



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, 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;
- a Monetary Order for damage, 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 and the landlord's agent (the "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 agree that the tenant was served with the landlords' application for dispute resolution via registered mail. 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 retain the tenant's security deposit, pursuant to section 38 of the *Act*?
4. 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 June 25, 2017 and ended on September 30, 2020. Monthly rent in the amount of \$2,452.00 was payable on the first day of each month. A security deposit of \$1,150.00 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 testified that he signed a Form K, notice of tenant's responsibilities, regarding the strata of the subject rental building, when he signed his first tenancy agreement with the previous management company. The tenant testified that when he signed his new tenancy agreement with the new management company, he did not sign a new Form K. The original Form K was not entered into evidence.

Both parties agree that the tenant texted the landlord with the tenant's forwarding address on October 16, 2020. The agent testified that the text message was received on October 16, 2020. The landlord filed this application on October 25, 2020.

Both parties agree that the tenant and a representative of the landlord completed a joint move in condition inspection report on July 1, 2017. The agent testified that she e-mailed the tenant three times with opportunities for inspection. The agent testified that the third email to the tenant contained RTB Form 22 Notice of Final Opportunity to Schedule a Condition Inspection. This form was entered into evidence and states that the final opportunity for the move out inspection was October 11, 2020 at 10 a.m. The agent testified that the tenant did not attend the move out condition inspection. The landlord completed the move out condition inspection and report and the report was entered into evidence.

The tenant testified that he received the landlords' emails but did not attend the final opportunity for inspection because it was scheduled for the weekend before thanksgiving and that is a family time.

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

Item	Amount
Strata fines	\$10,150.00
Damage to the rental unit	\$900.00
Cleaning	\$165.00
Replace mailbox key	\$74.55
Total	\$11,289.55

Strata Fines

The agent testified that the tenant was issued a Notice of Infraction from the strata company on August 7, 2020 for listing the subject rental property for short term rental. The tenant testified that he received the August 7, 2020 Notice of Infraction from the landlord on August 21, 2020. The Notice of Infraction provided the tenant with an opportunity to dispute the contravention. The tenant testified that he did not dispute the bylaw contravention.

The agent testified that the tenant was then issued a Notice of Decision dated September 29, 2020 in which the tenant was issued a \$10,000.00 fine. The above documents were entered into evidence. The Notice of Decision states that this was the tenant's eighth contravention of the short term accomodation bylaw. The tenant confirmed receipt of the September 29, 2020 Notice of Decision.

The tenant testified that he should not have to pay the strata fine because it is an illegal fine and that the strata is not permitted to "stack" fines.

The agent testified that the tenant was issued a Notice of Infraction from the strata company on August 28, 2020 for failing to wait for the gate to close behind them before proceeding. The Notice of Infraction provided the tenant with an opportunity to dispute the contravention. The tenant testified that he received the August 28, 2020 Notice of Infraction and did not dispute it. The agent testified that the tenant was then issued a Notice of Decision dated September 29, 2020 in which the tenant was issued a \$50.00 fine. The above documents were entered into evidence.

The tenant testified that he is responsible for the \$50.00 fine.

The agent testified that the tenant was issued a Notice of Infraction from the strata company on September 8, 2020 for improperly disposing of a milk jug in the mixed paper bin. The Notice of Infraction provided the tenant with an opportunity to dispute the alleged contravention. The agent testified that the strata has not yet made a decision on the above infraction, but the landlord expects the fine to be \$100.00.

The tenant testified that if the strata issues a \$100.00 fine, he will pay it.

Damage to the Rental Unit

The agent testified that the tenant broke a closet door and the door to the master bedroom, both of which required replacement. Pictures of the closet door off the track and what appears to be a crack in the master bedroom door, were entered into evidence.

The tenant testified that he did not break the closet doors, but the doors no longer fit because the structure of the building is changing due to the pressure and that the doors no longer fit the door frame. The tenant testified that the door to the master bedroom is not cracked and that the dark line seen in the photographs is just a mark that could be removed.

The move in condition inspection report states that the property was brand new at the start of this tenancy. The move out condition inspection report states that the closet door in the master bedroom and the door to the master bedroom are damaged.

The agent testified that the walls of the subject rental property were scratched, dirty and dented and required repainting. A photograph of a nicked wall was entered into evidence. The agent testified that the carpets were so dirty they required replacement. Photographs of dirty carpet were entered into evidence.

The move in condition inspection report states that the property was brand new at the start of this tenancy. The move out condition inspection report states that the walls at the subject rental property are dirty, scratched, stained and damaged.

The move in condition inspection report states that the property was brand new at the start of this tenancy. The move out condition inspection report states that the carpet in the subject rental property is dirty and stained.

The tenant testified that the subject rental property did not need repainting. The tenant testified that he hired a carpet cleaner for September 28, 2020. The tenant testified that it is hard to live at a property for three years and to have no stains. The tenant testified that if you don't look too closely you don't notice the carpet stains.

The tenant did not enter any documents into evidence.

The agent testified that the landlord renovated the entire subject rental property and that this cost him \$7,035.00. A receipt for same was entered into evidence. The receipt provided a brake down for the services provided, the relevant portions state:

- Painting: \$2,600.00;
- Replace bedroom carpet: \$1,800.00;
- Replace bedroom door: \$500.00;
- Replace closet door: \$150.00

The agent testified that the landlord is not seeking the entire amount of the above costs and is only seeking \$900.00. The agent testified that the \$900.00 is an approximation of the portion of the above costs the tenant owes.

Cleaning

The agent testified that while the tenant personally moved out of the subject rental property on September 30, 2020; it took the tenant a number of days to remove his belongings. The tenant agreed to the above testimony. The agent testified that the tenant did not clean the subject rental property at the end of the tenancy and the landlord incurred a cleaning expense in the amount of \$165.00. A receipt for same was entered into evidence.

Both parties agreed that the subject rental property was brand new and in good condition at the start of this tenancy. The move in condition inspection report states same. The move out condition inspection report states that the subject rental property was dirty at the end of the tenancy.

The tenant testified that he wanted to clean the subject rental property himself but was not permitted to after September 30, 2020.

Replace Mailbox Key

Both parties agree that the tenant lost the mail key. The agent entered into evidence a receipt for a new mail key in the amount of \$74.55. The tenant testified that he was responsible for this charge.

Analysis

Strata Fines

Residential Tenancy Branch Policy Guideline #16 states that:

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.

Based on the testimony of the tenant, I find that the tenant signed a Form K a notice of tenant's responsibilities, regarding the strata of the subject rental building at the start of this tenancy. I find that the tenant knew or ought to have known that he is responsible for the strata fines incurred during the course of this tenancy. I find that the tenant received notice of the infractions and notice of the decisions. I find that the agent has proved that \$10,050.00 in fines were levied against the tenant for failing to wait for the gate to close and listing the subject rental property for short term rentals. I therefore find that the tenant is responsible for the above strata fines in the amount of \$10,050.00.

I decline to award the landlord \$100.00 for the strata infraction of disposing of a plastic item in a paper bin because the strata has not made that decision yet. I find that this claim is premature and is therefore dismissed with leave to reapply.

In regard to the tenant's claim that the strata fines are illegal, I find that I do not have jurisdiction to hear such a claim as it falls outside the scope of the *Act*.

Damage to the Rental Unit

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 tenant. 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 the parties jointly completed a move in condition inspection report in accordance with sections 23 and 24 of the *Act*.

Based on the testimony of both parties, I find that the tenant received the agent's three emailed requests for a joint move out condition inspection. I accept the tenant's testimony that he elected not to attend the final opportunity for inspection because he had family plans that weekend.

Section 35 of the *Act* states:

- 35** (1)The landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit
- (a)on or after the day the tenant ceases to occupy the rental unit, or
 - (b)on another mutually agreed day.
- (2)The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.
- (3)The landlord must complete a condition inspection report in accordance with the regulations.
- (4)Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.
- (5)The landlord may make the inspection and complete and sign the report without the tenant if
- (a)the landlord has complied with subsection (2) and the tenant does not participate on either occasion, or

(b)the tenant has abandoned the rental unit.

While e-mail is not an approved method of service under section 88 of the *Act*, I find that the tenant was sufficiently served with the landlord's three requests for inspection, pursuant to section 71 of the *Act*, because the tenant acknowledged receipt of the emails. I find that the landlord complied with the landlord's section 35 requirements and was permitted under section 35(5)(a) of the *Act* to complete and sign the move out condition inspection report in the absence of the tenant.

Section 21 of the Residential Tenancy Act Regulation states:

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.

The tenant did not enter any documents into evidence. Pursuant to section 21 of the Regulation, I accept the contents of the move in and out condition inspection reports as a true recording of the condition of the subject rental property at the beginning and ending of this tenancy.

Pursuant to the agent's testimony and the condition inspection reports, I find that the tenant broke a closet door and the door to the master bedroom, both of which required replacing.

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.

I accept the testimony of both parties that the subject rental property was brand new at the start of this tenancy.

Policy Guideline #40 states that the useful life for doors is 20 years (240 months). Therefore, at the time the tenant moved out, there was approximately 201 months of useful life that should have been left for the doors of this unit. I find that since the doors required repainting after only 39 months, the tenant is responsible for the following costs:

$\$650.00$ (cost of new doors) / 240 months (useful life of doors) = $\$2.71$ (monthly cost)

$\$2.71$ (monthly cost) * 201 months (expected useful life of doors after tenant moved out) = $\$544.71$

Pursuant to the agent's testimony and the condition inspection reports, I find that the property required repainting at the end of this tenancy.

Policy Guideline #40 states that the useful life for interior paint is four years (48 months). Therefore, at the time the tenant moved out, there was approximately 9 months of useful life that should have been left for the paint of this unit. I find that since the property required repainting after only 39 months, the tenant is responsible for the following costs:

$\$2,600.00$ (cost of painting) / 48 months (useful life of paint) = $\$54.17$ (monthly cost)

$\$54.17$ (monthly cost) * 9 months (expected useful life of paint after tenant moved out) = $\$487.53$

Pursuant to the agent's testimony and the condition inspection reports, I find that the carpets required replacement at the end of this tenancy.

Policy Guideline #40 states that the useful life for interior carpet is 10 years (120 months). Therefore, at the time the tenant moved out, there was approximately 81

months of useful life that should have been left for the carpet of this unit. I find that since the carpet required repainting after only 39 months, the tenant is responsible for the following costs:

$\$1,800.00$ (cost of new carpets) / 120 months (useful life of carpet) = $\$15.00$
(monthly cost)

$\$15.00$ (monthly cost) * 81 months (expected useful life of carpet after tenant moved out) = $\$1,215.00$.

The total damages the landlord could have sought from the tenant is $\$2,247.24$; however, the landlord is only seeking $\$900.00$ from the tenant for the above damages. I grant the landlord a monetary award of $\$900.00$ from the tenant for damage to the subject rental property.

Cleaning

Based on the agent's testimony and the condition inspection reports, I find that the tenant did not leave the subject rental property clean, in accordance with section 57 of the *Act*. I find that the tenant had until September 30, 2020, to clean the subject rental property and failed to do so. I find that the landlord is entitled to recover the cost of cleaning in the amount of $\$165.00$, from the tenant.

Replace Mailbox Key

As both parties agree that the tenant owes the landlord the cost of replacing the mailbox key, I award the landlord $\$74.55$ for the mail key replacement.

Security Deposit

While text message is not an approved method of service under section 88 of the *Act*, I find that the landlord was sufficiently served, for the purposes of this *Act*, pursuant to section 71 of the *Act*, with the tenant's forwarding address on October 16, 2020.

Section 38(1) 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 deposit pursuant to section 38(1)(a) and 38(1)(b) of the *Act*.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee from the tenant, pursuant to section 72 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 \$1,150.00 security deposit.

Conclusion

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

Item	Amount
Strata fines	\$10,050.00
Damage	\$900.00
Cleaning	\$165.00
Mail key	\$74.55
Filing fee	\$100.00
Less security deposit	-\$1,150.00
TOTAL	\$10,139.55

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: January 11, 2021

Residential Tenancy Branch