



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL, MNDCL, FFL

Introduction

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

- a Monetary Order for damage or compensation, pursuant to section 67;
- a Monetary Order for damage, pursuant to section 67; and
- authorization to recover the filing fee from the tenant, pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 1:46 p.m. in order to enable the tenant to call into this teleconference hearing scheduled for 1:30 p.m. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord testified that the tenant was personally served with his application for dispute resolution by a process server on February 5, 2020. The landlord entered into evidence a proof of service document signed by the process server confirming same. I find that the tenant was served in accordance with section 89 of the *Act*.

Issues to be Decided

1. Is the landlord entitled to a Monetary Order for damage or compensation, pursuant to section 67 of the *Act*?

2. Is the landlord entitled to a Monetary Order for damage, pursuant to section 67 of the *Act*?
3. Is the landlord entitled to recover the filing fee from the tenant, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the landlord, not all details of his submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The landlord provided the following undisputed testimony. This tenancy began on May 1, 2018 and ended on October 25, 2019. The landlord was granted an Order of Possession from the Residential Tenancy Branch pursuant to a 10 Day Notice to End Tenancy for Unpaid rent in a decision dated October 22, 2019. The file number for the previous file is located on the cover page of this decision. Monthly rent in the amount of \$1,486.25 was payable on the first day of each month. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The landlord testified that a move in condition inspection report was completed with the tenant in May of 2018 and a move out condition inspection report was completed with the tenant on October 26, 2019. The move in and out condition inspection reports, signed by both parties, were entered into evidence. The move in and move out condition inspection reports state that the tenant agrees with the contents of the reports.

The landlord testified that the following damages arose from this tenancy:

Item	Amount
Clean carpets	\$152.78
Replace kitchen cabinet	\$478.61
Replace door mat	\$10.77
Cleaning	\$265.00
Dump fee	\$25.00
Repair drywall	\$265.00
November 2019's rent	\$1,486.25
Total	\$2,683.41

Clean carpets

The landlord testified that the tenant did not clean the carpets at the end of the tenancy and that they were dirty. The move in condition inspection report states that the carpets in the subject rental property were in good condition. The move out condition inspection report states that the carpets are dirty.

The landlord entered into evidence a receipt for a carpet cleaner rental in the amount of \$44.78. The landlord testified that it took him four hours to clean the carpets and is seeking compensation for his time a rate of \$25.00 per hour for a total of \$100.00.

The landlord testified that he used approximately \$8.00 of carpet cleaner that he had purchased prior to the tenant moving out.

Replace kitchen cabinet

The landlord testified that the tenant damaged the kitchen cabinets which required replacing. The landlord testified that the cabinets were eight years old at the time the tenant moved out.

The move in condition inspection report states that the kitchen cabinets in the subject rental property were in good condition. The move out condition inspection report states that the kitchen cabinets are damaged.

The landlord entered into evidence a receipt for new cabinets in the about of \$198.61. The landlord testified that it took him seven hours to replace the cabinets. The landlord is seeking compensation for is time a rate of \$40.00 per hour for a total of \$280.00.

Replace door mat

The landlord testified that the tenant took the door mat with him when he moved out. The landlord entered into evidence a receipt for a new door mat in the amount of \$10.77.

The landlord testified that the door mat was four years old at the time the tenant moved out.

Cleaning

The landlord testified that the tenant did not clean the subject rental property when he moved out. Photographs showing same were entered into evidence. The move in condition inspection report states that the subject rental property was in good condition at the start of the tenancy. The move out condition inspection report states that the subject rental property was dirty at the end of the tenancy.

The landlord testified that it took him 10 hours to clean the subject rental property. The landlord is seeking compensation for his time at a rate of \$25.00 per hour for a total of \$250.00.

The landlord testified that he used approximately \$15.00 worth of cleaning supplies he purchased prior to the tenant moving out.

Dump fee

The landlord testified that the tenant left two bags of garbage under the deck of the subject rental property and piles of garbage and recycling around the full garbage bins. The landlord testified that he hauled all the garbage to the dump which cost him \$25.00. The landlord testified that he paid in cash and did not keep the receipt. The landlord entered into evidence photographs of the garbage left at the subject rental property by the tenant.

Repair drywall

The landlord testified that the tenant's cat damaged the drywall under all of the windowsills at the subject rental property. The landlord testified that when the cat jumped onto the windowsill, the cat's back claws dug into the drywall. Photographs of same were entered into evidence.

The landlord testified that the tenant also left large holes in the walls. Pictures of same were entered into evidence.

The move in condition inspection report states that the walls at the subject rental property were in good condition at the start of the tenancy. The move out condition inspection report states that the walls of the subject rental property were damaged at

the end of the tenancy.

The landlord testified that it took him six hours to repair the drywall at the subject rental property. The landlord is seeking compensation for his time at a rate of \$40.00 per hour for a total of \$240.00.

The landlord testified that he used \$25.00 worth of drywall repair supplies to repair the drywall that he purchased prior to the tenant moving out.

November 2019's rent

The landlord testified that the tenant did not provide him with a notice to end the tenancy and the subject rental property was not in a rentable state when the tenant vacated. The landlord testified that the subject rental property was cleaned, repaired and ready for renting as of November 2, 2019 when he started advertising it for rent. The landlord testified that he was not able to rent the subject rental property for November 2019.

Analysis

Section 67 of the *Act* states:

Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Policy Guideline 16 states that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To be successful in a monetary claim, the tenant must establish all four of the following points:

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

damage or loss.

Failure to prove one of the above points means the claim fails.

Residential Tenancy Policy Guideline 16 states that nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

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

Clean carpets

Residential Tenancy Policy Guideline #1 states that at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year.

Based on the landlord's testimony and the condition inspection reports, I find that the tenant failed to clean the carpets at the end of the tenancy, contrary to section 37(2)(a) of the *Act* and Policy Guideline #3. I find that the landlord suffered a quantifiable loss as a result and acted reasonably to minimize that loss.

I find that the landlord is entitled to a monetary award in the amount of \$44.78 for the carpet cleaner rental and \$100.00 for his labour.

While the landlord did not prove the value of the carpet cleaner used to clean the carpets, I find that the landlord has proved that he suffered a loss due to the tenant's breach of the *Act*. I therefore award the landlord \$8.00 in nominal damages for carpet cleaner.

Replace kitchen cabinet

Based on the landlord's testimony and the condition inspection reports, I find that the tenant damaged the kitchen cabinets, contrary to section 37(2)(a) of the *Act*. I find that the landlord suffered a quantifiable loss as a result and acted reasonably to minimize that loss.

Residential Tenancy Guide #40 states:

This guideline is a general guide for determining the useful life of building elements for considering applications for additional rent increases and determining damages which the director has the authority to determine under the Residential Tenancy Act and the Manufactured Home Park Tenancy Act . Useful life is the expected lifetime, or the acceptable period of use, of an item under normal circumstances.

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.

Policy Guideline #40 states that the useful life for cabinets is 25 years (300 months). Therefore, at the time the tenant moved out, there was approximately 204 months of useful life that should have been left for the cabinets of this unit. I find that since new cabinets were required after only 96 months, the tenant is required to pay according to the following calculations:

$\$478.61$ (cost of cabinets and labour) / 300 months (useful life of cabinets) =
 $\$1.59$ (monthly cost)

$\$1.59$ (monthly cost) * 204 months (expected useful life of cabinets after tenant moved out) = **$\$324.36$**

Replace door mat

Based on the landlord's undisputed testimony, I find that the tenant removed the landlord's door mat from the subject rental property at the end of the tenancy, contrary to section 37(2)(a) of the *Act*.

Residential Tenancy Policy Guideline #40 states:

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.

I find that the door mat has the same useful life as furniture which has a useful life of 10 years (120 months). Therefore, at the time the tenant moved out, there was approximately 72 months of useful life that should have been left for the door mat of this unit. I find that since a new door mat was required after only 48 months, the tenant is required to pay according to the following calculations:

$\$10.77 \text{ (cost of door mat)} / 120 \text{ months (useful life of cabinets)} = \$0.09 \text{ (monthly cost)}$

$\$0.09 \text{ (monthly cost)} * 72 \text{ months (expected useful life of cabinets after tenant moved out)} = \mathbf{\$6.48}$

Cleaning

Based on the landlord's testimony and the condition inspection reports, I find that the tenant failed to clean the subject rental property, contrary to section 37(2)(a) of the *Act*. I find that the landlord suffered a quantifiable loss as a result and acted reasonably to minimize that loss.

I find that the landlord is entitled to a monetary award in the amount of \$250.00 for cleaning the subject rental property.

While the landlord did not prove the value of the cleaning supplies used, I find that the landlord has proved that he suffered a loss due to the tenant's breach of the *Act*. I therefore award the landlord \$15.00 in nominal damages for cleaning supplies.

Dump fee

Based on the landlord's testimony, the photographic evidence and the condition inspection reports, I find that the tenant left garbage at the subject rental property contrary to section 37(2)(a) of the *Act*. I find that the landlord suffered a loss as a result of the tenant's breach, but the landlord has not proved the value of that loss as no receipt was entered into evidence. Nonetheless, I find that the landlord is entitled to nominal damages in the amount of \$25.00 for his loss.

Repair drywall

Based on the landlord's testimony, the photographic evidence and the condition inspection reports, I find that the tenant damaged the drywall at the subject rental property contrary to section 37(2)(a) of the *Act*. I find that the landlord suffered a quantifiable loss as a result and acted reasonably to minimize that loss.

I find that the landlord is entitled to compensation in the amount of \$240.00 for his time to repair the drywall.

I find that the landlord did not provide a receipt for the supplies used to repair the drywall but has proved that he suffered a loss. I find that the landlord is entitled to nominal damages for drywall repair supplies in the amount of \$25.00.

November 2019's rent

Section 45(1) of the *Act* states that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that:

- (a) is not earlier than one month after the date the landlord receives the notice, and
- (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

I accept the landlord's undisputed testimony that the tenant did not provide him with a notice to end tenancy.

Residential Tenancy Branch Policy Guideline #3 states:

In a month to month tenancy, if the tenancy is ended by the landlord for non-payment of rent, the landlord may recover any loss of rent suffered for the next month as a notice given by the tenant during the month would not end the tenancy until the end of the subsequent month.

Pursuant to the above, I find that the landlord is entitled to recover November 2019's rent in the amount of \$1,486.25.

Filing Fee

As the landlord was successful in his application for dispute resolution, I find that he is entitled to recover the \$100.00 filing fee from the tenant, pursuant to section 72 of the *Act*.

Conclusion

I issue a Monetary Order to the landlord under the following terms:

Item	Amount
Clean carpets	\$152.78
Replace kitchen cabinet	\$324.36
Replace door mat	\$6.48
Cleaning	\$265.00
Dump fee	\$25.00
Repair drywall	\$265.00
November 2019's rent	\$1,486.25
Filing fee	\$100.00
Total	\$2,624.87

The landlord is provided with this Order in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order 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 *Residential Tenancy Act*.

Dated: June 25, 2020

Residential Tenancy Branch