



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Parkview Apartments Inc. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCL-S, 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;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee from the tenant, pursuant to section 72.

The tenant, the tenant's advocate and the landlord's agent attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties agreed that the landlord served the tenant via registered mail. The landlord entered into evidence a Canada Post tracking receipt dated June 24, 2020 to confirm the above mailing. 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 retain the tenant's security deposit, pursuant to section 38 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 both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on December 1, 2017 and ended on October 31, 2019. Monthly rent in the amount of \$945.00 was payable on the first day of each month. A security deposit of \$462.00 was paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The tenant's advocate testified that the tenant sent the landlord a letter via regular mail on June 16, 2020 which contained her forwarding address. The landlord's agent testified that this letter was received on June 18, 2020. The landlord filed this application for dispute resolution on June 23, 2020, five days after receiving the tenant's forwarding address in writing.

The landlord's agent testified that an agent of the landlord and the tenant completed a move in condition inspection report on November 30, 2017 and it was signed by both parties. The tenant testified that she could not recall if she completed the move in condition inspection report with an agent of the landlord but did not dispute that the signature on the move in condition inspection report was hers.

The tenant testified that she tried to arrange a time to complete the move out condition inspection report but the landlord did not get back to her. The tenant testified that the landlord never asked her to complete the move out inspection report.

The landlord's agent testified that she did not know if the tenant was provided with two opportunities, the last in writing, to complete the move out condition inspection report. The landlord's agent testified that the move out condition inspection report was completed without the tenant. The move in and out condition inspection reports were entered into evidence.

The tenant's advocate submitted that the landlord's right to retain the tenant's security deposit was extinguished for failure to provide the required opportunities for inspection, pursuant to sections 35 and 36 of the *Act*.

The landlord's agent testified that the following damages arose out of this tenancy:

Damages	Amount
Carpet	\$800.00
Paint	\$400.00
Kitchen counter	\$400.00
Window	\$112.20
Rent	\$25.00
Total	\$1,737.20

Carpet

The landlord's agent testified that the carpet in the subject rental property was new and in good condition at the beginning of the tenancy and required replacing at the end of the tenancy due to the stains and burn marks left by the tenant. Photographs of same were entered into evidence. The move in condition inspection report states that the carpet in the subject rental property was new and in good condition at the start of the tenancy and stained and burned at the end of the tenancy. A receipt for new carpet in the amount of \$800.00 was entered into evidence.

The tenant testified that she burned the carpet in the living room from cigarettes but that the other rooms did not have burns and that only the living room carpet needed to be replaced. The landlord testified that there were burn marks in all the rooms and the carpet in the entire property required replacement.

Paint

The landlord's agent testified that the walls at the subject rental property were in good condition at the beginning of this tenancy and required repainting at the end of this tenancy. The landlord's agent testified that she did not know the last time the walls were painted prior to the start of this tenancy and did not know why the walls required repainting at the end of this tenancy.

The move in condition inspection report states that the walls and trim of the subject rental property were in good condition at the start of this tenancy. The move out condition inspection report states that the walls were stained with nicotine and dirty at the end of this tenancy. A receipt for painting in the amount of \$400.00 was entered into

evidence.

The tenant testified that she washed the walls at the end of the tenancy and that they did not require re-painting.

Kitchen counter

The landlord testified that the kitchen countertop at the subject rental property was in good condition at the start of the tenancy and was warped from heat damage at the end of the tenancy. The move in condition inspection report states that the kitchen countertop was in good condition at the start of this tenancy. The move out condition inspection report states that the kitchen countertop is damaged and has a heat bubble. A receipt for a new kitchen counter in the amount of \$400.00 was entered into evidence.

The tenant testified that she thought the countertop was wood and put a hot pot on it and that this is likely what caused the bubbling on the countertop.

Window

Both parties agree that during the tenancy the tenant broke a window and promised, in writing, to pay the landlord \$312.20 for its replacement. The tenant made installment payments of \$50.00 per month and paid a total of \$200.00 towards the broken window.

The landlord's testified that the tenant still owes \$212.20. The tenant testified that she told the previous manager that she could not make her payments because she was on disability and he told her not to worry about it. The tenant testified that she thought the manager meant that she didn't have to pay for the rest of the window.

The landlord's agent testified that the manager only meant that the tenant could make the remaining payments at a later date, not that she didn't have to pay the remaining balance.

The landlord testified that she does not know how old the broken window was.

Rent

The landlord testified that in May of 2019 the tenant's rent was \$25.00 short and that the tenant owes \$25.00 in unpaid rent. The tenant's rental ledger was entered into evidence and states same.

The tenant testified that her rent cheque goes directly to a society who pays her rent and she did not know that the May 2019 rent cheque was short by \$25.00.

Invoices

The tenant's advocate submitted that the invoices entered into evidence by the landlord for the carpet, countertop, and painting are all in the identical format and made in June of 2020, following the landlord's receipt of the tenant's forwarding address. The invoices, while dated in June of 2020 all state that the work was done shortly after the tenancy ended. The tenant's advocate submitted that the invoices are more like estimates and that this calls into question the actual cost of the work completed. The tenant's advocate noted that all the figures requested are whole numbers, which is also suspect.

The landlord's agent testified that she prepared the invoices in preparation for this hearing but that all the work was completed by the landlord's in-house contractors and that she confirmed with the contractors the amount paid to them. The landlord's agent testified that she does not pay the contractors tax so that is why the numbers were whole numbers.

Analysis

Condition Inspection Reports

Section 37 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.

Sections 23, 24, 35 and 36 of the *Act* establish the rules whereby joint move-in and joint move-out condition inspections are to be conducted and reports of inspections are to be issued and provided to the tenants. When disputes arise as to the changes in condition

between the start and end of a tenancy, joint move-in condition inspections and inspection reports are very helpful. These requirements are designed to clarify disputes regarding the condition of rental units at the beginning and end of a tenancy.

Based on the testimony of both parties, I find that, on a balance of probabilities, the tenant completed the move in condition inspection report with the landlord and signed the move in condition inspection report.

Where the landlord and the tenant disagree on the move in condition of the rental property and other evidence does not clarify the issue, I rely on the move in condition inspection report as both parties signed it.

Based on the testimony of both parties, I find that the landlord did not provide the tenant with two opportunities, the last in writing, to complete the move out condition inspection report, contrary to section 35 of the *Act*. As the move out condition inspection report was not completed in accordance with the *Act*, I find that it has no weight, and will not be considered in determining the move out condition of the subject rental property.

Section 36(2) of the *Act* states:

Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

(a) does not comply with section 35 (2) [*2 opportunities for inspection*],

(b) having complied with section 35 (2), does not participate on either occasion, or

(c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

I find that the landlord's right to claim against the tenant's security deposit for damage was extinguished under section 36(2) of the *Act*. However, as the landlord also made a claim for unpaid rent, the landlord was permitted under the *Act*, to retain the tenant's security deposit and file a claim against it. Unpaid rent is not damage under section 36(2) of the *Act*.

Monetary Claim

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 landlord 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.

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that 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.

When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails.

Invoices

I accept the landlord's agent's testimony that the invoices entered into evidence are a true recording of the money paid to the in house contractors.

Carpets

Both parties agreed that the tenant burned holes in the carpet in the living room. The

landlord entered into evidence photographs of the damage. I find, on a balance of probabilities, that the tenant left burn marks in other areas of the subject rental property and that the carpets throughout the subject rental property required replacement due to the burn marks. Based on the move in condition inspection report and the landlord's testimony, I find that the carpets were new at the beginning of this tenancy.

Policy Guideline #40 states that the useful life for carpet is 10 years (120 months). Therefore, at the time the tenant moved out, there was approximately 97 months of useful life that should have been left for the carpets of this unit. I find that since the unit required new carpets after only 23 months, the tenant is required to pay according to the following calculations:

$\$800.00 \text{ (cost of carpets)} / 120 \text{ months (useful life of carpet)} = \$6.67 \text{ (monthly cost)}$

$\$6.67 \text{ (monthly cost)} * 97 \text{ months (expected useful life of carpet after tenant moved out)} = \646.99

Paint

I find that the landlord has failed to prove, on a balance of probabilities, that the tenant damaged the walls at the subject rental property or that the walls required repainting at the end of this tenancy. The landlord's claim for the cost of painting is dismissed.

Kitchen counter

Based on the testimony of the both parties, I find that the tenant damaged the countertop in the kitchen.

The landlord did not know how old the kitchen countertop was, as such I cannot complete a useful life calculation and the landlord has not proved, on a balance of probabilities that the countertop had any useful life left. I therefore dismiss the landlord's claim for the cost of the new countertop.

Window

Based on the testimony of the both parties, I find that the tenant broke a window.

The landlord did not know how old the window was, as such I cannot complete a useful life calculation and the landlord has not proved, on a balance of probabilities that the depreciated cost of the window was not already paid by the tenant. I therefore dismiss the landlord's claim for the remaining cost of the window.

Rent

Based on the landlord's agent's testimony and the ledger entered into evidence, I find that the tenant owes the landlord \$25.00 in unpaid rent.

Security Deposit

Section 38 of the *Act* states that within 15 days after the later of:

- (a) the date the tenancy ends, and
 - (b) the date the landlord receives the tenant's forwarding address in writing,
- the landlord must do one of the following:
- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
 - (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

I find that the landlord made an application for dispute resolution claiming against the security and pet damage deposits pursuant to section 38(a) and 38(b) of the *Act*.

Section 72(2) of the *Act* states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit or pet damage deposit due to the tenant. I find that the landlord is entitled to retain the tenant's security deposit in the amount of \$462.00.

As the landlord was successful in their application for dispute resolution, I find that they are 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
Carpet	\$646.99
Rent	\$25.00
Filing fee	\$100.00
Less security deposit	-\$462.00
TOTAL	\$309.99

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: October 16, 2020

Residential Tenancy Branch