



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

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

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

Both the landlord and the tenant attended the hearing. As both parties were present, service of documents was confirmed. The tenant acknowledged service of the landlord's Application for Dispute Resolution and evidence; the landlord acknowledged service of the tenant's evidence however stated he received it a day late. The landlord confirmed he was ready to proceed with the hearing, having had the opportunity to fully review the tenant's evidence.

Preliminary Issue

In his Application for Dispute Resolution, the landlord sought compensation in the amount of \$20,000.00. At the commencement of the hearing, the landlord advised me that this stated amount was a typographical error; the landlord was only seeking compensation in the amount of \$2,000.00. The landlord asked that his Application for Dispute Resolution be amended to reflect the actual amount sought and the tenant did not dispute the amendment. Accordingly, I amended the landlord's claim to \$2,000.00.

The landlord did not provide a monetary order worksheet to show how he arrived at the \$2,000.00 amount sought. The landlord testified that he has quotes for work and material that amounts to \$4,985.00, however he only seeks \$2,000.00 from the tenant. The landlord was unable to advise how he wanted me to determine which elements of his claim were to be included or excluded in his claim for \$2,000.00. The parties

proceeded to provide testimony regarding multiple things the landlord claims were damaged by the tenant.

The landlord provided the following testimony. When the tenant moved out, the landlord had many repairs that needed to be done and he couldn't re-rent it immediately. He seeks \$500.00 for the time the rental unit remained vacant.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for damages to the rental unit?

Can the landlord retain the tenant's security deposit?

Can the filing fee be recovered?

Background and Evidence

At the commencement of the hearing, pursuant to rules 3.6 and 7.4, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony. In accordance with rule 7.14, I exercised my authority to determine the relevance, necessity and appropriateness of each party's 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 each of the parties' respective positions have been recorded and will be addressed in this decision.

The landlord gave the following testimony. The rental unit is a 3 bedroom condominium built in 1986. It was last renovated 12 years ago. The carpets are 12 years old and they are a commercial grade berber. The hardwoods were last refinished 14 to 15 years ago. The kitchen and bath are original, from 1986 and the blinds were last replaced 12 years ago. The landlord purchased the rental unit from his brother, a realtor. The tenant took possession of the rental unit immediately after the landlord purchased it.

A copy of the tenancy agreement was provided as evidence. The fixed, one year tenancy began on May 1, 2010, renewed each year as a subsequent fixed one year tenancy. At the beginning of the tenancy, the landlord collected a security deposit of \$575.00 and a pet damage deposit of \$200.00 which the landlord continues to hold. The landlord testified the tenancy ended by a mutual agreement to end the tenancy signed on September 13, 2020, ending the tenancy on September 30, 2020.

The landlord testified that a condition inspection report was done with the tenant at the commencement of the tenancy. The landlord did not provide a move-in condition inspection report, however he states that the tenancy agreement indicates one was done. The landlord testified that he can't find his copy of the condition inspection report, he assumes it was given to the tenant.

The landlord did not provide a monetary order worksheet to organize his claim, so I asked the landlord to give evidence by category. The landlord gave the following testimony:

- The tenant had pets and the pets urinated on the carpets. Photos of dried, pooled urine going right down to the underlay were provided as evidence. The landlord didn't notice the urine issues while doing the "walkthrough" on move out with the tenant because the carpets were still wet with fragranced carpet cleaner. The carpets by the door were damaged by the dog trying to dig under it and the hardwood floors were damaged by the dog.
- The brass trim on the fireplace is discolored. The landlord testified the tenant told him it was done when a plastic bag melted on it. The landlord fixed it with a can of spray paint.
- There are anchor holes in the walls where the tenant put up shelving
- The original drapes to the unit are missing. The tenant purchased horizontal blind which are inferior. Those blinds are broken upstairs and down.
- The screen doors are missing. The tenant replaced the original doors, then kept them after she vacated the unit.
- There is water damage from an incident in the bathroom.
- The bubble window is cracked from the inside. Those windows are no longer available for purchase, so the damage was fixed with caulking by the landlord. The landlord doesn't know how the tenant broke it, but attributes it to a shelf the tenant had in front of the window that may have been knocked over by her cat. The tenant blamed the damage on contractors working on the exterior of the building.

The landlord's witness, his brother testified that he viewed the rental unit when the tenant vacated it. He saw the hardwoods were worn, scuffed and gouged and needed to be replaced. Pet stains exceeded normal wear and tear. He is a realtor and he made sure the condition of the unit was selling-ready when his brother purchased it.

The tenant gave the following testimony:

The landlord did not do a condition inspection report with her at the commencement of the tenancy in 2010. The landlord did not understand his role as a landlord, or that he was required to do one with her at the beginning.

- The carpets were worn when she first moved in. They are now at least 12 years old and the carpet cleaner she hired to clean them at the end of the tenancy told her they are too old to successfully clean. The tenant attributed the stains shown on the landlord's photos as remnants of a toilet leak that the landlord was aware of. The damaged carpets at the doorway were not caused by her dog; the door sticks and rubs the carpet thereby wearing it out.
- The floors were also in terrible shape when she moved in. The tenant purchased floor rugs to cover them up and she asked the landlord several times to fix it but the landlord didn't want to.
- The wood stove was discolored when a plastic bag touched it when she walked by. It got stuck on the stove and melted, causing the stain.
- The bubble window was damaged by the contractors doing work on the exterior of the building. The tenant testified the landlord agreed with her the workmen did the damage. The landlord's own repair with "glue" made the crack more noticeable.
- The landlord allowed the tenant to take down the original drapes when she moved in. She bagged them up and gave them to the landlord. The blinds started breaking when she moved in. The landlord told her it was OK to throw the blinds out. She left the ones she bought up and they were not broken.
- The rental unit did not have any screen doors when she moved in. Her daughter told her she could purchase a generic one which she did and she took them when the tenancy ended.

- The tenant used anchors to put up shelving on the walls with the landlord's permission. She asked the landlord what he wanted her to use to put them up and she left before she had time to fix the holes.

When the tenancy ended, the landlord did not bring a condition inspection report for the tenant to sign. The tenant recorded the "walkthrough" with the landlord at the end of the tenancy and brought a blank condition inspection report for the parties to sign. The condition inspection report provides the tenant's forwarding address, is signed by both parties and notes the following damage at the end of the tenancy for which the tenant is responsible:

Carpets in bedroom questionable? Large holes in living room wall.

Under the tenant's comments where she does not agree with the report, the tenant writes:

Holes with anchors to hold shelves (IKEA floating shelves) normal wear and tear of carpets after 10 years.

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.

Section 37 of the *Act* states:

Leaving the rental unit at the end of a tenancy

37 (1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.

- (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

In order to succeed in his claim for compensation, the landlord must satisfy me the damage to the rental unit were not caused by reasonable wear and tear during the 10 year tenancy. Reasonable wear and tear refers to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion.

The tenant acknowledged the following two facts. She put up shelves and did not repair the holes she put into the walls for the shelves before she moved out. Second, she accidentally melted a plastic bag against the brass fireplace when the bag stuck to the fireplace as she walked by. *Residential Tenancy Branch Policy Guideline PG-1 [Landlord & Tenant – Responsibility for Residential Premises]* states:

Nail Holes:

1. Most tenants will put up pictures in their unit. The landlord may set rules as to how this can be done e.g. no adhesive hangers or only picture hook nails may be used. If the tenant follows the landlord's reasonable instructions for hanging and removing pictures/mirrors/wall hangings/ceiling hooks, it is not considered damage and he or she is not responsible for filling the holes or the cost of filling the holes.
2. The tenant must pay for repairing walls where there are an excessive number of nail holes, or large nails, or screws or tape have been used and left wall damage.
3. The tenant is responsible for all deliberate or negligent damage to the walls.

I have reviewed the photos of the anchors put into the walls of the rental unit and I accept the tenant's testimony that the holes were put there with the landlord's knowledge and permission. As such, I do not consider the anchor holes to be damage and the tenant is not responsible for filling them.

The discoloration to the stove was damage caused by the tenant's neglect and the tenant is responsible for paying for repairing it. The landlord has provided a receipt for \$10.97 for high heat spray paint to repair the damage and I award the landlord \$10.97 + tax of \$1.31 for a total of **\$12.28** pursuant to section 67 of the *Act*.

Turning to the carpet damage. Residential Tenancy Branch Policy Guideline PG-12 [Useful Life of Building Elements] provides guidance for arbitrators to use in determining

damages. 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.

According to the guideline, carpets have a useful life of 10 years. The landlord testified the carpets were 12 years old at the end of the tenancy. As such, I find the carpets were already in need of replacement at the end of the tenancy and the landlord would be required to replace them. I dismiss this portion of the landlord's claim.

The policy guideline states drapes and venetian blinds have a useful life of 10 years. Based on the guideline, I find the rental unit would require new window coverings and I dismiss these portions of the landlord's claim.

Regarding the remainder of the landlord's claim for damaged hardwood floors, blinds, water damage and the bubble window, the landlord bears the standard of proof to satisfy me that the damages to the rental unit as alleged by the tenant were caused by the tenant or her guests during the tenancy.

Section 23 of the *Act* states the landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day. Section 21 of the Residential Tenancy Regulations 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.**

At the commencement of the tenancy, the landlord did not attend for the condition inspection walkthrough with the tenant, contrary to section 23 of the *Act*. Sections 17 and 18 of the Regs indicate it is the landlord's responsibility to schedule the inspections and provide a copy to the tenant. The landlord did conduct a condition inspection report with the tenant and did not use this opportunity to describe the state of repair of the rental unit that was already 24 years old. Without a condition inspection report conducted with both the landlord and tenant present at the beginning of the tenancy, I am left to guess the state of repair and condition of a 35+ year old rental unit after being lived in by this tenant for 10 years.

With respect to the damage to the bubble window, the missing screen, the hardwood floors and the water damage, I find the landlord has put himself in a position that he

cannot prove, on a balance of probabilities, that the damage was caused by during the tenancy and if such damage was beyond reasonable wear and tear. I find the landlord has not provided a preponderance of evidence to contradict the tenant's assertion that the bubble window was damaged by outside contractors; the patio windows originally had screens; the condition of the hardwood floors was good; or that the water damage was caused by her negligence or misuse. Once again, section 21 of the regulations states a condition inspection report is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection – in this case, when the tenancy began. Without one to compare to the state of repair at the end of the tenancy, I find the landlord has provided insufficient evidence to prove the remainder of his claim. For this reason, the remainder of the landlord's claim is dismissed.

Lastly, the landlord seeks \$500.00 for the time the rental unit remained vacant to prepare for the next tenant. I find that the tenant left the rental unit reasonably clean and undamaged except for regular wear and tear. After a tenancy of 10 years, the landlord should anticipate there will be elements of wear and tear that should be expected before the rental unit would be ready for another tenant. Renting residential units is a business that requires occasional business costs. I find the time the unit was vacant to be a business expense that the tenant should not be required to bear and as such, I dismiss this portion of the landlord's claim.

As the majority of the landlord's claim was not successful, the filing fee will not be recovered.

The landlord filed his Application for Dispute Resolution within 15 days of the tenancy ending and when he received the tenant's forwarding address. The tenant's security deposit and pet damage deposits in the sum of \$775.00 is ordered returned to the tenant, less the \$12.28 monetary order granted earlier in this decision.

Conclusion

I issue a monetary order in the tenant's favour in the amount of \$762.72.

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: February 01, 2021