



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Lord Nelson Place
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **MNDCL-S, FFL**

Introduction

The words tenant and landlord in this decision have the same meaning as in the *Act*, and the singular of these words includes the plural.

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

- A monetary order for damages or compensation and authorization to retain a security deposit pursuant to sections 38 and 67; and
- Authorization to recover the filing fee for this application from the tenants pursuant to section 72.

Both tenants attended the hearing and were represented by co-tenant, HB ("tenant"). The landlord was represented at the hearing by the resident manager, MS ("landlord"). As both parties were present, service of documents was confirmed. The tenant acknowledged service of the landlord's Application for Dispute Resolution and stated he had no concerns with timely service of documents. The tenant did not provide any documentary evidence for this hearing.

Issue(s) to be Decided

Is the landlord entitled to the damages she seeks?

Background and Evidence

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the tenants' claim and my findings around each are set out below.

A copy of the tenancy agreement was provided as evidence. The month to month tenancy began on November 1, 2018 with rent set at \$1,700.00 per month payable on

the first day of each month. A security deposit of \$850.00 was collected by the landlord which she continues to hold. A condition inspection report was done with the tenants at the commencement of the tenancy.

The landlord testified that the tenant ended the tenancy by giving the landlord a one month notice to end tenancy, effective June 30, 2020. When the tenant moved out, the damage caused by the tenant's smoking was so bad the next set of tenants were forced to postpone their move in until the unit could be cleaned, painted and repaired. The landlord seeks compensation for the damages she testified were sustained to the unit as well rent for the period the rental unit remained vacant and reimbursement of one month's rent to the next set of tenants.

The landlord and the tenant each gave testimony in order of each item in the landlord's monetary order worksheet. Although the landlord gave her testimony during the first half of the hearing and the tenant gave his testimony at the second half, I have recorded each party's respective positions on each item together.

1. [building manager] – painting: \$525.00 + 2. [landlord] – inventory – painting supply: \$82.79

Landlord: The entire apartment smelled of smoke and were yellow from smoke residue. The only way to get rid of the smell and discoloration was by repainting the suite. An invoice for the labour was submitted as well as an invoice for the paint. The landlord seeks only half the amount for the paint as only half the pail was used.

Tenant: in the lease, smoking was allowed. The tenant understood that the unit would be painted after the lease was over, however he doesn't agree that 2 coats would be required. The tenant himself is a painter and he believes 1 coat would have been sufficient. The tenant argues that the unit needed repainting when he originally moved in, but he had to take this unit because he had no other choice. His move in was delayed, but he never sought compensation from the landlord at the beginning of his tenancy.

3. cleaning: \$250.00

Landlord: it took the resident manager 10 hours at \$25.00 per hour to clean the tenant's unit. This is not part of her duties as the resident manager, she charged the owner of the building for her work. The resident manager's invoice to the building owner is provided as evidence, as are photos of the unit taken after the tenant left.

Tenant: He offered the resident manager the option to clean the unit after he left. She refused, saying she had children to look after, so the job was going to go to another

resident of the building. He was left feeling she would give him the job. He doesn't believe it would take 10 hours to clean the place, 4.5 hours would have been sufficient. He acknowledges the kitchen and bath were both immaculate on move in.

4. Carpet Cleaning: \$95.00 + 5. Damaged carpets: \$630.00

Landlord: she tried to clean the carpets instead of replacing it, but that wasn't enough to remove the dark spots in the living room and the second bedroom doorway. Cigarette burns were noted throughout the rental unit by the carpet cleaning company whose invoice was provided. Photos of the carpet stains and burns were also provided. The landlord also provided the invoice for the original carpet installation in 2012. The landlord submits that there life expectancy for the carpet should be 10-12 years and estimates the tenant should compensate her for the remaining life of the carpets, or \$630.00. In written submissions, the landlord states the carpets were in "good condition" when the tenant moved in, however I note the condition inspection report records the condition of the carpets upon move-in as "fair". The landlord testified the carpets were replaced after the tenant moved out, however no invoice for new carpets was provided.

Tenant: when he moved in, the carpets were "thin and stretched". The landlord offered to have the carpets re-stretched, since her husband is a carpet cleaner. This was done incorrectly. The tenant submits that the carpets were already old when he moved in and should have been replaced.

6. Drapes cleaned: \$135.00.

Landlord: the tenancy agreement states that the tenant will pay for professional cleaning of the carpets and drapes at the end of the tenancy. The landlord testified that the invoice for the drape cleaning was provided by herself, as building manager. She took the drapes down to have them washed and re-hung although she did not wash them herself. The landlord believes the owner of the building actually did the washing of the drapes in her "special" drape laundering machine, justifying the "professional cleaning" charged to the tenant. No invoice for professional laundering was provided by the landlord.

Tenant: the drapes were cleaned by his wife 1 month before moving out. They are fully machine washable she laundered them in the building washing machine. They looked fine at the time of move out.

7. electrician: \$45.00

Landlord: When the tenant left, in one of the rooms, there were bare wires hanging where the light fixture was previously attached. An electrician was called in to reinstall a light fixture and his invoice was provided.

Tenant: he took down the original light fixture to install a ceiling fan and couldn't locate the original light fixture when he took down the fan. He acknowledges the light fixture wasn't reinstalled however an electrician didn't need to be called in to put up a new one. He could have done it himself, but he had already moved his tools out, so he was unable to do so.

8. electricity shut off: \$26.01

Landlord: the tenant shut off the electricity when he moved out and it cost the landlord this amount to have it turned back on. The landlord acknowledges there is nothing in the tenancy agreement indicating the tenant should not discontinue the electricity when ending the tenancy.

Tenant: he called BC Hydro to advise them he was moving his service. He never told them to disconnect service to the unit, just asked them to transfer to his new accommodations. He should not be responsible for the landlord reconnecting hydro.

9. replaced tiles: \$210.00

Landlord: the tenant put up safety bars in the brand-new bathroom. The new tenants did not want the bars and the landlord hired a handyman to take out the bars. The installation of the bars caused damage to 4 of the ceramic tiles in the bathroom, so the handyman replaced the tiles at a cost of \$210.00.

Tenant: the tenant paid \$250.00 for the safety bars and he thought the new tenants would appreciate them in the bathroom.

10. Missing toilet seat: \$22.38

Landlord: the toilet seat was missing at the end of the tenancy.

Tenant: he purchased a new toilet seat at the beginning of the tenancy and took it with him at the end of the tenancy. He acknowledges he did not put the original toilet seat back when he moved out. He didn't have an opportunity to replace it before moving out.

11. half months rent: \$875.00 + [new tenants] \$1,590.00

Landlord: After the tenant moved out, the odor of the smoke was so bad and the overall state of the unit was so bad that the next set of tenants refused to take immediate possession. The next set of tenants were allowed to go back to their original rental unit to stay while awaiting the rental unit being cleaned and repainted. Their previous landlord wouldn't allow them to stay for a partial month, so they had to pay another full month's rent at their old place. The landlord seeks to compensate them for the inconvenience with paying their rent at the old place. The landlord testified that the new tenants moved into the rental unit on July 15th, so the landlord seeks compensation for the half month's rent while this rental unit remained vacant from July 1 to July 15.

Tenant: When he first moved in, the state of the rental unit was also very poor. He didn't have the luxury of moving back into a previous rental unit because he was "renovicted" from his previous unit. He couldn't move into this unit until November 22nd, so he should have been compensated by the landlord. He lost 3 weeks of not living in the unit and never complained.

Analysis

Section 7 of the *Act* states: 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.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

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

Rule 6.6 of the Residential Tenancy Rules of Procedure indicate the onus to prove their case is on the person making the claim. The standard of proof is on a balance of probabilities. If the applicant is successful in proving it is more likely than not the facts occurred as claimed, the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; and
4. Steps taken, if any, to mitigate the damage or loss.

I will provide my reasoning for each item in the landlord's monetary order worksheet in order as listed.

1 and 2: Painting and Paint supplies.

The landlord relies on clause 25 of the tenancy agreement referring to smoking in the unit as justification for the painting. It states "*that extra painting cost will be added to tenants that smoke, due to odour and stain to the walls and ceiling made by smoke*".

Residential Tenancy Branch Policy guideline PG-1 states:

Residential Tenancy Agreements must not include terms that contradict the Legislation. For example, the tenant cannot be required as a condition of tenancy to paint the premises or to maintain and repair appliances provided by the landlord. Such a term of the tenancy agreement would not be enforceable. 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 landlord has provided sufficient evidence to satisfy me that the tenants smoked in their unit, causing the rental unit to smell of cigarette smoke. I find it reasonable that the damage caused by the smoke odors required a full repaint of the rental unit at the landlord's expense. I find the invoice provided for painting the unit to be reasonable and I also find the landlord's decision to only charge the tenant for half a pail of paint to be reasonable. Pursuant to section 67 of the *Act*, I award the landlord (\$525.00 + \$82.79 = \$607.79): **\$607.79.**

3. cleaning

Residential Tenancy Branch Policy Guideline PG-1 states:

*the tenant must maintain "reasonable health, cleanliness and sanitary standards" throughout the rental unit or site, and property or park. **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 or Manufactured Home Park Tenancy Act (the Legislation). (emphasis added)*

I have reviewed the photographs provided by the landlord to corroborate the claim for cleaning. I have also considered the tenant's testimony that he offered the resident manager the cleaning job, acknowledging it wasn't cleaned at the end of the tenancy. I find it reasonable that the resident manager took 10 hours to clean the unit, despite the tenant's estimate that it wouldn't take that long. I find \$25.00 per hour to do the work to be a reasonable wage to do this work. I award the landlord **\$250.00** for cleaning the unit, pursuant to section 67 of the *Act*.

4. carpet cleaning

Residential Tenancy Branch Policy Guideline PG-1 states:

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.

This tenancy lasted approximately one and a half years. The tenant did not provide any evidence or testimony to say that he made any attempt to clean the carpets before vacating the rental unit. I award the landlord **\$95.00** for the carpet cleaning.

5. carpet replacement

Policy Guideline PG-40 [useful life of building elements] provides estimated lifespans of building elements. According to the guideline, a carpet has a lifespan of 10 years. The carpets were last replaced in 2012, meaning that the remaining life for the carpets is approximately 2 years. The condition inspection report conducted at the commencement of the tenancy indicates the condition of the carpet was “fair”, not “good” as the landlord states. The tenant testified that they should have been replaced when he first moved in but he had no choice but to accept it since he had no alternative. As the onus is on the landlord to prove that her case, I find that the evidence does not lead me to believe the carpets were in the good condition she says they were at the beginning of this tenant’s tenancy. As such, I dismiss this portion of the landlord’s claim.

6. drape cleaning

The landlord claims for professional cleaning of the drapes stating the tenancy agreement allows her to charge the tenant. Despite this, the landlord testified that she herself took down the drapes and rehung them, acknowledging she is not a professional drape cleaner. She testified she “believes” the actual owner of the building took them home and used her “special” drape cleaning equipment to clean the drapes, however I find this testimony to be merely speculation. The landlord did not provide any invoices from a professional drapery cleaner to corroborate her claim. I find the landlord has not provided sufficient evidence to show me the existence of the damage, or the value of the damage she seeks (points 1 and 3 of the 4 point test) and I dismiss this portion of the landlord’s claim.

7, 9, 10 : electrician, replaced tiles, toilet seat

The tenant acknowledges he took down the light to put up his ceiling fan and didn’t put it back up at the end of his tenancy. Likewise, he put up safety bars and removed the toilet seat in the brand-new bathroom and didn’t return the bathroom to its original state when he left. As section 37 requires the tenant leave the rental unit “undamaged” at the end of the tenancy, I find the landlord has satisfied me the tenant damaged the rental unit and must compensate the landlord for each of the items requested. I award the landlord ($\$45.00 + 210.00 + 22.38 = \277.38) **\$277.38**

8. electricity shut off

The landlord seeks compensation from the tenant for “disconnecting” the BC Hydro electricity. The tenant testified that he simply moved his service from this rental unit to his next accommodation, never asking BC Hydro to shut it off at the old rental unit. I find there has been no breach of the *Act*, Regulations or tenancy agreement. As there has been no breach, there is no damage to compensate the landlord for. This portion of the landlord’s claim is dismissed.

11 [landlord’s] half month’s rent

Policy Guideline PG-3 [Claims for rent and damages for loss of rent] states:

Even where a tenancy has been ended by proper notice, if the premises are un-rentable due to damage caused by the tenant, the landlord is entitled to claim damages for loss of rent. The landlord is required to mitigate the loss by completing the repairs in a timely manner.

The tenant acknowledged that he offered the resident manager the job of cleaning the unit when he left but she refused. As such, I find that the tenant knew the unit was likely un-rentable due to the state he left it in when he vacated it. I am satisfied the landlord took immediate steps to bring it back to rentable condition for the next set of tenants within the first 15 days of July and the landlord did not collect rent for this period. I award the landlord for this lost rent in the amount of **\$850.00**.

12. [next set of tenants] compensation for rent at last rental unit

Section 67 allows me to award a landlord or a tenant for damage or loss caused by a tenancy. The landlord seeks to collect rent from this tenant to reimburse her next set of tenants as their move-in was delayed. The landlord testified that the owner of the building was planning on reimbursing the next set of tenants but acknowledged it has not been done. I heard no evidence from the landlord indicating the next set of tenants were seeking to recover this from the landlord, nor am I able to determine how this landlord is deserving of compensation when she is not out-of-pocket. I do not find the landlord has suffered any loss and I deny the landlord’s claim to recover rent on behalf of the next set of tenants.

Item	amount
Painting and paint supplies	\$607.79
Cleaning	\$250.00
Carpet cleaner	\$95.00
Electrician, tile replacement, toilet seat	\$277.38
½ month rent (July 1 to July15)	\$850.00
Subtotal	\$2,080.17

As the landlord's application was successful, the landlord is also entitled to recovery of the \$100.00 filing fee for the cost of this application.

The landlord continues to hold the tenant's security deposit in the amount of \$850.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the entire security deposit in partial satisfaction of the monetary claim.

Item	amount
Monetary award	\$2,080.17
Filing fee	\$100.00
Less security deposit	(\$850.00)
Total	\$1,330.17

Conclusion

I issue a monetary order in the landlord's favour in the amount of **\$1,330.17**.

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: December 23, 2020

Residential Tenancy Branch