



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Skyline Living
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S, FFL

Introduction

This hearing dealt with a landlord's application for monetary compensation for damage to the rental unit and authorization to retain all or part of the tenant's security deposit.

The landlord's agent appeared at the hearing and was affirmed. There was no appearance on part of the two named co-tenants.

Since the named co-tenants did not appear at the hearing, I explored service of the hearing materials upon each of the tenants.

The landlord's agent testified that the hearing materials were sent to only one of the tenants, at his forwarding address, on May 27, 2021 as they only had a forwarding address for that tenant. The registered mail was returned as unclaimed; however, pursuant to section 90 of the Act, a party is deemed served five days after mailing so that a party cannot avoid service. Accordingly, I found the tenant deemed served.

As for the other named tenant, as she was not served at an address where she resides or her forwarding address, I excluded her as a named party and amended the style of cause accordingly.

Issue(s) to be Decided

1. Has the landlord established an entitlement to compensation from the tenant for damage to the rental unit, and if so, in what amount?
2. Is the landlord authorized to retain all of part of the tenant's security deposit?
3. Award of the filing fee.

Background and Evidence

The landlord entered into the original tenancy agreement on September 1, 2020 and the agreement was assigned to the named tenant, and his co-tenant, effective March 1, 2021. The landlord is holding a security deposit of \$1045.00.

The landlord and the original tenants performed a move-in inspection report; however, the landlord did not submit it as evidence for this proceeding. When the tenancy was assigned the landlord prepared an inspection report indicating the assignees were accepting the rental unit in "as is" condition and a move-in inspection report reflects that.

A move-out inspection was performed with the named tenant on April 30, 2021.

The tenant did not provide the landlord with written authorization to retain any part of the security deposit but he provided a forwarding address on the move-out inspection report.

On May 13, 2021 the landlord applied for compensation totalling \$1709.88 which was comprised of the following charges:

Painting per quote	\$1,284.00
Replacing entry door lock	\$55.00
New window covering	\$0.10
Door Repair per quote	\$25.00
Replacing Carpet per quote	\$70.00
Replacing towel bar	\$92.58

In support of the amounts claimed above, the landlord provided a written quotation from a contractor dated May 12, 2021.

At the hearing, the landlord's agent requested the amounts be amended to reflect the actual costs to rectify the damage, as set out below:

Painting – the landlord did not have the entire unit re-painted, as quoted, but painted walls and a ceiling which had been damaged beyond wear and tear at a cost of \$100.00 + \$130.00, for a total of \$230.00.

Repairing door and replacing lock – the landlord's agent testified that the repair to the door and the lock was much more expensive than the amounts quoted of \$55.00 and \$25.00 and actually cost \$372.58.

Window covering – the landlord's agent withdrew the claim for \$.10

Carpet – the landlord's agent testified the carpet was cleaned and not replaced. The landlord's agent stated the cost for cleaning was \$40.00.

Towel bar – The landlord's agent stated the towel bar did not need replacement and was likely just tightened.

The landlord's agent sought to add additional claims for damage to the rental unit during the hearing. I declined to permit the landlord to do so as the tenant had not been put on notice that this hearing would include claims other than those set out in the Notice of Dispute Resolution Proceeding.

Aside from the contractor's quotation, other evidence provided by the landlord included a copy of the tenancy agreement; the move-in and move-out inspection reports; and photographs.

The move-out inspection signed by the tenant indicates he agreed with the landlord's assessment of the condition of the property.

Considering the door and lock costs were much greater than quoted, I authorized and ordered the landlord to provide me with the invoice/receipt to substantiate the actual amounts to repair the door and replace the lock. In response, the landlord provided an email dated May 12, 2021 from the same contractor who had provided the quotation indicating the entry door was \$125.00 to repair; however, there was no charge for a new lockset. The landlord also provided other evidence that I had not authorized and, accordingly, I did not give consideration to the additional evidence.

Analysis

Section 32 of the Act provides that a tenant is required to repair damage caused to the rental unit or residential property by their actions or neglect, or those of persons permitted on the property by the tenant. Section 37 of the Act requires the tenant to leave the rental unit undamaged at the end of the tenancy. However, sections 32 and 37 provide that reasonable wear and tear is not considered damage. Accordingly, a landlord may pursue a tenant for damage caused by the tenant or a person permitted on the property by the tenant due to their actions or neglect, but a landlord may not pursue a tenant for reasonable wear and tear or pre-existing damage.

Upon consideration of all of the unopposed evidence before me, I provide the following findings and reasons.

Painting – The move-out inspection report and the photographs are consistent with the landlord's position that the ceiling and a couple of walls required painting to rectify scuffs and holes. However, there appears to be photographs of two walls that have settlement cracks which would not be the tenant's responsibility. Considering the landlord reduced its claim from \$1284.00 to \$230.00 I find the landlord's request for \$230.00 to be within reason and I award the landlord this amount.

Door repair and lock replacement -- The landlord's contractor quoted \$25.00 to repair the door but on the same day provided an email indicated the cost was \$125.00. I had authorized and ordered the landlord to provide a copy of the actual invoice/receipt for the door repair. I find the email dated the same day as the written quote does not satisfy me that the actual cost to repair the door was \$125.00. Therefore, I limit the landlord's award to the lesser amount, as quoted, of \$25.00.

The same email evidence described above, has no charge for the lock replacement. Nor, was an invoice/receipt provided, as ordered, to demonstrate the actual cost to replace the lock. As such, I find I am not satisfied that the lock required replacement due to damage caused by the tenant and I make no award for replacement of the lock.

Carpet -- The move-out inspection report indicates the carpet required cleaning or repair. The landlord had originally claimed \$70.00 for carpet replacement but acknowledged the carpet was actually cleaned for \$40.00. I accept that the request to recover \$40.00 for carpet cleaning is reasonable and I award the landlord that amount.

Towel bar – the landlord’s agent testified the towel bar did not actually get replaced and was likely just tightened. There was no claim for the cost to tighten the towel bar. Therefore, I make no award with respect to the towel bar.

Upon review of the move-out inspection report, I note the landlord does not provide space for a tenant to authorize deductions from the security deposit as is required under section 20(2) of the Residential Tenancy Regulations. Section 20(2) provides as follows:

(2) In addition to the information referred to in subsection (1), a condition inspection report completed under section 35 of the Act [*condition inspection: end of tenancy*] must contain the following items in a manner that makes them clearly distinguishable from other information in the report:

- (a) a statement itemizing any damage to the rental unit or residential property for which the tenant is responsible;
- (b) if agreed upon by the landlord and tenant,
 - (i) the amount to be deducted from the tenant's security deposit or pet damage deposit,
 - (ii) the tenant's signature indicating agreement with the deduction, and
 - (iii) the date on which the tenant signed

[My emphasis underlined]

In failing to provide the above-described information on the move-out inspection report, the landlord does not provide the tenant the opportunity to authorize reasonable deductions from the security deposit on the move-out inspection report. Considering this, and the landlord’s limited success in this application, I find it appropriate the landlord absorb the cost of the filing fee and I make no award for recovery of the filing fee to the landlord.

In keeping with all of the above, I authorize the landlord to make the following deductions from the tenant’s security deposit and I order the landlord to return the balance of the security deposit to the tenant, as set out below.

Security deposit held by landlord		\$1045.00
Less: authorized deductions for –		
Painting	230.00	
Door repair	25.00	
Carpet cleaning	40.00	295.00
Balance of security deposit due to tenant		\$ 750.00

In keeping with Residential Tenancy Policy Guideline 17, I provide the tenant a Monetary Order with this decision to ensure the landlord refunds \$750.00 to the tenant as ordered.

Conclusion

The landlord is authorized to deduct \$295.00 from the tenant's security deposit and the landlord is ordered to return the balance of the security deposit in the net amount of \$750.00 to the tenant. The tenant is provided a Monetary Order in the amount of \$750.00 to ensure payment is made.

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: November 24, 2021

Residential Tenancy Branch