



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, FFL

Introduction

This hearing was convened from the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for a monetary order for damage or compensation for damage under the Act of \$730.00, retaining the security deposit for this claim; and to recover the \$100.00 cost of their Application filing fee.

An agent for the Landlord, F.M. ("Agent"), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Agent and gave him an opportunity to ask questions about the hearing process. During the hearing the Agent was given the opportunity to provide his evidence orally and to respond to my questions. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

As the Tenants did not attend the hearing, I considered service of the Notice of Dispute Resolution Hearing. Section 59 of the Act and Rule 3.1 state that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Agent provided documentary evidence that he had served each of the Tenants with the Notice of Hearing documents by Canada Post registered mail, sent on December 24, 2020, and with further evidence being sent via registered mail on April 6, 2021. The Agent provided Canada Post tracking numbers as evidence of this service. I find that the Tenants were deemed served with the Notice of Hearing documents in accordance with the Act. I, therefore, admitted the Application and evidentiary documents, and I continued to hear from the Agent in the absence of the Tenants.

Preliminary and Procedural Matters

The Agent provided the Parties' email addresses in the Application and he confirmed these addresses in the hearing. He also confirmed his understanding that the

Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

Issue(s) to be Decided

- Is the Landlord entitled to a monetary order, and if so, in what amount?
- Is the Landlord entitled to recovery of the Application filing fee?

Background and Evidence

The Agent said that the Tenants were the first people to live the rental unit - a brand-new condominium building. The Agent confirmed the details set out in the fixed-term tenancy agreement, including that the tenancy began on August 1, 2020, and was to run to July 31, 2021, and then operate on a month-to-month basis. The Tenants agreed to pay the Landlord a monthly rent of \$2,300.00, due on the first day of each month; they also paid the Landlord a security deposit of \$1,150.00, and no pet damage deposit (although the Landlord noted that there was cat food and cat fur left behind).

The Agent said that in an email dated October 30, 2020 at 8:24 p.m., the Tenants sent him their notice to end the tenancy. In this email, the Tenants said that they:

...will be relocating to Alberta due to work at the end of November, so we are giving our 30 day notice of intent to move. We are aware that this will be breaking our 1 year lease agreement with [the Landlord].

...

The Agent submitted a copy of a condition inspection report ("CIR") from the start of the tenancy; however, he said that the Parties did not have an opportunity to schedule a move-out inspection at the end of November, because the Tenants moved out on November 7, 2020, contrary to their October 30, 2020 email noted above (they had paid until the end of November 2020). The Landlord learned that the Tenants had vacated the suite when they emailed him a note with this news dated November 7, 2020 at 8:48 a.m. However, in lieu of no move-out CIR, the Agent submitted photographs of the damage for which he initiated this claim, which can be compared to the notes on the move-in CIR.

The Agent said that the Tenants left the rental unit in fairly clean and good condition, except for holes in the walls from mounting two televisions and for drywall anchors. He said:

They were the first people to live in there. I was willing to consider accepting the

holes, if the new tenant was interested in using them for their own TV.

However, the Agent submitted evidence of the response from new the tenants, in which they said they intended to use a TV stand and not a wall-mounted television. In their response, the Tenants said the following: "I suppose repairs for the tv mounts holes need to be done then. . . . I would expect since this is the most minor of repairs that we are to expect a reasonable fee deducted from our deposit."

In the Agent's response dated December 4, 2020, he included the following comments:

I was supposed to meet with our handyman but unfortunately, he became sick. I will have to get someone else to give our office a quotation regarding repairing the holes in the walls.

DRYWALL ANCHORS

I actually had noticed previously there was some drywall anchors that you installed. I generally tell all new tenants they can use slim nails to put up pictures and the Residential Tenancy Office views this as normal wear and tear. However, drywall anchors create larger holes and the RTO regards this as a tenant responsibility to repair. I counted nine drywall anchor holes as follows:

Entry Hall: 4
Dining Room: 1
2nd Bedroom: 2
Master Bedroom: 2

The above is in addition to the TV mounting holes in the master bedroom and living room.

These holes will also have to be repaired.

In an email from the Agent to the Tenants dated December 9, 2020, he said:

I asked another handyman for a painting quotation and here is the response:

- (a) \$250 to repair and touch up all the drywall anchor holes,
- (b) \$480 to repair the TV mounting holes in the living room and master bedroom.

The whole wall in each of these two affected areas need to be repainted due

to the number & size of holes.

The Agent then asked the Tenants for their approval of these deductions from their security deposit, so that he could then prepare the cheque reimbursing the Tenants for the balance owing from their deposit. He asked for their reply as soon as possible; however, he said he did not hear back from the Tenants on this matter, and therefore, he initiated dispute resolution to claim for an order for compensation for these damages, claiming against the security deposit.

I reviewed the Landlord's photographs of the holes left by the Tenants in the rental unit walls, and I found them to be consistent with the Agent's description of the damage.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Section 32 of the Act requires that a landlord maintain the rental unit in a state of decoration and repair that complies with the health, safety, and housing standards required by law, and having regard to the age, character, and location of the rental unit, which make it suitable for occupation by the tenant. Section 37 of the Act states that a tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

I find that the residential property was a new condominium building, in which the Tenants were the first to live in the rental unit. I find that the Tenants acknowledged that they had made holes that needed to be repaired when they said: "I suppose repairs for the tv mounts holes need to be done then." I also find that they expressed understanding that the repairs would be deducted from their security deposit.

Based on the evidence before me I find that there were holes in need of repair from drywall anchors in the entry hall, the dining room, and two bedrooms. I also find that there were additional holes in the walls of two rooms from mounting two televisions on the walls. I find that all of these walls needed to be painted to avoid the appearance of spots where the holes were filled in and covered up. I find that the amount charged was reasonable in the circumstances, and therefore, I award the Landlord with **\$730.00** from the Tenants for these repairs, pursuant to section 67 of the Act.

I also award the Landlord with recovery of the **\$100.00** Application filing fee from the

Tenants, pursuant to section 72 of the Act, for a total award of **\$830.00**.

Summary and Set Off

I find that this claim meets the criteria under section 72(2)(b) of the Act to be offset against the Tenants' security deposit of \$1,150.00 in complete satisfaction of the Landlord's monetary award.

The Landlord is authorized to retain \$830.00 of the Tenants' security deposit, and is Ordered to return the remainder immediately. The Tenants are granted a Monetary Order of **\$320.00** from the Landlord for the remaining amount of their security deposit.

Conclusion

The Landlord is successful in their Application for \$730.00 compensation for damage the Tenants left to the rental unit at the end of the tenancy. The Landlord provided sufficient evidence of damage, for which the Tenants acknowledged responsibility, to be awarded compensation from the Tenants. The Landlord is also awarded \$100.00 from the Tenants for recovery of the Application filing fee for a total monetary award of \$830.00.

The Landlord is authorized to deduct this award from the Tenants' \$1,150.00 security deposit in complete satisfaction of this award. The Landlord is Ordered to return the remaining \$320.00 of the Tenants' security deposit to them immediately. The Tenants are provided with a Monetary Order for **\$320.00** in this regard from the Landlord.

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 27, 2021

Residential Tenancy Branch