Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL

Introduction

The landlord seeks compensation pursuant to section 67 of the *Residential Tenancy Act* ("Act"), including recovery of the filing fee under section 72 of the Act.

Both parties attended the hearing on June 4, 2021. No issues of service were raised by the parties and Rules 6.10 and 6.11 of the *Rules of Procedure* were covered.

Issue

Is the landlord entitled to compensation?

Background and Evidence

Relevant evidence, complying with the *Rules of Procedure,* was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the specific issue of this dispute, and to explain the decision, is reproduced below.

The tenancy began November 1, 2018 and ended January 23, 2021. Monthly rent was $2,850. The tenants paid a security deposit of $1,400 which the landlord holds in trust pending the outcome of this claim. A copy of the tenancy agreement was in evidence.

The landlord seeks $4,916.90 from their former tenants for the following matters (this list mirrors the items and amounts provided in the landlord's Monetary Order Worksheet):

1. Wall repair and painting $4,015.00
2. Baseboard damage repairs $100.00
3. Kitchen cabinet door repair $25.00
4. Window covering cleaning $469.23
5. Window handle replacement $30.22
6. Washing machine repair $177.45

The landlord testified that everything was in good condition and in working order at the start of the tenancy. There were no deficiencies. The entire rental unit was painted before the tenants moved in. When the tenants moved out the tenants had attempted to repair the walls – there were many, many holes – and some walls had been painted a different colour. There were also numerous marks in the wall.

During the walk through at the end of the tenancy, the landlord observed several patched areas and painted walls (of a different colour). The patches were not sanded down, and there were also fingerprints that were “not there at the start of the tenancy.” The landlord noted that the tenants’ position at that time was that any and all damages were from wear and tear. The tenants did not have permission to use paint that the landlords had stored in the storage locker for the rental unit. According to the landlord, whether damage is wear and tear is “up to the landlord [to determine].” Moreover, the landlord asked, why would a tenant attempt to repair or fix something if it was indeed wear and tear.

The landlord testified that during the walkthrough they also noticed that a window handle was missing. One of the tenants had remarked that the handle had come loose and was thrown into a closet. The landlord obtained a new handle and had it installed.

Next, the landlord testified that tenants who took over after these tenants notified the landlord that they were having problems with the washing machine. A warning light of some sort kept coming on; “halfway through the cycle the light went on,” the landlord explained. An appliance repair company had to attend, and they found the machine clogged. It was repaired. Apparently, some nursing pads and a plastic collar stay had been found in the machine. During the walkthrough inspection, one of the tenants briefly turned the washing machine on and off, in an effort to demonstrate that all was well with the washing machine. However, the new tenants discovered that all was not well.

In answer to a few questions that I asked of the landlord, the landlord testified that most of the rental unit was last painted in 2016. Additional painting had been done in 2017 (before the tenancy) when the building was re-piped and a few walls had to be opened and then fixed.

The landlord next testified about a venetian blind that appeared to have stains on it, most likely from spaghetti sauce. When asked about this during the move out inspection, the tenants apparently commented, “I dunno, we didn’t do it.” Then, some time after, the tenants acknowledged causing the stains to the blinds. The landlords then ended up cleaning all the blinds in the rental unit.

Finally, the landlord testified about baseboard damage that had been caused by the tenants. And, about a kitchen cabinet that had been damaged by the tenants. Photographs to support their claim were submitted into evidence, along with a copy of the condition inspection report.

In their testimony, the tenants (only tenant K.J. provided any testimony) testified that the building in which the rental unit is located is over thirty years old. In terms of the multiple holes in the walls, the tenant "tried to fix them," and touched up the areas with paint from the storage locker. They did so because, in their words, they wanted to be acting in good faith.

The tenant argued that the landlord's claim is "overly broad," and that everything claimed is that it was the tenants' fault, versus any recognition that the damage was wear and tear. They argued that there is no evidence that the entire rental unit was painted when the landlord said it was painted. In any event, the tenant argued that they did not cause any of the damages alleged and that the landlord suffered no loss.

While acknowledging that they stained 5 of the blind vanes, they argued that they should not be liable for having to pay for all 133 of the vanes that were cleaned.

Regarding the window handle, it had come loose during the tenancy, though it remained functional. As for the baseboard damage, the tenants were unaware of any damage, though there are few possible explanations for this. Next, the tenant argued that the kitchen cabinet was also reasonable wear and tear. Finally, regarding the washing machine, the tenant argued that the landlord is responsible for repairs to appliances. The malfunctioning machine (discovered by the new tenants) was not the result of either negligence or wilful intent, the tenant argued. Indeed, the tenants had used the machine in a regular manner, including washing nursing pads and dress shirts with collar stays.

The tenants provided three caselaw decisions in support of their defense, two from the Civil Resolution Tribunal (*Law v. Mahal,* 2020 BCCRT 852; *Nowicki v. Gobrecht,* 2020 BCCRT 1417) and one from the Ontario Superior Court of Justice, small claims court (Doucette-Grasby v Lacey, 2013 CanLII 95661 (ON SCSM)). I will address these decisions at a later point in this decision. Also frequently addressed and referenced by the tenants were various policy guidelines, which shall also be addressed below.

In rebuttal, the landlord testified that "we are not professional landlords or lawyers." They pointed out that the caselaw provided by the tenants are distinguishable, and that one of them is from another jurisdiction.

In respect of the window coverings (the blinds), the landlord explained that they cannot just clean one vane, but that all of them have to cleaned together. They argued that the age of the building is not relevant to the landlord's claims.

Analysis

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.

When an applicant seeks compensation under the Act, they must prove, on a balance of probabilities, all four of the following criteria before compensation may be awarded: (1) has the respondent party to a tenancy agreement failed to comply with the Act, regulations, or the tenancy agreement?; (2) if yes, did the loss or damage result from the non-compliance?; (3) has the applicant proven the amount or value of their damage or loss?; and, (4) has the applicant done whatever is reasonable to minimize the damage or loss?

The above-noted criteria are based on sections 7 and 67 of the Act, which state:

> 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.
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> 67 Without limiting the general authority in section 62 (3) *[director's authority respecting dispute resolution proceedings]*, if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Before delving in the particulars of the landlord's claim, I note that the caselaw provided by the tenants was of little help. Leaving aside the fact that arbitrators in Residential Tenancy Branch hearings are not bound by caselaw (except decisions from the Supreme Court of British Columbia or the British Columbia Court of Appeal), the

decisions provided to me are fact-specific and distinguishable. The two Civil Resolution Tribunal cases were rendered under a different statute and of minimal value. The third case, from the small claims court in Ontario, is not binding. For these reasons, I do not consider the application of any of these decisions to the decision before me.

In respect of the landlord's application, it is worth noting that the landlord's claim hinges on whether the tenants breached section 37(2)(a) of the Act, which states that "When a tenant vacates a rental unit, the tenant must [. . .] leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear [. . .]."

The phrase "reasonable wear and tear" is not defined in the Act or associated regulations. *Residential Tenancy Policy Guideline 1. Landlord & Tenant – Responsibility for Residential Premises*, however, provides a modicum of clarity at page one:

> 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. An arbitrator may determine whether or not repairs or maintenance are required due to deliberate damage or neglect by the tenant. An arbitrator may also determine whether or not the condition of premises meet reasonable health, cleanliness and sanitary standards, which are not necessarily the standards of the arbitrator, the landlord or the tenant.

Having reviewed and examined the documentary evidence, including that of the photographs taken by the landlord, I am persuaded that the multiple holes and patch jobs are beyond what is considered reasonable wear and tear. The number of holes is excessive, and thus the damage cannot be said to fall within reasonable wear and tear (see page 4, *Residential Tenancy Policy Guideline 1*).

It therefore follows that the tenants are liable for the wall repair and painting costs. However, I must apply *Residential Tenancy Policy Guideline 40* in determining an amount of depreciation to be applied to repairs. According to the guideline, interior paint is considered to have a useful life of four years. Thus, the assumption is that a landlord will repaint the interior walls every four years. In this dispute, the rental unit was (mostly) painted in 2016. As of the date that the tenancy ended, a period of at least four years have passed. Therefore, any cost related to painting the walls (which included some touch up patches) is reduced by 100% to zero. As such, while the tenants are liable for this claim, no compensation may flow.

In respect of the baseboard damage, there is insufficient evidence that this damage was anything but that caused by reasonable wear and tear. I find that the evidence points to reasonable wear and tear. Accordingly, I find no breach of the Act.

In respect of the kitchen cabinet door damage, I similarly find that this minor damage is that which would be caused by reasonable use, and thus is what I find to be reasonable wear and tear. Frequent – but entirely normal – opening and closing of this type of cabinet door will result the damage that is depicted in the landlord's photographs. Therefore, no claim for compensation will be considered for this damage.

Regarding the window covering cleaning, the tenants acknowledged having caused the spaghetti-stained vanes. However, they argue that they ought to be liable for the cleaning to five vanes, and not all 133 vanes. While I find some merit to this argument (because they only stained a small portion of the vanes), it is likewise unreasonable to expect a landlord to bring in a professional cleaner to just focus on five vanes. Moreover, a specific cleaning of five vanes would, in my mind, lead to a mismatched array of cleaned and uncleaned vanes.

For these reasons, I find that the landlord is entitled to compensation greater than just five vanes, but less than the total one hundred and thirty-three vanes cleaned. There appear to be 24 vanes on the blinds in question. Thus, I find that the tenants are liable to pay $84.67 ($469.23 divided by 133 multiplied by 24) for the cleaning.

As for the window handle replacement, an ever-loosening handle is consistent with reasonable use, and thus is "damage" consistent with reasonable wear and tear. For this reason, I do find that the tenants are liable for the cost of replacing the handle. This aspect of the landlord's claim is dismissed.

Finally, as for the washing machine, it was the new tenants who reported this issue. The parties appeared to have discovered no issues with the washing machine during the move-out inspection. The tenant turned the switch off and on quickly to demonstrate that there was nothing wrong with the machine. This is reflected in the Condition Inspection Report which indicated no issues with the washer. If the landlord had wanted to confirm that there were no issues, they ought to have run a test cycle after the tenants had vacated. Moreover, even if the tenants had caused the washing machine to malfunction, there is no evidence for me to find that they used the washing machine in a manner that was inappropriate or negligent. Indeed, the washing of dress shirts and nursing pads is an ordinary and reasonable use of a washing machine.

In summary, I dismiss all aspects of the landlord's claim with the exception of the cost of the blind cleaning in the amount of $84.67, which is awarded. Finally, as the landlord was at least partly successful in their application, I award them the cost of the application filing fee in the amount of $100.00, pursuant to section 72 of the Act.

Section 38(4)(b) of the Act permits a landlord to retain an amount from a security or pet damage deposit if "after the end of the tenancy, the director orders that the landlord may retain the amount." As such, I order that the landlord may retain $184.67 of the tenants' security deposit in full satisfaction of the above-noted awards.

The balance of the tenants' security deposit, $1,215.33, must be returned to the tenants within 15 days of the landlord's receiving this decision. A copy of a monetary order is issued to the tenants, in conjunction with this decision, should enforcement of the ordered return of the balance of the deposit be necessary.

Conclusion

I hereby award the landlord $184.67 in compensation, with the remaining aspects of the landlord's claim, as outlined and explained above, is dismissed without leave to reapply.

The landlord is authorized to retain $184.67 from the tenants' security deposit and I ordered to return $1,215.33 of the balance of the security deposit to the tenants.

This decision is made on delegated authority under section 9.1(1) of the Act.

Dated: June 8, 2021

Residential Tenancy Branch