



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, MNDL-S

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for a monetary order for damage or compensation under the Act of \$1,300.00; and a monetary order for damages of \$1,000.00, retaining the security deposit to apply to these claims.

The Landlord and the Tenant, J.Z., appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process.

During the hearing the Tenant and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. 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.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

Preliminary and Procedural Matters

The Landlord provided the Parties' email addresses in the Application and they confirmed these addresses in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in

the hearing. I also advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

Issue(s) to be Decided

- Is the Landlord entitled to a monetary order, and if so, in what amount?

Background and Evidence

The Parties agreed that the fixed-term tenancy began on April 14, 2021, with a monthly rent of \$1,300.00, due on the 14th day of each month. The Parties agreed that the Tenants paid the Landlord a security deposit of \$1,000.00, and no pet damage deposit.

The Parties agreed that they did not do a condition inspection of the rental unit at the start of the tenancy, with which to compare the condition at the end of the tenancy.

#1 Compensation for Damage → \$1,300.00

The Parties agreed that the Tenants moved out on July 14, 2021. In the Application, the Landlord said:

The Tenants removed kitchen cabinet doors and hinges. Left doors in the shed - Tenants re painted new door jams - Tenants did not clean up the interior of the house and left garbage and abandoned items in the yard.

In the hearing, the Landlord said:

We talked about the kitchen cabinets. The Tenants were going to paint them. They were left in disarray – they pulled them off and left some in the shop. They changed the style of half of them, and painted them. And they gave me six days notice and broke the year's lease.

I am trying to get a contractor – [B.L.] – who has done work for me in the past. He is supposed to be going in and repairing the cabinets to how they were. He is very busy, and he is going to get there when he can get there. He said he should be done by mid-September. He said it will cost roughly \$1100.00 – it's in what we submitted – see an email about it. He came and looked at them and looked in the shop and that's what he said. That's not including the \$200.00 to replace locks and the \$200.00 to remove garbage.

The Tenant said:

[The Landlord] gave us full permission, as per my evidence, saying we could fix the cabinets. We started them immediately. We took off door hinges and added a trim to improve the quality - at our expense - and we painted them. We informed [the Landlord] that we would be back on the 14th to finish all of our responsibilities. It would have entailed putting the doors back, but he changed the locks. So why the \$1,100.00 fee for that?

[The Landlord] never did a walk through – he's made allegations about cabinets and everything else. There's no proof showing any of this. The hinges all needed replacing. But upon him not following up with his other obligations.... I was ready to put them all back, but he changed the locks on us – locked up stuff of ours - the refrigerator that we bought, because his stopped working a week into the tenancy. Instead of complaining, we bought a new [used] fridge. In his evidence he's claiming our fridge with a scratch and a broken door – it was our used fridge. I have a receipt and a number for the lady we bought it from.

[The Landlord] said that there was garbage we left in the yard. All of the garbage bins were full, and garbage was left in the yard and the bins. We left it in the exact same condition as when we moved in. We were not given an opportunity to take photos. We are a professional cleaning company and he's claiming that, too?

The Landlord said:

We never gave any written permission to change the cabinets, but as the Act states, written permission is required.

The fridge – we were not told that our fridge died at the time. We were told that when they moved out. They asked for \$500.00 for their fridge, but they didn't have a receipt for it.

The Landlord submitted photographs of the rental unit kitchen, which shows the cupboards above the counters without doors.

The Tenant submitted a text dated July 13, 2021 at 8:34 p.m., which states:

The only thing I haven't been able to do is put the top cabinet doors on all the

old hinges are in the pantry along with all the screws I also left a can of paint in case the new tenant or you wants to finish painting the rest. I ordered new hinges cause the old ones are in pretty rough shape to start with but they won't be here until August 5th according to [the online retailer] when they come in I could leave them on the front porch I ordered 50 so there should be more then enough my wife thoroughly cleaned the house before we left I have a couple things in the back yard I left I still have to grab (rake, shovel couple buckets etc) all screw holes were patched and repaired.

[reproduced as written]

The Landlord submitted a copy of a text that he received from his contractor on August 6, 2021, which states:

Hello [T.], some of the doors have a raised edge on them now kind of a shaker style. In order to make them look uniform again all the remaining doors will need the same treatment. I will give you a price to repair and repaint all the doors. Hardware will have to be installed also.

Labour	22 hours @ \$45.00	990.00
Materials		130.00
Total		1120.00

[reproduced as written]

#2 Monetary Order for Damage or Compensation for Damage → \$1,000.00

I asked the Landlord about the basis for his second claim for \$1,000.00 from the Tenant. The Landlord said:

It was that I'm going to be out \$1,300.00 for the rent, because they gave us six days notice, and I'll be out \$1,000.00. I was trying to fill out that we're going to be out \$1,600.00 rent and \$1,000.00 security deposit, because it's going to cost me this amount of money....

The cabinets and the holes on the walls – that's for the damage – \$1,300.00 is for the loss of rental income and now it's \$2,600.00 we're out, because we can't rent it without kitchen cabinets.

Analysis

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

Before the Parties testified, I advised them of how I would analyze the evidence presented to me. I said that a party who applies for compensation against another party has the burden of proving their claim on a balance of probabilities. RTB Policy Guideline #16 ("PG #16") sets out a four-part test that an applicant must prove in establishing a monetary claim. In this case, the Landlord must prove:

1. That the Tenant violated the Act, regulations, or tenancy agreement;
2. That the violation caused the Landlord to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the Landlord did what was reasonable to minimize the damage or loss.

("Test")

Section 23 of the Act states that the landlord and tenant must inspect the condition of the rental unit together on the day the tenant is entitled to possession of the rental unit or on another mutually agreed upon day. The landlord must complete a condition inspection report ("CIR") in accordance with the regulations. Both the landlord and tenant must sign the CIR and the landlord must give the tenant a copy of that report in accordance with the regulations.

Section 35 of the Act also states that the landlord and tenant must inspect the condition of the rental unit together after the day the tenant ceases to occupy the rental unit, or on another mutually agreed upon day. As well, the landlord must offer the tenant at least two opportunities for the tenant to attend the move-out inspection.

Section 21 of the *Residential Tenancy Act* Regulation sets out that the CIR is evidence of the state of repair of the condition of the rental unit on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

Section 32 of the Act requires a tenant to make repairs for damage that is caused by the action or neglect of the tenant, other persons the tenant permits on the property or the tenant's pets. Section 37 requires a tenant to leave the rental unit undamaged.

However, sections 32 and 37 also provide that reasonable wear and tear is not damage and that a tenant may not be held responsible for repairing or replacing items that have suffered reasonable wear and tear.

Policy Guideline #1 helps interpret these sections of the Act:

The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises), or for cleaning to bring the premises to a higher standard than that set out in the *Residential Tenancy Act* or *Manufactured Home Park Tenancy Act* (the Legislation).

Reasonable wear and tear refer 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 reasonable wear and tear or due to deliberate damage or neglect by the tenant. An arbitrator may also determine whether or not the condition of premises meets reasonable health, cleanliness and sanitary standards, which are not necessarily the standards of the arbitrator, the landlord or the tenant.

In addition to setting out the Test noted above, PG #16 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.

. . .

An arbitrator may award monetary compensation only as permitted by the Act or the common law. In situations where there has been damage or loss with respect to property, money or services, the value of the damage or loss is established by the evidence provided.

When I consider all of the evidence before me overall, I note that the Landlord's explanation for the compensation he seeks is inconsistent with the claims he made in his Application. The Landlord did not seek recovery of lost income revenue in his Application, and therefore, I find that it would be inconsistent with administrative fairness for him to make such a claim in the hearing with no notice of this claim to the Tenants.

Further, I find that the Tenant told the Landlord in a text on July 13th, that he would return the following day to reinstall the cupboard doors. The Tenant even offered the Landlord new hinge hardware that he had ordered to replace the dilapidated hinges he had removed from the cupboard doors. However, I find that the evidence before me is that the Landlord changed the locks prior to the Tenant's return on July 14th to do the needed repairs. Accordingly, I find that the Landlord contributed to the rental unit being in a deficient condition at the end of the tenancy, as the Tenants were unable to return to the rental unit to finish their work. I find this indicates that the Landlord did not minimize or mitigate his damages in this regard, by having the Tenant complete the work for free. I, therefore, find that the Landlord failed the fourth step of the Test.

I find that the evidence before me indicates that the Tenant was repainting and refurbishing the kitchen cupboards at no charge to the Landlord. I find that this is inconsistent with the Landlord's contractor having quoted \$1,120.00 to finish the work. The contractor indicated that he would repaint the doors; however, this disregards the evidence that the Tenant has already given them one coat of paint. I find on a balance of probabilities that the contractor's quote is unreasonably high in this regard. As a result, I find that the Landlord failed to prove the value of the damage left to the rental unit by the Tenants – the third step of the Test, and therefore, I dismiss the Landlord's claim for compensation for the cupboard doors.

I have found that the Landlord failed to meet his requirements in establishing that he is due compensation from the Tenants, given that he failed the third and fourth steps of the Test. I, therefore, dismiss the Landlord's claim without leave to reapply.

I Order the Landlord to return the \$1,000.00 security deposit to the Tenants, as soon as possible, pursuant to section 38 of the Act. In this regard, I award the Tenants with a Monetary Order for \$1,000.00 from the Landlord for the reimbursement of their security deposit.

Conclusion

The Landlord is unsuccessful in his Application for compensation from the Tenants, as the Landlord failed to meet his obligations under PG #16 to establish a reasonable value for his claim, and he failed to mitigate or minimize the damage claimed.

I Order the Landlord to return the Tenants' **\$1,000.00** security deposit, as soon as possible. I grant the Tenants a Monetary Order in this regard. This Order must be

served on the Landlord by the Tenants and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: August 27, 2021

Residential Tenancy Branch