



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ACTION PROPERTY MANAGEMENT and
[tenant name suppressed to protect privacy]

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 tenant's security deposit, under section 38; and
- an authorization to recover the filing fee for this application, under section 72.

Both parties attended the hearing. The landlord was represented by property manager SS. The tenant was assisted by advocate TC. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing both parties affirmed they understand it is prohibited to record this hearing.

As both parties were present service was confirmed. The parties each confirmed receipt of the application and evidence (the materials). 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 tenant's security deposit?
3. an authorization to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and

important aspects of the landlord's claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is the landlord's obligation to present the evidence to substantiate the application.

Both parties agreed the fixed-term tenancy started on July 02, 2020 and ended on November 30, 2020. Monthly rent was \$1,000.00, due on the first day of the month. At the outset of the tenancy a security deposit (the deposit) of \$500.00 was collected and the landlord holds it in trust. The parties conducted a move-in inspection on July 02, 2020.

The fixed-term tenancy agreement from July 02 to November 30, 2020 (submitted into evidence) was signed by the parties indicating that the tenant will vacate the rental unit at the end of the fixed-term.

On November 18, 2020 the tenant emailed the landlord stating he planned to move out on November 30, 2020. On November 19, 2020 the landlord posted a notice on the tenant's rental unit door offering two opportunities for the move-out inspection: November 30 at 4:30 P.M. and December 01 at 3:00 P.M. The tenant did not reply. A few days later the landlord posted a notice of final opportunity to schedule a condition inspection (RTB form 22) on the tenant's rental unit door offering November 30, 2020 at 11:00 A.M. for the move-out inspection (both notices were submitted into evidence). The tenant confirmed he received both notices on November 23 or 24, 2020.

The landlord stated on November 30, 2020 she learned the tenant had abandoned the rental unit and conducted the move-out inspection alone. The condition inspection report (the report) was submitted into evidence. It is signed by the landlord and tenant on July 02, 2020 and only by the landlord on November 30, 2020.

Both parties agreed the tenant provided his forwarding address in writing on December 06, 2020 (email submitted into evidence). This application was filed on December 12, 2020. The tenant did not authorize the landlord to retain the deposit.

The landlord stated the tenant caused large holes in the master bedroom wall and scratched the stairwell wall. The report indicates when the tenancy started the master bedroom walls were in good condition and when the tenancy ended the master bedroom and the stairwell walls had large holes and scratches. Both parties agreed when the tenancy started the stairwell wall was in good condition. The landlord submitted into evidence four photographs showing a large hole in the master bedroom

wall and a large scratch in the stairwell wall and a receipt indicating the cost to repair the walls was \$315.00 (\$300.00 plus taxes of 5%).

The landlord testified the tenant damaged the second bedroom closet door and the door could not be repaired. The report indicates when the tenancy started the second bedroom closet door was in good condition and when the tenancy ended it was damaged. The landlord submitted into evidence two photographs showing a damaged closet door and a receipt indicating the cost to replace the closet door was \$210.00 (\$200.00 plus taxes of 5%).

The landlord affirmed the tenant damaged the bathroom door. The report indicates when the tenancy started the bathroom door was in good condition and when the tenancy ended it was damaged ('dent'). The landlord submitted into evidence one photograph showing a damaged bathroom door and a receipt indicating the cost to repair the bathroom door was \$52.50 (\$50.00 plus taxes of 5%)

The tenant stated he planned to repair the rental unit and he would have spent less money on the repairs, but he left the rental unit on November 23, 2020.

The landlord submitted into evidence a monetary order worksheet indicating a claim in the amount of \$577.50

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 the case is on the person making the claim.

Move-out inspection

Section 35 of the Act states:

(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.**

(emphasis added)

The tenant confirmed he received the two notices of opportunity to schedule a move-out inspection. The tenant emailed the landlord on November 18, 2020 informing he planned to vacate the rental unit on November 30, 2020. The tenancy agreement states the tenant will vacate the rental unit on November 30, 2020. As such, I find the landlord complied with section 35(1) and (2) of the Act and I accept the accuracy of the report.

Walls damage

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."

Section 37(2) of the Act states:

Leaving the rental unit at the end of a tenancy

37(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

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 undisputed testimony provided by the landlord, the report, the photographs and the receipt, I find the tenant breached sections 32(3) and 37(2)(a) of the Act by not repairing the damaged walls and the landlord suffered a loss of \$315.00 because of the tenant's failure to comply with the Act. The tenant did not present an invoice or estimate indicating the repair could have been cheaper.

Thus, I award the landlord \$315.00 for this loss.

Closet door

Based on the undisputed testimony provided by the landlord, the report, the photographs and the receipt, I find the tenant breached section 32(3) of the Act by not repairing the damaged closet door and the landlord suffered a loss of \$210.00 because of the tenant's failure to comply with the Act.

Thus, I award the landlord \$210.00 for this loss.

Bathroom door

Based on the undisputed testimony provided by the landlord, the report, the photographs and the receipt, I find the tenant breached section 32(3) of the Act by not repairing the damaged bathroom door and the landlord suffered a loss of \$52.50 because of the tenant's failure to comply with the Act.

Thus, I award the landlord \$52.50 for this loss.

Deposit

Section 38(1) of the Act requires the landlord to either return the tenant's 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 forwarding address was provided in writing on December 06, 2020. The landlord brought an application for dispute resolution on December 12, 2020, within the timeframe section of section 38(1) of the Act.

As explained in section D.2 of Policy Guideline #17, the monetary amount or cost awarded to a landlord may be deducted from the deposit held by the landlord. I order the landlord to retain the \$500.00 security deposit in partial satisfaction of the total monetary award.

Filing fee and summary

As the landlord was successful in this application, the landlord is entitled to recover the \$100.00 filing fee.

In summary:

Item	Amount \$
Walls damage	315.00
Closet door	210.00
Bathroom door	52.50
Filing fee	100.00
Subtotal	677.50
Deposit (subtract)	500.00
Total	177.50

Conclusion

Pursuant to sections 38, 67 and 72 of the Act, I authorize the landlord to retain the \$500.00 deposit and grant the landlord a monetary order in the amount of \$177.50.

The landlord is provided with this order in the above terms and the tenant must be served with this order. 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: April 28, 2021

Residential Tenancy Branch