



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL, MNDCL-S

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on June 02, 2020 (the “Application”). The Landlord applied as follows:

- For compensation for damage to the rental unit;
- To keep the security and pet damage deposits; and
- For reimbursement for the filing fee.

The Landlord had filed an amendment adding a claim for compensation for monetary loss or other money owed.

The Landlord and Tenant appeared at the hearing. I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

The Landlord withdrew the request for reimbursement for the filing fee as the filing fee had been waived.

The Landlord had sought \$1,150.00 in compensation for damage to the rental unit. The Landlord had not submitted a Monetary Order Worksheet or outline of amounts sought. When asked about this, the Landlord indicated she sought \$1,150.00 because this is the amount of the deposits. The Landlord was unaware that she could request further compensation.

The Tenant had submitted a previous RTB decision on File Number 1. The Adjudicator in that decision ordered the Landlord to return double the security and pet damage deposits. I was unaware during the hearing; however, have since become aware that

the Landlord sought a review of that decision. The Arbitrator on review confirmed the original decision and order.

I explained to the parties that I cannot re-consider the original decision and that the Landlord must return the deposits. I explained that I would not consider the request for the Landlord to keep the deposits because a decision on this has been made. I explained that I would still consider the request for compensation and whether the Landlord is entitled to a Monetary Order for compensation.

The Landlord asked if she could amend the amount sought in the Application. The Landlord sought to amend the amount based on verbal quotes for additional repairs and work to be done in the rental unit. I told the Landlord I would not allow an amendment to the Application on the date of the hearing to increase the amount sought in the absence of an outline of the amounts sought or some documentary evidence of the amounts. I told the Landlord she could seek to withdraw the Application and I would hear the parties on this. I told the Landlord it is open to her to apply for further compensation in the future but that it would be up to an Arbitrator to determine whether the Landlord was entitled to request further compensation that was not requested in the Application. I told the Landlord that all of the compensation sought should have been included in the Application.

The Landlord sought to proceed with the Application. The Landlord confirmed she was seeking the \$1,150.00 based on the repair invoice, cleaning invoice and carpet cleaning quote submitted. The Landlord is also seeking compensation of \$3,900.00 for loss of rent for April and May.

The Tenant confirmed she was prepared to deal with the monetary claims outlined above despite the Landlord not submitting a Monetary Order Worksheet or outline of amounts sought.

I proceeded to hear the parties on the request for compensation for repairs, cleaning, carpet cleaning and loss of rent for April and May.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package, amendment and evidence and no issues arose.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all testimony provided and reviewed all documentary evidence submitted. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Landlord entitled to compensation for damage to the rental unit?
2. Is the Landlord entitled to compensation for monetary loss or other money owed?

Background and Evidence

As stated, the Landlord sought the following compensation:

Item	Description	Amount
1	Repairs	\$840.26
2	Cleaning	\$262.50
3	Carpet cleaning	\$132.72
4	Loss of rent	\$3,900.00
	TOTAL	\$5,135.48

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate and the most current agreement. The agreement started October 01, 2017 and was for a fixed term ending September 30, 2019. The parties agreed rent at the end was \$1,950.00 per month. Rent was due on the first day of each month. The Tenant paid a \$925.00 security deposit and \$200.00 pet damage deposit.

I understand from the materials that the tenancy agreement is a renewal and that this tenancy started December 01, 2016.

The parties agreed the tenancy ended March 31, 2020.

A Condition Inspection Report (CIR) was submitted as evidence. The parties agreed they did a move-in inspection November 11, 2016, completed the CIR and signed the CIR.

The parties agreed on the following in relation to a move-out inspection. They did not do an inspection together because of the current pandemic. The Tenant took a video of the rental unit at the end of the tenancy. The Landlord then did an inspection and completed the CIR. The Landlord then sent the CIR to the Tenant and the parties communicated back and forth about the issues.

Repairs

The Landlord testified as follows in relation to repairs. The rental unit was basically brand new at the start of the tenancy. The damage to the rental unit was extensive at the end of the tenancy. Areas of the rental unit had to be repaired. The walls were covered in white spots and all had to be painted. The Tenant had said she would paint prior to the end of the tenancy. There was damage to the doors and baseboards of every room. The shoe rack was broken. Light bulbs were burnt out. Appliances were scratched. The kitchen cabinets were in bad shape.

The Landlord submitted an invoice for the repairs. It is for labour and materials. The Landlord testified that it took the repair people a couple days to do the repairs. The Landlord did not know how many hours it took them. The Landlord did not know what the repair people charged per hour. The Landlord testified that the repair people charged per job, not per hour.

The Landlord submitted photos of the rental unit. The Landlord testified that the photos were taken prior to the repair people doing anything in the rental unit.

The Landlord testified that the paint in the rental unit was five years old.

The Landlord submitted an email from the repair company outlining what was done in the rental unit including:

- Extensive wall/baseboard patching, particularly wall corners in hallways and entrance area
- Two door frames had gouges and required patching and painting
- Shoe rack required two new supports
- Living room cabinet gables had to be repaired due to extensive scratches
- Light bulbs required replacement

The Tenant testified as follows. The photos submitted by the Landlord were not taken prior to the repair people doing work on the rental unit. The Tenant did not leave anything white on the walls at the end of the tenancy which can be seen in the video submitted. Any damage to the rental unit was reasonable wear and tear. Scratches to the fridge were minimal and did not impact the functioning of the fridge. The Landlord did not mitigate her loss. The repairs could have been done by someone with minimal skills. The cost of the repairs is not reasonable. The Landlord was responsible for painting the rental unit.

The Tenant testified that cracks in the walls and baseboards were from natural shifting of the building and not due to the actions or neglect of the Tenant.

In reply, the Landlord testified that she is not claiming compensation for cracks in the walls or baseboards as she agrees these were not the fault of the Tenant.

Cleaning

The Landlord testified as follows. The rental unit looked like it had not been cleaned at all at the end of the tenancy. The baseboards and windows were black. The bathroom was dirty. It looked like the windows had never been cleaned. She hired a cleaner. The invoice for this is in evidence. She does not know how many hours it took to clean but thinks it took eight hours. She does not know how much the cleaner charged per hour. She thinks the cleaner charged per job.

The Tenant testified as follows. She did clean the rental unit over two to three days. The rental unit was not a complete mess. It may not have been up to the Landlord's standards, but she cleaned which is shown in the video submitted.

In reply, the Landlord testified about one photo in particular which she submitted shows how dirty the window sills and baseboards were.

The Landlord submitted an email about cleaning which I have not relied on as it does not include any indication of who it is from or when it was sent.

Carpet Cleaning

The Landlord testified that the carpet was stained and very dirty at the end of the tenancy. The Landlord submitted a carpet cleaning quote for \$126.40 plus 5% tax.

The Tenant agreed she owes the Landlord some compensation for carpet cleaning. At first, the Tenant mentioned the amount being the issue. However, the Tenant then agreed to pay the Landlord the \$126.40 sought in the quote.

Loss of rent

The Landlord sought loss of rent for April and May. The Landlord submitted that she had tenants lined up to move in April 01, 2020 but when these tenants saw the condition

of the rental unit, they decided not to move in. The Landlord testified that she did not have a tenancy agreement with these tenants.

The Landlord testified that the rental unit was so damaged and unclean that she could not re-rent the unit. The Landlord testified that she still has not re-rented the unit. The Landlord acknowledged that the rental unit was in a rentable condition by April 03, 2020, the cleaning and majority of the repairs having been done. However, the Landlord took the position that the reason she could not re-rent the unit in April or May was because she lost the potential tenants for April 01, 2020 and potential tenants already had a place to live by April 03, 2020. The Landlord also took the position that the carpet still had to be cleaned and companies would not attend due to the current pandemic.

The Tenant disputed that she is responsible to pay the Landlord for loss of rent for April and May. The Tenant reiterated that she did clean the rental unit and that the only thing that was not done was carpet cleaning. The Tenant submitted that the rental unit was livable. The Tenant acknowledged she may have missed a few spots in cleaning but testified that there were no large issues.

I note that near the end of the hearing the Tenant stated that there were white spots on the walls when people were looking at the rental unit prior to the end of the tenancy.

Analysis

Section 7 of the *Act* states:

7 (1) If a...tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying...tenant must compensate the [landlord] for damage or loss that results.

(2) A landlord...who claims compensation for damage or loss that results from the [tenant's] non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Pursuant to rule 6.6 of the Rules of Procedure, it is the Landlord as applicant who has the onus to prove the claim. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

Section 37 of the *Act* states:

(2) When a tenant vacates a rental unit, the tenant must

(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear...

Repairs

Based on the repair invoice and email from the repair company, I am satisfied the repair company painted and patched walls, baseboards, trims and two doors. I am also satisfied they fixed a shoe rack, replaced bulbs and repaired cabinet gables.

I have looked at the evidence submitted about the required repairs. I do not find the evidence authored by the Landlord, such as the move-out CIR or emails, to be compelling evidence of the damage given the Tenant does not agree with the Landlord's assessment of the damage. The documents authored by the Landlord simply reflect the Landlord's view of the damage and do not further support the Landlord's testimony. I have therefore considered the other evidence submitted showing the state of the rental unit at the end of the tenancy.

The photos submitted by the Landlord show some damage to the walls. They show marks on a door frame, a chip in the door paint and a chip or gouge in a door frame. The photos show one burned out bulb. The photos show a shoe rack on the floor of a closet. The photos show some scuffing and marks on baseboards. For the most part, the photos show the type of wall "damage" one would expect from someone living in the rental unit for more than three years. I do accept that the photos show three corner walls that do have more extensive patching or damage on them.

The Tenant's video tends to show the rental unit was left in a reasonable condition. There is no extensive damage shown in the video. The video does not show the extent of patching shown in the photos but does show some patching, for example in the kitchen. The video shows the shoe rack on the floor.

Based on the photos and video, I am satisfied there was a burned out bulb and damage beyond reasonable wear and tear to two doors and frames, three corner walls, a section of wall and baseboard under a window and a second small section of baseboard. I am also satisfied there was damage to the shoe rack in the sense that it was not attached to the wall. I find the remainder of the damage shown in the photos is reasonable wear and tear.

I am satisfied the Tenant breached section 37 of the *Act* in relation to a burned out bulb, two doors and frames, three corner walls, a section of wall and baseboard under a window, a second small section of baseboard and shoe rack. I am satisfied the Landlord had to have these areas repaired.

I am not satisfied that it cost \$840.26 to have the above issues repaired as I find from the evidence that the repair company's work covered more than these issues. Further, the useful life of indoor paint is four years meaning the paint in the rental unit had passed its useful life (see Policy Guideline 40 page 5). I find the amount the Tenant is responsible for is decreased due to this.

The repair invoice is not broken down into detailed issues and therefore I cannot easily calculate the amount of the above damage. I have therefore estimated what a reasonable amount of time to repair these issues is as well as a reasonable cost. Given the nature and number of issues, I cannot be satisfied that they would have taken more than seven hours to address. Given the nature and number of issues, I am satisfied an average repair person could have addressed them. In the absence of further evidence, I cannot be satisfied that an average repair person would charge more than \$30.00 an hour. The repair invoice shows the materials cost \$180.17. I divide this cost in half

given I find some of the materials were used to do repairs that the Tenant is not responsible for. In total, I find the Landlord is entitled to \$300.00 for the repairs.

I acknowledge that the amount awarded is less than the \$840.26 sought. However, the amount of compensation has been reduced because the Tenant is not responsible for all of the repairs and because the paint in the rental unit was past its useful life.

Cleaning

Based on the photos and video, I am not satisfied the Tenant did not do any cleaning of the rental unit. The video and photos do not support this position. The video and photos show that the rental unit was left reasonably clean for the most part. I do accept that the photos show three small areas of the rental unit that could have been cleaner. The photos do not show that the bathrooms were dirty.

If the rental unit was not cleaned at all, I would expect to see some evidence of this in the video and would expect the photos to reflect this. It may be that the rental unit was not perfect. It may be that the rental unit was not up to the Landlord's standards. But the standard is not one of perfection or the Landlord's. The standard is reasonably clean. I find the Tenant left the rental unit reasonably clean except for three small areas.

I am satisfied the Tenant breached section 37 of the *Act* in relation to the three small areas. In my view, these three small areas could have been wiped down easily within 15 minutes. The average cleaning person charges \$20.00 to \$25.00 per hour. Therefore, I find the value of the damage or loss, being 15 minutes of cleaning, is approximately \$7.00. Considering cleaning also requires products, I award the Landlord \$10.00.

I acknowledge that the Landlord paid cleaners \$262.50 to clean the rental unit. However, the Landlord has failed to show that the rental unit was left dirty, other than for three small areas. Therefore, the Landlord has only proven she is entitled to a minimal amount for cleaning.

Carpet cleaning

The Tenant agreed to pay the Landlord for carpet cleaning. The Tenant agreed on \$126.40. The carpet cleaning quote shows the cost is \$126.40 plus 5% tax. I am

satisfied the Tenant should pay the full \$132.72 as this is a minimal increase from what was discussed, and the Tenant agreed she owes the Landlord for carpet cleaning.

Loss of rent

The request for loss of rent is based on the Landlord's position that the Tenant left the rental unit unlivable and the new tenants who attended April 01, 2020 did not want to rent the unit.

I am not satisfied the Landlord is entitled to loss of rent for the following reasons.

The evidence does not support that the rental unit was left unlivable and in fact shows the rental unit was left in a reasonable condition for the most part. The breaches found above are minimal on the scale of seriousness. The evidence does not support that there was extensive damage to the rental unit. I do not accept that new tenants could not have moved into the rental unit based on the condition of it. Nor do I accept that it would be unreasonable to expect new tenants to move into the rental unit despite the minimal issues.

Further, I am not satisfied in the absence of some evidence from the new tenants who attended the rental unit on April 01, 2020 that they chose not to rent the unit based solely on the condition of the rental unit. This seems unlikely given the minimal issues in the rental unit. It is not uncommon for new tenants to have to do some cleaning to bring a rental unit up to their own standards. It also seems unusual that new tenants would decline to rent a unit based on it requiring minimal repairs.

Here, the breach alleged is that the Tenant left the rental unit in a poor condition. Although I have accepted that the rental unit required minimal cleaning and repairs, and that the Tenant did breach section 37 of the *Act* in relation to some issues, I do not accept that the breaches found resulted in loss of rent for two months. I find this because of the minimal nature of the issues.

Further, the Landlord has not submitted sufficient documentary evidence to show what efforts she made to re-rent the unit. In the absence of compelling evidence that the Landlord took all reasonable steps to re-rent the unit and could not because of the minimal issues noted above, I am not satisfied the Landlord is entitled to compensation for loss of rent.

Summary

The Landlord is entitled to the following compensation:

Item	Description	Amount
1	Repairs	\$300.00
2	Cleaning	\$10.00
3	Carpet cleaning	\$132.72
4	Loss of rent	-
	TOTAL	\$442.72

The Landlord is entitled to \$442.72 and is issued a Monetary Order for this amount pursuant to section 67 of the *Act*.

Conclusion

The Landlord is entitled to \$442.72 and is issued a Monetary Order for this amount. This Order must be served on the Tenant. If the Tenant fails to comply with this Order, it 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 *Act*.

Dated: June 25, 2020

 Residential Tenancy Branch