



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The landlord applied for:

- a monetary order for loss under the Act, the regulation or tenancy agreement, pursuant to section 67;
- an authorization to retain the tenants' security and pet damage deposits (the deposits), under section 38;
- an authorization to recover the filing fee for this application, under section 72.

Tenant JT, her advocate DG (the tenant) and the landlord attended the hearing. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The landlord affirmed he served both tenants the application and the evidence (the materials) by registered mail. The tracking numbers for the packages mailed to tenant BM on November 05, 2020 containing the application and on January 15, 2021 containing the evidence are on the cover page of this decision.

Section 90 of the Act provides that a document served in accordance with Section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail the, tenant BM is deemed to have received the application on November 10, 2020 and the evidence on January 20, 2021, in accordance with section 90 (a) of the Act.

Tenant JT confirmed receipt of the materials in January 2021.

The landlord confirmed receipt of tenant's JT response evidence on February 05, 2021.

Based on the testimonies I find that each party was served with the respective materials in accordance with sections 88 and 89 of the Act.

Issues to be Decided

Is the landlord entitled to:

1. a monetary order for loss?
2. an authorization to retain the tenants' deposits?
3. an authorization to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to all the evidence provided by the attending parties, including documentary evidence and the testimony, not all details of the submission and arguments are reproduced here. I explained Rule of Procedure 7.4 to the attending parties; it is the landlord's obligation to present the evidence to substantiate his claims.

Both parties agreed the tenancy started on February 01, 2017 and ended on October 01, 2020. Rent was \$1,250.00 per month, due on the first of the month. At the outset of the tenancy a security deposit of \$625.00 and a pet damage deposit of \$250.00 were collected. The landlord holds the total deposits in the amount of \$875.00 in trust. The tenancy agreement was submitted into evidence.

The condition inspection report (the report) was submitted into evidence. Both parties signed it on the move in date. Both parties agreed they attended the move-out inspection on October 01, 2020 and they did not sign the report's last page.

The tenant affirmed the forwarding address was submitted to the landlord in writing by registered mail sent on October 15, 2020. The landlord stated he received the forwarding address around the end of October 2020. The landlord's application was filed on October 31, 2020.

The landlord is claiming for \$226.69 to replace the living room windows coverings. The landlord stated the tenants damaged the living room windows coverings, which were in good condition when the tenancy started and had been installed in 2015. The landlord submitted into evidence the invoice for \$226.59. The fabric windows coverings needed to be custom made to match the other windows coverings in the rental unit.

The tenant affirmed similar fabric custom made windows coverings cost \$50.00 and the landlord is purchasing better quality imported windows covering.

The landlord is claiming for \$903.00 for painting the rental unit. The landlord submitted a painting invoice for \$903.00. It states:

Job description: To repaint one bedroom (walls), to repair 7 door before painting (child safety to be removed), remove old transition boards, repaint fireplace (walls), repair curtain tracks, purpose of work to repair damage done by previous renter.

The report states the master bedroom walls were in good condition when the tenancy started and damaged when the tenancy ended: "a lot of cat scratches on all over the top and bottom". The tenant affirmed he offered to pay \$100.00 when the tenancy ended to repair the master bedroom walls but the landlord did not accept.

The landlord states the tenants installed several child safety locks and the painter needed to remove them and paint the area where they were installed without his permission. The tenant affirmed the child safety locks can be easily removed and he did not need to ask permission to install them. The photographs submitted into evidence show 6 child safety locks.

The report indicates the second bedroom floor was in good condition when the tenancy started and "strip between flooring is broken" when the tenant ended. The tenant stated this damage is regular wear and tear. The landlord submitted 2 photographs into evidence showing the damaged transition board.

The report states the fireplace had "chips side+top" when the tenancy started and "extra scratches on fireplace top and front" when the tenancy ended. The tenant stated the scratches around the fireplace are regular wear and tear. The landlord submitted into evidence 2 photographs showing the fireplace.

The report indicates the windows coverings in the master bedroom were in good condition when the tenancy started and when the tenancy ended: "curtain rail is loose". The tenant stated the master bedroom windows covering rail only needed to be screwed back in. The landlord claims the tenants damaged the curtain rail and must pay for its repair.

The landlord testified the one bedroom and one den 750 square feet rental unit was painted in 2015. The transition board was installed in 2010.

The landlord is claiming for reimbursement in the amount of \$44.54 for the cost of 66 high resolution prints needed to serve the application and \$33.88 for registered mail to serve the application.

The landlord submitted into evidence a monetary order worksheet. The total amount the landlord is claiming is \$1,308.11.

Analysis

Section 7 of the Act states:

Liability for not complying with this Act or a tenancy agreement

7 (1) 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.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Residential Tenancy Branch Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

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. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

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.

Living room windows coverings

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

Based on the both parties testimony and the report, I find the tenants breached section 37(2)(a) of the Act by damaging the living room windows coverings and the landlord suffered a loss because of the tenants' failure to comply with the Act.

Residential Tenancy Branch Policy Guideline 5 provides that compensation should restore the party to the position as if the damage had not occurred:

Betterment

The purpose of compensation is to restore the landlord or tenant to a position as if the damage or loss had not occurred. Sometimes repairing damage or replacing damaged items puts the landlord or tenant suffering damage or loss in a better position than they were before the damage or loss occurred.

This may happen as a matter of course – for example if arborite countertops from the 1960s must be replaced because of damage, this almost always requires installing brand new countertops. Similarly, if a circuit that was wired in the 1940s needs to be replaced, it should be brought up to code. The result is that the property is made better than it was before the damage or loss occurred.

Based on the landlord's convincing and straightforward testimony and the invoice submitted into evidence, I find the new living room windows coverings are not better than the original ones.

Thus, I award the landlord \$226.59 in compensation for the living room windows coverings replacement.

Painting

Residential Tenancy Branch Policy Guideline 1 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.

PAINTING

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.

(emphasis added)

Based on the report and the landlord's testimony, I find the tenants breached section 37(2)(a) of the Act by not painting the walls that were damaged during the tenancy and the landlord suffered a loss because of the tenants' failure to comply with the Act.

Residential Tenancy Branch Policy Guideline 40 states the useful life of interior painting is 4 years. The paint was 5 years old when the tenancy ended.

Based on the photographs submitted into evidence and both parties testimony, I find 6 child safety locks installed by the tenants is not an excessive number and the damage related to removing them is regular wear and tear.

Based on the photographs submitted into evidence and both parties testimony, I find the damaged floor transition board is regular wear and tear.

Based on the report, photographs submitted into evidence and both parties testimony, I find the scratches on the fireplace is regular wear and tear.

Based on the report, the photographs submitted into evidence and the landlord's more convincing testimony, I find the damaged master bedroom windows coverings rail is not regular wear and tear.

The landlord did not submit into evidence a detailed invoice for the painting costs. The landlord's testimony about the painting cost was not detailed. Considering the size of the rental unit, the age of the painting when the tenancy ended, the landlord's testimony and the report, I find it reasonable to award the landlord \$300.00 for painting expenses and to repair the master bedroom windows coverings rail. I note that the Policy Guideline is a guidance to interpret the Act. The tenants are responsible for the damage caused to the bedroom walls ("a lot of cat scratches on all over the top and bottom") despite the paint being beyond its useful life.

Thus, I award the landlord \$300.00 in compensation for painting expenses and to repair the master bedroom windows coverings rail.

Litigation costs

The cost of prints needed to serve the application and registered mail are litigation costs are not recoverable under the Act.

Thus, I dismiss the landlord's claims for compensation for the costs of prints and registered mail.

Deposit

Section 38(1) of the Act requires the landlord to either return the tenants' security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing.

The tenant mailed the forwarding address on October 15, 2020. Per section 90(a) of the Act, the landlord is deemed to have received the forwarding address on October 20, 2020. The landlord brought an application for dispute resolution on October 31, 2020, within the timeframe section of section 38(1) of the Act.

Filing fee and summary

As the landlord was partially successful in his claim, I authorize him to recover the \$100.00 filing fee.

In summary, the landlord is entitled to:

Expenses	\$
Living room windows coverings	226.59
Painting and bedroom windows coverings rail	300.00
Filing fee	100.00
Total	626.59

Set-off

Residential Tenancy Branch Policy Guideline 17 states:

The Residential Tenancy Act provides that where an arbitrator orders a party to pay any monetary amount or to bear all or any part of the cost of the application fee, the monetary amount or cost awarded to a landlord may be deducted from the security deposit held by the landlord and the monetary amount or cost

awarded to a tenant may be deducted from any rent due to the landlord.

As such, the landlord is authorized to retain the amount of \$626.59 from the deposits to offset the monetary award for losses incurred due to the tenants' non-compliance with the Act. The landlord must return the balance of the deposit of \$248.41.

Conclusion

Pursuant to sections 38, 67 and 72 of the Act, I authorize the landlord to retain \$626.59 from the tenants' deposits in total satisfaction of losses incurred and grant the tenants a monetary award pursuant to section 38 of the Act in the amount of \$248.41.

The tenants are provided with this order in the above terms and the landlord must be served with this order. Should the landlord 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: February 25, 2021

Residential Tenancy Branch