



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes For the landlord: MNDCL-S, MNDL, FFL
For the tenant: MNDCT, MNSD, FFT

Introduction

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

- a monetary order for compensation for damage and loss under the Act, the Regulation or tenancy agreement pursuant to section 67 of the Act;
- authorization to retain the tenant's security deposit under Section 38 of the Act; and
- an authorization to recover the filing fee for this application, pursuant to section 72.

This hearing also dealt with the tenant's application pursuant to the *Act* for:

- a monetary order for compensation for damage and loss under the Act, the Regulation or tenancy agreement pursuant to section 67 of the Act;
- an order for the landlord to return the security deposit pursuant to section 38; and
- an authorization to recover the filing fee for this application, pursuant to section 72.

Both parties attended the hearing. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

As both parties were present service was confirmed. The parties each confirmed receipt of the application and evidence (the materials). Based on the testimonies I find that each party was served with the respective materials in accordance with sections 88 and 89 of the *Act*.

Issues to be Decided

Is the landlord entitled to:

1. a monetary award for compensation for damages caused by the tenant?
2. an authorization to recover the filing fee for this application?

Is the tenant entitled to:

1. an order for the landlord to return double the security deposit?
2. an authorization to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending parties, not all details of the submissions and arguments are reproduced here. The relevant and important aspects of the claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is their obligation to present the evidence to substantiate their applications.

Both parties agreed the periodic tenancy started on August 01, 2018 and ended on February 29, 2020. Monthly rent was \$2,050.00, due on the last day of the prior month. At the outset of the tenancy the landlord collected a security deposit of \$1,000.00 and still holds it in trust. A tenancy agreement was submitted into evidence.

Both parties also agreed the forwarding address was provided in writing to the landlord on February 29, 2020. The landlord applied for dispute resolution on March 11, 2020.

A condition inspection report (the report) was submitted into evidence. Both parties agreed they conducted the move-out condition inspection together and signed it on February 29, 2020.

With regard to the move-in condition inspection report, the landlord affirmed she gave a blank copy of the report to the tenant to complete it when the tenancy started. The tenant affirmed she did not receive a copy when she moved in.

The report indicates at the end of the tenancy there were several screw holes throughout the rental unit and the walls were patched. The report states: "End of

tenancy: Patches on wall + dirty". The tenant wrote: "Patches on walls are normal wear and tear".

The landlord affirmed the rental unit was completely painted six months prior to the start of this tenancy and the rental unit's condition was great when this tenancy started. The tenant affirmed there were no screw holes or patches on the walls when the tenancy started.

Both parties agreed they were aware the tenant was taking a fine art course in a local college during the entire tenancy.

The tenant affirmed the landlord said she would paint the rental unit upon the end of the tenancy and there was no prohibition of hanging frames or pictures on the walls using screw holes. The landlord affirmed she did not tell the tenant she would paint the rental unit when this tenancy ends.

The tenant voluntarily served a notice to end monthly tenancy on January 17, 2020 (submitted into evidence) because the landlord informed her she wished to sell the rental unit. The tenant affirmed she spent \$636.59 for the rental of a van to move boxes during one week and \$897.75 for professional movers to move her furniture to a new address in the same city (receipts submitted into evidence). The tenant applied to be reimbursed for these expenses.

The landlord affirmed upon the end of the tenancy there were 77 screw holes and several patches on the walls of the 1,500 square feet two-bedroom rental unit. The landlord submitted into evidence several photographs showing the screw holes and patches. The tenant affirmed she missed some screw holes but removed others and patched the walls.

The landlord also affirmed the tenant painted some of the walls with a glossy white color. The landlord did not authorize the tenant to paint the rental unit. There was a black substance on the walls that could not be removed. The tenant affirmed she did not paint the rental unit and the tenant is not aware what is the black substance on the walls.

The landlord submitted into evidence two receipts for paint in the amount of \$171.26 and \$210.20 and an invoice for a painter in the amount of \$1,084.12. The invoice states: "Contract labour to sand 70-80 screw/nail holes that were over filled by past tenant, also to remove screws, fill & sand left in walls by past tenant, paint 2nd bedroom back to

original colour as room was left painted white by past tenant. Paint to be supplied by owner". The painting service lasted five days and it started immediately after the tenant moved out. The landlord affirmed the painter was the cheapest contractor she could find.

The tenant affirmed the hardwood floor had no damages when the tenancy ended and the report does not indicate any damage to the hardwood floor.

The landlord affirmed the hardwood floor was in good condition when the tenancy started and when it finished there was a black substance damaging the hardwood floor on the kitchen, living and dining room area. The landlord paid a contractor \$590.00 to clean the floor but he was unable to remove the substance. The landlord then contacted the insurance company, which replaced it. The landlord paid the insurance deductible of \$2,000.00.

The landlord affirmed the tenant denied access to the rental unit and because of this the landlord could not have the carpet replaced for 16 days after the tenancy ended. As a consequence of the tenant's refusal of allowing the landlord to access the rental unit during the tenancy to allow the carpet replacement the rental unit could not be advertised for sale during 16 days. The landlord is claiming for \$490.00 for loss of rental income.

The tenant affirmed she never denied the landlord entry to the rental unit.

Both parties submitted into evidence monetary order worksheets. The landlord's total claim (for painting, loss of rental income and floor damage) is \$4,545.64 and the tenant's total claim (for the return of double the security deposit and moving expenses) is \$3,534.34.

Analysis

Sections 7 and 67 of the Act state:

Liability for not complying with this Act or a tenancy agreement

7 (1) 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.

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

Director's orders: compensation for damage or loss

67 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.

Residential Tenancy Branch Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. 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.

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Landlord's claim for painting

Section 37(2) of the Act states:

Leaving the rental unit at the end of a tenancy

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[...]

(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

Residential Tenancy Branch Policy Guideline 1 states:

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.

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.

The photographs submitted into evidence by the landlord show there was a large amount of screw holes throughout the rental unit. The tenant admitted she is responsible for the screw holes.

I find that 77 screw holes in a two-bedroom 1,500 square foot rental unit is an excessive number.

The parties offered conflicting verbal testimony regarding the painting of some walls. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

In this case, the landlord's testimony about the painting of some walls with a glossy white color and the photographs provided was more plausible than the tenant's testimony. I therefore accept the landlord's version that some walls were painted by the tenant.

Residential Tenancy Branch Policy Guideline 03 sets standards for mitigating losses of tenants and landlords. It states:

The damages awarded are an amount sufficient to put the landlord in the same position as if the tenant had not breached the agreement.

I find the landlord mitigated her losses by hiring the cheapest contractor she found to paint the rental unit. As such, I award the landlord a compensation in the amount of \$1,465.58 (171.26+210.2+1,084.12).

Landlord's claim for damage to the hardwood floor

The parties offered conflicting verbal testimony regarding the condition of the hardwood floor in the kitchen, living and dining room. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

Regulation 21 states:

Evidentiary weight of a condition inspection report

21 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.

In this case, the landlord did not provide any extra evidence about the condition of the hardwood floor in the living and dining room. The photographs submitted into evidence do not show the hardwood floor in the living and dining room. Furthermore, the report does not mention damages to the hardwood floor in the kitchen, living and dining room.

As such, I find the landlord did not prove, on a balance of probabilities, the tenant is responsible for damages to the hardwood floor. Thus, I dismiss the landlord's application for a monetary award for damages to the hardwood floor.

Landlord's claim of loss of rental income

The parties once again offered conflicting verbal testimony and the landlord failed to provide extra evidence about the denial of access to the landlord during the tenancy to the rental unit.

Thus, I find the landlord did not prove, on a balance of probabilities, the tenant denied entry to the rental unit.

Furthermore, the landlord affirmed she has the rental unit on the market for sale and the landlord did not explain how the 16-day delay in the carpet replacement stopped her from listing the rental unit in this period.

I dismiss the landlord's application for a monetary award for loss of rental income.

Tenant's claim for moving expenses

The tenant is asking for compensation for moving expenses, although she voluntarily served a notice to end tenancy.

The moving expenses are not related to the landlord not complying with the Act. Thus, I dismiss the tenant's application for a monetary award for moving expenses.

Tenant's claim for the return of the security deposit

Based on the parties undisputed testimony, I find the landlord received the tenant's forwarding address on February 29, 2020 and applied for dispute resolution on March 11, 2020, within the timeframe of Section 38(1)(d) of the Act.

As the landlord was partially successful in his application and is entitled to a compensation in an amount greater than the deposit, the tenant is not entitled to an order for the return of the deposits. Thus, I dismiss the tenant's application for the return of the security deposit.

Filing fee and set-off

As the landlord was partially successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application.

The tenant must bear the cost of his filing fee, as the tenant was not successful in his application.

Residential Tenancy Branch Policy Guideline 17 states:

The Residential Tenancy Act provides that where an arbitrator orders a party to pay any monetary amount or to bear all or any part of the cost of the application fee, the monetary amount or cost awarded to a landlord may be deducted from the security deposit held by the landlord and the monetary amount or cost awarded to a tenant may be deducted from any rent due to the landlord.

As such, the landlord is authorized to retain the \$1,000.00 security damage deposit to offset the monetary award for losses incurred due to the tenant's non-compliance with the Act.

In summary:

Painting	\$1,465.58
Filing fee	\$100.00
Subtotal	\$1,565.58
Minus balance of the deposit	-\$1,000.00
Total monetary award	\$565.58

Conclusion

Pursuant to section 38 of the Act, I authorize the landlord to retain the tenant's security deposit of \$1,000.00 in partial satisfaction of losses incurred and grant the landlord a monetary order pursuant to sections 67 and 72 in the amount of **\$565.58**.

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: July 10, 2020

Residential Tenancy Branch