Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BAYVIEW STRATA & RENTAL SERVICE and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S FFL

Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act). The landlord applied for a monetary order in the amount of $1,606.22 for damage to the rental unit, site or property, to offset any amount owing with the tenant's security deposit and pet damage deposit and recover the cost of the filing fee.

This hearing began on April 22, 2021, and after 58 minutes was adjourned to allow for additional time to hear from both parties. On September 2, 2021, the parties reconvened and after an additional 40 minutes, the hearing concluded.

Attending both dated of the hearing was an agent for the landlord, CL (agent), the tenant and a support person for the tenant. A summary of the testimony and evidence is provided below and includes only that which is relevant to the hearing. Words utilizing the singular shall also include the plural and vice versa where the context requires.

In terms of service, I am satisfied that both parties were sufficiently served in accordance with the Act. I have reached this finding based on both parties confirming they could view the evidence which I have addressed in this decision.

Preliminary and Procedural Matters

The parties were informed at the start of the second portion of the hearing that recording of the dispute resolution is prohibited under the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 6.11. The parties were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, the parties were informed that if any recording was surreptitiously made and used for any purpose, they will be referred to the RTB

Compliance Enforcement Unit for the purpose of an investigation under the Act. Neither party had any questions about my direction pursuant to RTB Rule 6.11.

In addition, both parties confirmed their respective email addresses and were advised the decision would be emailed to both parties.

Issues to be Decided

- Is the landlord entitled to a monetary order under the Act, and if so, in what amount?
- What should happen to the tenant's security deposit and pet damage deposit under the Act?
- Is the landlord entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

A copy of two tenancy agreements were submitted in evidence. The first tenancy began on November 22, 2019 and included two units, A&B. For the remainder of this decision, I will refer to the rental units as "units" for ease of reference. For the first tenancy, the fixed-term date listed was for 6 months until May 31, 2020. The second tenancy agreement as signed on April 23, 2020 and was effective as of June 1, 2020 and was scheduled to require vacant possession as of November 30, 2020. The monthly rent of both agreements was $1,800.00 per month.

The landlord's monetary claim of $1,606.22 is comprised as follows:

ITEM DESCRIPTION	**AMOUNT CLAIMED**
1. Cleaning	$220.50
2. Maintenance hole filling	$655.72
3. Agent's Time per lease	$630.00
4. Filing fee	$100.00
TOTAL	**$1,606.22**

Regarding item 1, the agent stated that the tenant failed to leave the rental units in a reasonably clean condition and that it took 2 cleaners 3.5 hours to clean the units to a reasonable standard. In support of this portion of their claim, the landlord submitted an

invoice for the units, which states that a two person team spent 3.5 hours at $60.00 per hour for a total of $210.00 plus $10.50 in GST for a total of $220.50.

The agent referred to many colour photos, which the agent stated were taken at the end of the tenancy. The photos support that the shower was left dirty, that the sinks were dirty, the flooring had debris on them, the bathtub was dirty, the carpet had debris on them, the fridge was empty but not cleaned, the stove on the top and inside was dirty, and there were personal items left behind by the tenant on the patio.

The agent stated that the tenancy end date was November 30, 2020 and that on November 19, 2020, the agent scheduled an outgoing inspection for November 30, 2020 at 11:00 a.m. The tenant responded to that email request on November 26, 2020 requesting 12:30 p.m. and the agent confirmed 12:30 p.m. on November 30, 2020 for the outgoing inspection. On November 29, 2020, the agent stated the tenant asked for an extension which was not granted by the agent. The agent stated that at 12:30 p.m. on November 30, 2020, the rental unit looked like it was 8 hours away from being ready for an inspection as it was not clean or had the tenant's personal items removed and was full of stuff. The agent stated they would return at 7:00 p.m. on November 30, 2020 for the inspection. At 5:55 p.m. on the same day, the agent stated they emailed the tenant to advise they would be arriving at 7:15 p.m. and at 6:00 p.m. the tenants confirmed they would be there for 7:15 p.m.

The agent stated that when they arrived at 7:15 p.m. the unit was not ready and had at least 4 hours worth of work to be done from the agent's experience. The tenant left the unit at 11:10 p.m. and left materials for repair to the units. The agent stated that on December 1, 2020, the agent returned for the final inspection photos at 2:04 p.m. The agent stated that even though the tenant was given an extension, they were not ready to move out by the 7:15 p.m. timeline on November 30, 2020.

The tenant claims he was told by the agent "not to worry about the cleaning" via phone on November 30, 2020. The agent denies saying that to the tenant and had advised the tenant to prioritize moving personal items out of the units.

Regarding item 2, the landlord has claimed $655.72 for the high number of nail holes in the walls in the units. The agent stated that there were 423 holes in unit A and 141 holes in unit B. The tenant did not deny the number of holes described by the tenant and instead stated that they feel that number is normal wear and tear during a tenancy, which I will address further in this decision.

Although the tenant claims they were denied an outgoing inspection, the agent vehemently denies that as the inspection was scheduled for 12:30 p.m. on November 30, 2020 and the tenant was still at least 8 hours away from having their items removed and the cleaning completed.

The agent presented an invoice dated December 8, 2020, which indicated that the units required Unit A to remove nails, screws and thumbtacks from wall and fill 423 holes in the walls, then sand, wash walls, spot prime and paint affected walls one coat. For Unit B, the invoice indicates a drywall repair to the closet frame, remove screws and thumbtacks from walls and to fill 141 holes in the walls and remove debris and arrange furniture. The invoice indicates 16 hours at $35.00 per hour for a total of $560.00 in labour, $61.97 for materials plus a vehicle surcharge of $33.75 for a total of $655.72.

Regarding item 3, the landlord has claimed $630.00 for the 10 hours of “overholding” at $60.00 per hour calculated from 1:00 p.m. to 11:00 p.m. The tenant stated that COVID came into play and that while the tenant ordered a moving company, the moving company only moved the heavy stuff and to save money the tenant made 13-14 trips in their own vehicle to move the smaller items, such as boxes and totes. The tenant also admitted that they went to buy totes to move their smaller items. The agent stated that the tenant had over 2 months to prepare for moving day and that the tenant was not ready whatsoever at 12:30 p.m. on November 30, 2020 when the outgoing inspection had been scheduled for between the parties.

The tenant reiterated that they were advised that the agent stated, “don’t worry about the cleaning as we have to do a COVID clean”, which the agent denied saying. The tenant stated that they did the best with what they had.

The agent referred to clause 25 of the second tenancy agreement, which states as follows:

25. MOVE OUT REQUIREMENTS:

All tenants vacating are responsible for leaving the suite clean and in an acceptable state as detailed in section 29. of this agreement. **The unit must be clean and vacated by 1:00 p.m. on the last day of the month** unless otherwise arranged. By signing this agreement the tenant agrees to have $60/hour deducted from their security deposit for every hour they are in the home past 1:00 pm on the last day of their tenancy. TENANT AGREES

Analysis

Based on the documentary evidence presented, the testimony of the parties and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the Act. Accordingly, an applicant must prove the following:

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

In the matter before me, the landlord bears the burden of proof to prove all four parts of the above-noted test for damages or loss.

Item 1 – Section 37(2)(a) of the Act applies and states:

> **Leaving the rental unit at the end of a tenancy**
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> **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,** and
>
> [Emphasis added]

I have reviewed the photo evidence, and I find the tenant failed to leave the rental unit in a reasonably clean condition and I find the cleaning invoice to support the level of cleaning required to bring the rental unit to a reasonably clean condition. As a result, I find the landlord has met the burden of proof. I find the tenant breached section 37(2)(a) of the Act and I grant the landlord **$220.50** as claimed for this item. I afford no weight to the tenant's claim that the agent advised the tenant not to worry about cleaning as the agent denied saying that to the tenant during the hearing and I find delayed the outgoing inspection due to the lack of having personal items removed from the rental

unit. I also afford the colour photos from the landlord significant weight as they show a dirty rental unit at the end of the tenancy.

Regarding item 2, the landlord has claimed $655.72 to repair a very high number of holes in the walls in the units. I afford significant weight to the tenant not denying that there were over 560 holes in the units. I also afford RTB Policy Guideline #1 significant weight, which states under Nail Holes the following:

> 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.

While a few dozen nail holes in each unit could be considered reasonable, I find over 560 nail holes between two units to be very excessive and does not represent reasonable wear and tear as claimed by the tenant. As a result, I accept the invoice before me to be accurate and I find the tenant breached section 37(2)(a) of the Act by damaging the rental unit beyond normal wear and tear. Therefore, I find the landlord has met the burden of proof for this item and I grant the landlord **$655.72** as claimed.

Item 3 - The landlord has claimed $630.00 for the 10 hours of “overholding” at $60.00 per hour calculated from 1:00 p.m. to 11:00 p.m. Section 5(2) of the Act applies and states:

> **This Act cannot be avoided**
>
> **5**(2) **Any attempt to avoid or contract out of this Act or the regulations is of no effect.**
>
> [Emphasis added]

I find that clause 25 of the tenancy agreement is unenforceable as it is akin to an illegal rent increase. In other words, the tenant was never paying $60.00 per hour to occupy

the units so to charge $60.00 per hour for overholding I find is unconscionable and thereby unenforceable. As a result, I find the landlord has failed to meet the four-part test for this item and it is dismissed without leave to reapply, due to insufficient evidence.

Item 4 - As a majority of the application before me was successful, I grant the landlord **$100.00** pursuant to section 72 of the Act for the filing fee.

Based on the above, I find the landlord has established a total monetary claim of **$976.22** and pursuant to sections 38 and 67 of the Act, I grant the landlord authorization to retain $976.22 of the tenant's combined deposits of $1,800.00 in full satisfaction of the landlord's monetary claim. Pursuant to section 67 of the Act, I grant the tenant a monetary order for the pursuant to section 67 of the Act, for the combined deposit balance owing by the landlord to the tenant in the amount of **$823.78.**

Conclusion

The landlord's claim is mostly successful.

The landlord has established a total monetary claim of $976.22 which has been offset with the tenant's combined deposits of $1,800.00, which have accrued $0.00 in interest, in full satisfaction of the landlord's monetary claim pursuant to sections 38 and 67 of the Act.

The tenant has been granted a monetary order pursuant to section 67 of the Act, for the balance owing by the landlord to the tenant of $823.78.

Should the tenant require enforcement of this order, the landlord must be served and then the order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision will be emailed to both parties. The monetary order will be emailed to the tenant for service on the landlord.

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: September 13, 2021