terms of a settlement; therefore, I heard testimony, considered the evidence, and issued a decision to resolve this dispute.

Issue(s) to be Decided

Is the landlord entitled to compensation for damages done to the rental unit?

Can the landlord retain the security deposit, or should it be returned to the tenant?

Can either party recover their filing fee?

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.

A copy of the tenancy agreement was provided as evidence. The tenancy began on February 15, 2019 as a fixed term to end on January 31, 2020. Rent was set at \$1,600.00 per month payable on the first day of the month. A security deposit of \$800.00 was collected at the beginning of the tenancy which the landlord continues to hold. A condition inspection report was conducted when the tenancy began and was provided as evidence in these proceedings.

The landlord provided the following testimony. The rental unit is a strata unit built in 2007. When the condition inspection report was done with the tenant at the end of the tenancy on January 31, 2020, the landlord noted damage to the rental unit. The damage included a burnt-out light bulb, unclean cabinet doors, light shades and lint trap, small scratches on the microwave door, a pink mark left on the wall and fireplace shelf and a chip on the lower corner of the bathroom door. Most notably, there was an 18" long break to the bottom of the mirrored closet door and a burn mark or stain on the granite counter top. Photos of the damage was provided as evidence by the landlord.

The landlord testified that the tenant never advised him that the mirror was damaged by her or by anybody else. It was only while doing the condition inspection report at the end of the tenancy that he discovered the damage. The tenant told him it must have happened when contractors hired by the strata were doing work in the unit that they must have damaged the mirror.

The rental unit suffers from a water ingress issue identified by the strata corporation. The wall opposite the mirrored closet door had been opened up to reveal the pipes inside. The landlord submits that the work was done far away from where the damage to the mirror happened and that it is unlikely that the contractors damaged it. If it was damaged by the contractors, the tenant should have let the building concierge or the landlord know. Instead, the tenant said nothing. The landlord provided a quote from a glass company in the amount of \$374.32 as the cost to replace the broken glass mirror. The landlord submits that dismantling, transporting and installing the mirror would bring the cost to \$950.00 however the landlord has not provided any quote for the additional work.

The kitchen counter is made of stone. During the tenancy, the tenant damaged the stone countertop by staining it. The landlord attributes the staining to the placement of a hot pot or pan on the counters without protection, causing it to burn or scald. He states the size of the burn mark is consistent with such damage and testified that the stone repair company he had take a look at the damaged counter confirmed this opinion. The landlord provided a quote from a stonework company to replace the countertop: \$2,500.00 for the countertop and \$400.00 to remove the old sink and faucet and install. The stain 'stands out like a sore thumb' in the kitchen, according to the landlord. The stain cannot be repaired, as repairing the counter would require grinding it down. This would leave a depression in the stone and would be unsightly.

The landlord's son testified that he was present when the landlord and the tenant did both condition inspection reports. He was also present when the previous tenant had her move-out condition inspection report. The son testified there was no damage noted on the previous tenant's condition inspection report regarding countertop damage and points to the lack of any notation of countertop damage on the move-in condition inspection report with this tenant as proof the countertops were undamaged at the beginning of the tenancy.

The tenant provided the following testimony. When she moved in, she was 'desperate' to find a place. She took it upon the landlord's good faith that he would note the existing damage to the unit upon move-in; she was not thorough while inspecting the rental unit at the time. She was 'shocked' when the landlord pointed out deficiencies in the condition of the rental unit upon move out. She thought she and the landlord were working 'collaboratively' because of the strata's issue with the water ingress.

She hired cleaners to professionally clean the rental unit at the end of her tenancy and provided an invoice from the cleaners as proof.

The damage to the mirror wasn't noticed by the tenant until it was pointed out to her by the landlord during the condition inspection report at move-out. She believes it was damaged by the contractors who put up scaffolding in the unit and had to move her furniture around to do so. This includes moving a dresser/wardrobe which the tenant describes as 'heavy'. There is not much space in her bedroom so the moving around of furniture likely caused the break in the glass which she never saw. It is low on the mirror and is not easily seen.

She never put hot objects on the countertops. When it was brought to her attention, she had no recollection of how it must have happened. She doesn't do cooking on the left side of the sink. It's inaccessible and not comfortable for her to get to and so she doesn't put 'cooking things' there. That spot on the countertop is out of reach of the stove as it's on the far side of the sink from it. The tenant also alleges that the burn mark may have been there before she moved in, but acknowledges it wasn't described on the condition inspection report at move-in.

The tenant agrees that the landlord was entitled to deduct \$157.00 from her security deposit to pay for carpet cleaning, as required by their tenancy agreement.

In submissions, the tenant contends that if the landlord is awarded damages pursuant to section 67, the value of the damages must be decreased due to the useful life of the building element, in accordance with Residential Tenancy Branch Policy Guideline PG-40.

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.

- Landlord's claim for cleaning

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.

This notion is further elaborated in Residential Tenancy Branch Policy Guideline PG-1 which states:

the tenant must maintain "reasonable health, cleanliness and sanitary standards" throughout the rental unit or site, and property or park. The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard. The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises), or for cleaning to bring the premises to a higher standard than that set out in the Residential Tenancy Act...

...

An arbitrator may also determine whether or not the condition of premises meets reasonable health, cleanliness and sanitary standards, which are not necessarily the standards of the arbitrator, the landlord or the tenant.

I have reviewed the photographs provided by the landlord to corroborate the claim for cleaning. While the photographs show a suite that was left in a state that may not be described as "move-in ready", I find the unit was left reasonably clean and undamaged except for reasonable wear and tear. I decline to award the landlord a monetary award for cleaning. This includes the landlord's claim for the chip on the bathroom door and the burned-out light bulb.

- Mirrored Door

The tenant surmises that contractors probably caused the damage to the mirror when they erected scaffolding in her bedroom to deal with the water ingress issue. She claims she never saw the damage until the landlord pointed it out to her during the condition inspection report. The landlord contends that the mirror was undamaged when the tenant moved in and sustained damage during the tenancy, pointing to the condition inspection report at move-in as proof.

Section 21 of the Residential Tenancy Regulations state that

in dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

I am satisfied the landlord has shown on a balance of probabilities that the tenant caused the damage to the mirrored door during the tenancy. I find it unreasonable that the tenant would have failed to notice a crack to the mirror while living in the unit or that she would have withheld that information from the landlord if the damage were caused by the strata's contractors. I award the landlord the replacement cost of the mirrored door, **\$375.32**. The landlord has not provided sufficient evidence to corroborate his claim for an additional cost to dismantle, transport and install the mirrored door. That portion of the claim is dismissed.

PG-40 [Useful life of building elements] states:

Damage(s)

When applied to damage(s) caused by a tenant, the tenant's guests or the tenant's pets, the arbitrator may consider the useful life of a building element and the age of the item. Landlords should provide evidence showing the age of the item at the time of replacement and the cost of the replacement building item. That evidence may be in the form of work orders, invoices or other documentary evidence.

If the arbitrator finds that a landlord makes repairs to a rental unit due to damage caused by the tenant, the arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant's responsibility for the cost or replacement.

ADDITIONAL CONSIDERATIONS

Used items If the item being replaced was used when first installed, then the useful life will be determined by taking into account the length of time of that previous use.

Items that do not appear in the table If a building element does not appear in the table, the useful life will be determined with reference to items with similar characteristics in the table or information published by the manufacturer. Parties to dispute resolution may submit evidence for the useful life of a building element. Evidence may include documentation from the manufacturer for the particular item claimed.

The tenant's counsel contends that since mirrored doors don't appear in the table, I should consider 'furniture' to be similar in characteristics. I don't agree with counsel's submission and find that 'window' most closely matches the characteristics of the

mirrored closet door. A window has a useful life of 15 years, according to the table in PG-40. Given that the closet door was 13 years old at the time it was damaged and needs replacement, the landlord is entitled to a reduced value of the replacement calculated as: value of replacement (\$375.32) divided by 15 years = \$25.02/year. Multiplied by 2 years (remaining life) = **\$50.04**.

- Stone Countertop

Turning once again to section 21 of the Regulations, the condition inspection report is the evidence the arbitrator looks to in order to determine the state of repair and condition of the rental unit at the beginning and end of the tenancy. Based on the condition inspection report, I am satisfied the countertops were damaged during the tenancy by the tenant or her guests. I do not find the damage was pre-existing when the tenant moved in, as she alleges. I also find it unlikely that the tenant didn't use this side of the countertop because it was inconvenient or inaccessible. I am also satisfied that the counters could not be repaired and require replacement. The landlord is awarded the \$2,900.00 plus tax as sought, for a total of \$3,248.00.

The useful life of a counter is 25 years. As the counters are 13 years old, the landlord is entitled to $\$3,248.00/25 = \129.92 . Multiplied by 12 years (remaining life) = \$1,559.04. Pursuant to section 67, the landlord is awarded **\$1,559.04**

The tenant agreed the landlord is entitled to \$157.00 for carpet cleaning. This amount is also awarded to the landlord.

As the landlord was successful in his claim, the landlord will recover the filing fee.

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

Item	Amount
Mirrored Door	\$50.04
Stone countertop	\$1,559.04
Carpet cleaning	\$157.00
Filing fee	\$100.00
Less security deposit	(\$800.00)
Total	\$1,066.08

Conclusion

I issue a monetary order in the landlord's favour in the amount of **\$1,066.08**.

The tenant's claim is dismissed without leave to reapply.

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 19, 2020

Residential Tenancy Branch