



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDL-S, MNRL-S, FFL**

Introduction

This hearing was reconvened after the issuance of an October 23, 2020 interim decision. At the original hearing, I determined that due to time constraints, the landlord's application would be heard after I heard the tenant's application to dispute the landlord's 10-day notice to End Tenancy for Unpaid Rent or Utilities.

This reconvened hearing was held to deal with the landlord's application for:

- A monetary Order for Damages and authorization to retain a security deposit pursuant to sections 38 and 67;
- A monetary order for rent and/or utilities and authorization to retain a security deposit pursuant to sections 38 and 67; and
- Authorization to recover the filing fees from the tenant pursuant to section 72.

The tenant attended the hearing and the landlord attended the hearing with his counsel, SS. Exchange of documents was previously determined at the previous hearing. Both parties were prepared and ready to have the merits of the landlord's application heard.

Issue(s) to be Decided

Is the landlord entitled to monetary orders for unpaid rent or damages to the rental unit?
Can the landlord retain the tenant's security deposit?
Can the landlord recover the filing fee?

Background and Evidence

At the commencement of the hearing, I noted that my previous decision recorded an earlier arbitrator's finding dated August 18, 2020 that the landlord had established his claim of \$11,500.00 representing unpaid affected rent during the specified period of March 18, 2020 to August 17, 2020. My interim decision dated October 23, 2020 recorded that the tenant acknowledged she did not pay rent for the month of September

in the amount of \$2,700.00. I advised the parties that the issue of unpaid rent has thus been previously established and that the remainder of this hearing would be focused on the landlord's application for compensation for damages to the rental unit.

The landlord filed a monetary order worksheet to particularize his claim for damages and the parties were asked to provide testimony in order of each of the item in the monetary order worksheet. Although testimony was heard at different times for each party, I have summarized each party's submissions together by item in this decision. My findings around each item are made at the end of this decision.

The landlord testified that the rental unit consists of a single family house and garage. The house was built in 1964 and the landlord believes it was renovated right before he purchased it in 2015 by the previous owners. He understands that it was last painted in 2015 and the age of the carpets when the tenancy began was likely 2 years old in 2015. He further testified that at the commencement of the tenancy, he did not conduct a condition inspection report with the tenant. He took photographs of the unit's bathroom and provided that image to this hearing, however any remaining photos were not supplied to me for this hearing. A security deposit of \$1,150.00 was collected from the tenant which the landlord continues to hold.

1 Shower door

The landlord testified that at the beginning of the tenancy, the tenant removed the shower door and replaced it with a shower rod and curtain. A photograph of the original shower door was supplied, as well as a photo of the removed shower door on the ground under the porch. The landlord provided an estimate from a shower door company for \$420.00 plus GST to install a new door.

The tenant testified that she gave birth to a child approximately 2 months after moving into the rental unit. The shower door was inconvenient for her and her baby to be able to bathe properly. The landlord gave her verbal permission to remove the door and she carefully place it on the ground under the porch. The door was not damaged, it could be reattached.

2,3,6 Paint

The landlord testified that the tenant, or more likely her children drew on the walls and doors with crayons, pens and markers. Multiple photos of the rental unit depicting marks on the walls, cabinets and interior doors were presented by the landlord. There were also small nail holes and marks left on the wall from the tenant affixing things to the walls. The landlord provided invoices for the paint and paint supplies purchased and

testified it took him approximately 10 hours to paint the rental unit by himself. He seeks \$15.00 per hour for that work.

The tenant alleges that the landlord purposefully did the marks to the walls himself in order to get more money from her. The crayon marks and scribbles were done after she had moved out. No damage was done to the walls or doors, and if it was, it's only normal wear and tear. The fact that the landlord changed the locks means that the tenant couldn't return the rental unit to brand new condition.

4, 7, 8 floor supply and floor installation/ varnish

Upstairs, there was damage to the carpets, however the landlord realized the previous owner installed carpets over hardwood floors and decided not to replace the carpets upstairs. The landlord revarnished the upstairs hardwood floors and seeks the cost of the varnish back.

Downstairs, the landlord testified the carpets were in bad shaped and the landlord's father replaced the carpets with laminate flooring in the rec-room and a small room connected to the rec-room. The landlord testified that the cost of the laminate flooring is less than the cost to recarpet those rooms, however he did not provide an estimate for recarpeting it. No invoice for the labour was supplied as evidence by the landlord, however receipts for the laminate flooring was provided.

The tenant testified that she is one hundred percent sure the carpets were clean when the tenancy ended. Especially downstairs, where she did her work as a piano teacher. It's impossible she would have dirty carpets as her clients would not want to have lessons there if that were the case.

5. Cleaning

The landlord cleaned and removed the tenant's garbage for 10 hours himself. Photos of the garbage and debris left behind by the tenant were provided as evidence. The landlord seeks to have his labour compensated at \$15.00 per hour.

The tenant testified the locks were changed on September 15th. The house was clean. The landlord took her belongings. On September 12th the landlord did an inspection and didn't call her on the 13th or 14th. The landlord's testimony that an email was sent on September 15th advising her the locks were changed was untrue. She cleaned the unit and the landlord changed the locks suddenly. She still had belongings in the house and the landlord called it garbage.

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.

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.

First, regarding arrears in rent. It was previously established by the arbitrator on August 19, 2020 that the tenant owed rent for the months of April, May, June, July and August 2020 for a total of \$11,500.00. In my interim decision dated October 23, 2020, I found the tenant did not pay rent for the month of September 2020 in the amount of \$2,700.00, breaching section 26 of the Act. The landlord has clearly established that he is entitled to a monetary order in the amount of **\$14,200.00** for arrear in rent and I award that amount to him in accordance with section 67 of the Act.

The remainder of the landlord's claim will be analyzed in the order of the monetary order worksheet.

1. Shower door

Section 32(3) of the Act states a tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

While the tenant claims she had verbal permission from the landlord to remove the shower door, at the end of the tenancy, the door was not returned to its original

condition. Even though it was “carefully” placed on the dirt below the porch, it is still the tenant’s responsibility to have it reinstalled or hire somebody to have that work done pursuant to section 32(3). The tenant is found to be in breach of section 32(3) and the landlord is entitled to compensation in the amount of **\$400.00** for the replacement of the door.

2, 3, 6 paint

Residential Tenancy Branch policy guideline PG-1 [landlord and tenant responsibility for residential premises] states:

The tenant is responsible for all deliberate or negligent damage to the walls.

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.

Based on the landlord’s photographs, I find the tenant’s testimony that she left the rental unit clean of undamaged, with the exception of normal wear and tear, to be an inaccurate impression of the actual state of the unit. The tenant’s accusation that the landlord purposefully damaged the walls and doors of the unit to get greater compensation is both beyond reason and credibility. It defies any semblance of rationality or logic that any landlord would damage his own property in order to “get more money” as the tenant claims.

I find it more likely than not that the tenant’s children caused the crayon, pen and marker damage to the walls and doors of the rental unit. The landlord has supplied receipts for repairing that damage and I find that his ten hours of labour at the minimum wage of \$15.00 per hour to be reasonable for this work. While the landlord seeks an award of $\$392.31 + 30.91 + \$150.00 = \$573.22$ for the painting, PG-1 states that the landlord is responsible for painting the interior of the rental unit at reasonable intervals. Five years could be considered a reasonable interval for painting and as such, I deduct 50% of the award granted to the landlord for painting for an award of **\$286.61**.

4, 7, 8 floor supply and floor installation/ varnish

I have reviewed the photos of the flooring downstairs and I find that the condition of the carpets is fair for carpets that were last installed two years before the tenant move in, back in 2015. This would make the carpets approximately 7 years old when the tenant moved out. I find the landlord has not provided sufficient evidence to satisfy me the

carpets were damaged beyond normal wear and tear. The landlord's claim for flooring is dismissed, including the claim for varnish supplies.

5. Cleaning

PG-1 states

The Landlord is responsible for ensuring that rental units and property, or manufactured home sites and parks, meet "health, safety and housing standards" established by law, and are reasonably suitable for occupation given the nature and location of the property. 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.

WALLS

Cleaning: The tenant is responsible for washing scuff marks, finger prints, etc. off the walls unless the texture of the wall prohibited wiping.

Section 21 of the Residential Tenancy Regulations states that:

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 rightfully pointed out that the landlord did not conduct a condition inspection report with her at the commencement of the tenancy. Despite this, I find the landlord has provided a preponderance of evidence to show that the scribble marks on the wooden cabinets and interior doors are beyond what a reasonable person would describe as "reasonable health, cleanliness and sanitary standards". It would be both unreasonable and illogical to imagine that the tenant would have accepted the rental unit at the beginning of the tenancy with the pre-existing damage to the walls. Further, I note the abundance of garbage and debris left behind at the end of the tenancy. Based on the landlord's photos, I am satisfied the cabinet doors and interior doors were left unclean and unwashed at the end of the tenancy and that the tenant left behind garbage and refuse requiring labour for the landlord to clean it up. I award the landlord **\$150.00** to clean the rental unit to meet "health, safety and housing standards" established by law.

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 \$1,150.00. 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
Affected rent, Mar. 18 to Aug. 17	\$11,500.00
September 2020 rent	\$2,700.00
Shower door reinstallation	\$400.00
Paint, paint supplies, labour	\$286.61
Cleaning	\$150.00
Filing fee	\$100.00
Less security deposit	(\$1,150.00)
Total	\$13,986.61

Conclusion

I issue a monetary order in the landlord's favour in the amount of **\$13,986.61**. 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