



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes For the landlord: MNDL-S, FFL
For the tenant: MNSDB-DR

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;
- an 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 an order for the landlord to return the security deposit, pursuant to section 38 of the Act.

Both parties attended the hearing. The landlord was represented by agent AO. Witness DL attended for the tenant. 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 retain the tenant's security and pet damage deposit?
3. an authorization to recover the filing fee for this application?

Is the tenant entitled to an order for the landlord to return double the security and pet damage deposits?

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.

The tenant stated the tenancy started on November 15, 2018 and the landlord affirmed it was on December 01, 2018. Both parties agreed the periodic tenancy ended on March 30, 2020. Monthly rent was \$1,800.00, due on the first day of the month. At the outset of the tenancy the landlord collected a security deposit of \$850.00 and a pet damage deposit of \$850.00 (the deposits). The landlord still holds the deposits in trust. A tenancy agreement was submitted into evidence.

Both parties also agreed the forwarding address was provided in writing to the landlord on April 02, 2020. The tenant applied for dispute resolution on April 12, 2020 and the landlord applied on April 15, 2020.

A condition inspection report (the report) was submitted into evidence. Both parties agreed they conducted the move-in condition inspection together and signed it on December 01, 2018. The parties also agreed the move-out inspection did not happen because the tenant was in quarantine due to Covid19. A representative of the tenant attended the rental unit on March 30, 2020 and immediately after the landlord inspected the rental unit. The tenant's representative did not sign the move-out inspection.

The landlord affirmed the carpet was clean when the tenancy started and dirty when the tenancy ended. The landlord paid \$252.00 on April 02, 2020 to have the carpet professionally cleaned.

During the hearing the tenant agreed to pay for the carpet cleaning.

The landlord argued the carpet in the den had to be replaced because after it was professionally cleaned there was a strong smell of dog urine and some stains could not be removed. The cleaning invoice dated April 02, 2020 indicates:

- *Many unknown stains may not come out
- * Dog urine may not be able to remove

The report indicates when the tenancy started the carpet was damaged ("tile cracked"). The landlord said the carpet was 11 years old when the tenancy ended. An invoice for replacing the carpet was submitted into evidence. The carpet replacement service was \$759.83. A service fee of 10% in the amount of \$75.00 was also paid. The landlord spent a total amount of \$853.58 to replace the carpet in the den.

The tenant affirmed her dog did not urinate on the floor, as the dog is old and trained.

The landlord stated when the tenancy started there were small nail holes in the rental unit, but no screw holes and when the tenancy ended there were several brackets and large screw holes. The interior of the rental unit was painted in November 2016. The landlord paid \$1,260.00 to have the walls repaired in April 2020. This amount was not for painting but to repair the screw holes and brackets left by the tenants. Photographs were submitted into evidence. A quote dated April 15, 2020 indicates:

- Repair to holes in drywall: \$400
- Painting (includes prepping drywall) \$1200
- Total \$1,600

The tenant refuted any damage to the walls and stated all screw holes and brackets were in the rental unit when the tenancy started. The report indicates the walls in the kitchen were damaged when the tenancy started. All the other rooms had walls in good condition.

The landlord provided testimony that during the tenancy there was a break-in and the landlord paid \$286.00 to replace the rental unit's lock. The tenant agreed to pay this amount to the landlord, as long as she returns the security deposit.

The landlord affirmed the mailbox was vandalized during the tenancy and the landlord paid \$109.73 to have the mailbox replaced. The tenant stated the mailbox was vandalized after the tenancy ended. When the tenancy ended the mailbox was in perfect condition. The report does not indicate any damage to the mailbox.

The landlord argued the rental unit was clean when the tenancy started and dirty when the tenancy ended. The landlord provided photographs showing the stove, blinds and

inside the kitchen cupboards dirty. An invoice dated April 24, 2020 for 3 cleaners for 3.5 hours, in the total amount of \$275.63 was submitted into evidence.

The tenant disputed this testimony and stated she paid \$800.00 to have the unit cleaned before the tenancy ended. However, the tenant did not inspect the unit after it was cleaned. The stove was not clean when the tenancy started. The report indicates the stove and oven were clean when the tenancy started. The tenant stated the rental unit was not clean when the tenancy started, the carpet had stains and there were scratches all over the floor. The tenant also affirmed she agreed and signed the report when the tenancy started, but only later she was able to do a proper assessment of the rental unit. The tenant submitted photographs of the rental unit when the tenancy ended.

The tenant affirmed there was a flooding in the rental unit prior to the tenancy. The landlord disputed this testimony.

The landlord submitted a monetary order worksheet (RTB form 37) listing 6 claims totalling \$3,021.94. The tenant submitted a monetary order worksheet (RTB form 40) claiming for the return of the deposits.

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 carpet cleaning

The tenant agreed to pay \$252.00 for carpet cleaning. As such, I award the landlord a compensation in the amount of \$252.00 for carpet cleaning.

Landlord's claim for carpet replacement

Section 37(2) of the Act states:

Leaving the rental unit at the end of a tenancy

37(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 01 states:

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

put in the Residential Tenancy Act.

[...]

CARPETS

1. At the beginning of the tenancy the landlord is expected to provide the tenant with clean carpets in a reasonable state of repair.

2. The landlord is not expected to clean carpets during a tenancy, unless something unusual happens, like a water leak or flooding, which is not caused by the tenant.

3. The tenant is responsible for periodic cleaning of the carpets to maintain reasonable standards of cleanliness. Generally, 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. Where the tenant has deliberately or carelessly stained the carpet he or she will be held responsible for cleaning the carpet at the end of the tenancy regardless of the length of tenancy.

The tenant may be expected to steam clean or shampoo the carpets at the end of a tenancy, regardless of the length of tenancy, if he or she, or another occupant, has had pets which were not caged or if he or she smoked in the premises.

(emphasis added)

Based on the landlord's testimony, I find the carpet was 11 years old when the tenancy ended.

Residential Tenancy Branch Policy Guideline 40 indicates the useful life of a carpet is 10 years. The carpet was 11 years when the tenancy ended and a new carpet was installed as a consequence of the damages caused by the tenant to the carpet.

Residential Tenancy Branch Policy Guideline 05 states:

Betterment

The purpose of compensation is to restore the landlord or tenant to a position as if the damage or loss had not occurred. Sometimes repairing damage or replacing damaged items puts the landlord or tenant suffering damage or loss in a better position than they were before the damage or loss occurred.

This may happen as a matter of course – for example if arborite countertops from the 1960s must be replaced because of damage, this almost always requires installing brand new countertops. Similarly, if a circuit that was wired in the 1940s needs to be replaced, it should be brought up to code. The result is that the property is made better than it was before the damage or loss occurred.

See Policy Guideline 40: Useful Life of Building Elements for guidance on how this type of situation may be dealt with.

Sometimes damaged items are replaced with more extravagant, expensive or luxurious ones by choice. Some examples are:

- Replacing a damaged laminate floor with hardwood floors
- Replacing a damaged linoleum floor with marble
- Replacing damaged arborite countertops with granite
- Replacing a \$300 futon with a \$3,000 bed

A person can replace damaged items with more expensive ones if they choose, but not at the expense of the party responsible for the damage. The person responsible for the damage is only responsible for compensating their landlord or tenant in an amount that covers the loss. The extra cost of the more extravagant, expensive or luxurious item is not the responsibility of the person who caused the damage.

Considering the carpet was past its useful life when the tenancy ended, I dismiss the landlord's application for a monetary award for compensation.

However, based on the landlord's cohesive testimony and the carpet cleaning invoice dated April 02, 2020, I find the tenants breached section 37 of the Act and are responsible for damages to the den's carpet.

Residential Tenancy Branch Policy Guideline 16 states:

An arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward:

"Nominal damages" are a minimal award. 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.

In accordance with sections 37 and 67 of the Act and Residential Tenancy Branch Policy Guideline 16, I award the landlord nominal damages in the amount of \$200.00.

Landlord's claim for wall damage

The tenant affirmed the rental unit had screw holes and brackets on the wall when the tenancy started. However, the report indicates when the tenancy started there were only small marks in the walls and trim of the stairwell and hall.

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.

I find the testimony of the tenant does not outweigh the evidentiary value of the signed condition inspection report.

The landlord did not provide an invoice for the amount of \$1,260.00 for wall damage repairs. Based on the photographs submitted by the landlord, I find it reasonable to award the landlord \$400.00 for the wall damage repairs.

As such, I award the landlord a compensation in the amount of \$400.00 for wall damage repairs.

Landlord's claim for lock replacement

The tenant agreed to pay \$286.00 for the rental unit's lock replacement. Thus, I grant the landlord a compensation in the amount of \$286.00 for the rental unit's lock replacement.

Landlord's claim for mail box lock replacement

The parties offered conflicting verbal testimony regarding when the mailbox was vandalized. 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 did not offer any documentary evidence or call any witness to prove the mailbox was vandalized during the tenancy. Furthermore, the report does not indicate the condition of the mailbox.

As such, I dismiss the landlord's application for compensation for the mail box lock replacement.

Landlord's claim for cleaning

Residential Tenancy Branch Policy Guideline 1 states:

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.

Both parties submitted photographs indicating the rental unit's cleaning condition when the tenancy ended. I find the photographs submitted by the landlord show with more details the rental unit's cleaning conditions when the tenancy ended.

The tenant's testimony regarding the rental unit's cleaning conditions when the tenancy ended was not convincing, as the tenant stated she did not inspect the rental unit after the cleaners she hired completed their service.

Based on the landlord's photographs, the testimony provided and the invoice dated April 24, 2020, I find the rental unit was not reasonably clean when the tenancy ended and the landlord was required to undertake extensive cleaning at the end of the tenancy.

Thus, I award the landlord \$275.63 in compensation for this loss.

Landlord's filing fee and summary

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.

In summary, the landlord is entitled to:

Expense	\$
Carpet cleaning	252.00
Nominal damages for carpet replacement	200.00
Wall damage	400.00
Lock replacement	286.00
Cleaning	275.63
Sub-total	1,413.00
Filing fee	100.00
Total	1,513.63

Tenant's claim for return of the deposits

Based on the parties undisputed testimony offered by both parties, I find the landlord received the tenant's forwarding address on April 02, 2020 and applied for dispute resolution on April 15, 2020, within the timeframe of section 38(1)(d) of the Act.

As the landlord was partially successful in her application and is entitled to a compensation in an amount shorter than the deposits, the tenant is only entitled to the return of the balance of the deposits.

Set-off

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 amount of \$1,513.63 from the deposits to offset the monetary award for losses incurred due to the tenant's non-compliance with the Act. The landlord must return the balance of \$186.37.

In summary:

Landlord's monetary compensation	\$1,513.63
Deposits	\$1,700.00
Tenant's monetary award	\$186.37

Conclusion

Pursuant to sections 38, 67 and 72 of the Act, I authorize the landlord to retain \$1,513.63 from the tenant's deposits in total satisfaction of losses incurred and grant the tenant a monetary award pursuant to sections 38 and 67 of the Act in the amount of **\$186.37**.

The tenant is provided with this order in the above terms and the landlord must be served with this order as soon as possible. Should the landlord 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: August 17, 2020