



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNDCL-S, FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security and pet deposits in partial satisfaction of the monetary order requested, pursuant to section 38; and
- an order authorizing the landlord the recovery of the filing fee for this application from the tenant pursuant to section 72.

At the outset of the hearing, I explained to the parties that as these hearings were teleconferences, the parties could not see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so.

All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation. All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I explained the hearing and settlement processes to both parties. Both parties had an opportunity to ask questions. Both parties confirmed that they were ready to proceed with the hearing, they did not want to settle this application, and they wanted me to make a decision regarding this application. Neither party made any adjournment or accommodation requests. I have reviewed all oral and written submissions before me;

however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for damage and losses arising out of this tenancy?

Is the landlord entitled to retain all or a portion of the tenant's security and pet deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to the recovery of the filing fee?

Background, Evidence

The landlord's testimony is as follows. The tenancy began on July 1, 2019 and ended on March 31, 2021. The tenant was obligated to pay \$1600.00 per month in rent in advance and at the outset of the tenancy the tenant paid a \$800.00 security deposit and a \$800.00 pet deposit which the landlord still holds. Both parties agree that a written condition inspection was done at move in and move out.

The landlord testified that the tenant left the unit dirty and damaged at move out. The landlord testified that the tenant put an excessive amount of nail holes in the wall which required all the walls in the unit to be filled, sanded, and painted. The landlord testified that the tenant left the unit filthy and didn't do any cleaning in preparation for the move out. The landlord testified that the carpet smelt of cat urine so badly that it required the carpets to be removed and replaced. The landlord testified that the carpets had extensive staining to them. The landlord testified that the tenant did not pay the move out fee to the Strata as part of their Form K and tenancy agreement.

The landlord is applying for the following:

1.	Paint supplies and labour	\$1018.24
2.	Carpets	2600.44
3.	Suite Cleaning	777.00
4.	Strata	100.00
5.	Express Post	26.54
6.	Filing Fee	100.00
7.		
8.		
9.		

10.		
	Total	\$4622.22

The tenant gave the following testimony. The tenant testified that the carpets were old and worn when she moved in. The tenant testified that much of the damage alleged to the walls was there when she moved in and that the paint was old. The tenant testified that the suite did not smell like cat urine. The tenant testified that her cat always used the litter box and never stained the carpets. The tenant testified that the unit was left reasonably clean and is “okay” with some money given to the landlord for extra cleaning. The tenant acknowledges and accepts responsibility for the move out charge. The tenant testified that the landlord should only be entitled to “around \$350.00”.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. **In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof.** The claimant must provide **sufficient evidence of the following four factors**; the existence of the damage/loss, that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party, the applicant must also show that they followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed, and that if that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Along with the above, I have also turned my mind to Residential Tenancy Policy Guideline 40 regarding the “useful life” of building elements.

When applied to damage(s) caused by a tenant, the tenant’s guests or the tenant’s pets, the arbitrator may consider the useful life of a building element and the age of the item. **Landlords should provide evidence showing the age of the item at the time of replacement and the cost of the replacement building item.** That evidence may be in the form of work orders, invoices or other documentary evidence. If the arbitrator finds that a landlord makes repairs to a rental unit due to damage caused by the tenant, the arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant’s responsibility for the cost or replacement.

I address the landlords claim and my findings as follows.

Painting Supplies and Labour

The landlord testified that she purchased the property in 2017 and was not aware of the age of the paint in the unit. The landlord stated that “I think the unit is 11 years old”. Policy Guideline 40 lists the useful life of paint at 4 years. I find that the paint in the unit exceeded its useful life.

However, an arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward. “Nominal damages” are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

I find that the number of holes in the walls to be excessive and that a nominal award is appropriate under the circumstances based on the vast difference of the unit from move in to move out as per the condition inspection report and the photos provided by the landlord. As a result, I find that the landlord is entitled to \$200.00 nominal award.

Carpets \$2600.44

Again, as noted in the previous claim, the landlord testified that she purchased the property in 2017 and was not aware of the age of the carpets but assumed that they are the original ones. The landlord stated that “I think the unit is 11 years old”. Policy Guideline 40 lists the useful life of carpets at 10 years. I find that the carpets in the unit exceeded its useful life.

As noted above, an arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward. “Nominal damages” are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

I find that the number of stains to be excessive and that a nominal award is appropriate under the circumstances based on the vast difference of the unit from move in to move out as per the condition inspection report and the photos provided by the landlord. As a result, I find that the landlord is entitled to \$200.00 nominal award.

Cleaning \$777.00

The landlord did not provide an actual receipt for this claim but only a quote. The tenant agreed that the landlord should be entitled to some money for cleaning but nothing near the \$777.00. Based on the documentation, photos, inspection reports and testimony of the parties, I find that the appropriate amount to award the landlord is \$200.00.

Strata Move out fee \$100.00

The tenant agrees that she is responsible for this cost, accordingly; I find that the landlord is entitled to \$100.00.

Express Post \$26.54

The Act does not allow for the recovery of mailing costs to litigate one's claim; accordingly, I dismiss this portion of the landlords' claim.

The landlord is entitled to the recovery of the \$100.00 filing fee.

Conclusion

The landlord has established a claim for \$800.00. I order that the landlord retain \$800.00 from the deposits in full satisfaction of the claim. The landlord is to return the remaining \$800.00 to the tenant. I grant the tenant an order under section 67 for the balance due of \$800.00. This order may be filed in the Small Claims 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: October 14, 2021

Residential Tenancy Branch