



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDL-S, FFL**

Introduction

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

- a monetary award for damages and loss pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord MA (the "landlord") confirmed they represented both named applicants. The tenant represented themselves with the assistance of a family member.

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

The tenant confirmed receipt of the landlords' notice of application but disputed that they were served with the landlords' evidence package. The parties agree that the tenant has not provided the landlord with a forwarding address. The tenant says that the address for service provided on the landlord's application is not an address at which they reside and not their address for service.

The landlord testified that they served the tenant by registered mail sent to the address they found through an investigator. The landlord did not apply for an order for

substituted service nor did they provide a cogent explanation of how they determined the tenant's address or why they believe this to be an appropriate address for service.

Based on the testimonies of the parties I find that the tenant has been sufficiently served with the landlord's application and materials in accordance with section 71(2) of the *Act*. The tenant testified that they had full knowledge of the substance and contents of the landlord's claim and made reference throughout the hearing to the evidentiary materials. I am satisfied that there is no breach of the principles of procedural fairness or natural justice to find that the tenant has been sufficiently served with the landlord's materials in accordance with section 71(2).

The landlord confirmed receipt of the tenant's evidence and based on their testimony I find them duly served in accordance with section 88 of the *Act*.

Residential Tenancy Policy Rule of Procedure 3.7 provides that evidence submitted by a party must be organized, clear and legible. I find that the landlord submitted a large volume of individual pieces of evidence in a haphazard and poorly organized manner. They filed many individual files instead of a single pdf file with numbered pages, the file names are inconsistent and are uploaded non-sequentially in no discernable order so that locating individual pieces of evidence is difficult and time consuming. Pieces of documentary evidence are submitted as poorly focused photographs of the documents rather than legible scanned copies. While I have not excluded any of the documentary evidence of the landlord, I find that the poor presentation detrimentally affects the strength of submissions and parties are advised to submit all evidence in a single numbered pdf file containing only relevant materials.

Issue(s) to be Decided

Are the landlords entitled to a monetary award as claimed?

Are the landlords entitled to retain the deposit for this tenancy?

Are the landlords entitled to recover their filing fee from the tenant?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The parties agree on the following facts. This periodic tenancy began in December 2017 and ended on November 30, 2020 in accordance with a 1 Month Notice to End Tenancy for Cause dated October 29, 2020. A security deposit of \$800.00 was paid at the start of the tenancy and is still held by the landlord. The rental unit is a suite in a multi-unit strata managed condo building.

The parties prepared a move-in condition inspection report at the start of the tenancy. The tenant failed to participate in a move-out inspection despite the landlord providing several opportunities to schedule. The tenant has not provided a forwarding address as at the date of the hearing and refused to provide a current address for service.

The landlord served the tenant with a 1 Month Notice to End Tenancy for Cause on October 29, 2020 with an effective date of November 30, 2020. The reason provided on the notice for the tenancy to end is that the tenant has engaged in illegal activity that has adversely affected the quiet enjoyment of another occupant or the landlord and has jeopardized the lawful right or interest of another occupant of the landlord. Specifically, the landlord submits that they were informed by the strata corporation that the tenant has been reported growing cannabis on the property and dealing drugs. The tenant did not dispute the notice.

The landlord submits that at the end of the tenancy the rental unit required considerable cleaning, repairs and work to be done. Among the issues identified by the landlord include repairs to the patio, carpet cleaning, repainting the walls, removal of furniture, deep cleaning, replacement of carpets and flooring, changing the sinks and tubs, replacing fixtures and replacing the locks to the rental unit. The landlord submitted a large volume of photographs as well as invoices and receipts from third party companies retained to work on the rental unit.

The landlord submits that because of the reports from the strata corporation they commissioned a professional inspection of the rental unit which found various deficiencies required intervention. The landlord said that they initially attempted to restore the rental unit to its pre-tenancy condition through deep cleaning but ultimately required replacement of carpets and flooring due to the damage.

The landlord seeks a monetary award of \$16,084.89 for the following items:

Item	Amount
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Patio repair	\$4,998.00
Replacement Door Knob	\$24.01
Replacement Light Bulb	\$40.32
Disposal of Furniture	\$15.00
General Work Performed	\$1,000.00
Replacement of Flooring	\$4,760.00
Replacement of Carpeting	\$2,198.00
Replacement of Blinds	\$125.44
Replacement of Refrigerator Filter, bulbs, shelving	\$165.54
Replacement of Part for Dishwasher	\$95.52
Inspection of Rental Unit	\$341.25
Carpet Cleaning	\$200.55
Cleaning of Rental Unit	\$248.85
Painting	\$1,000.00
Replacement of Locks	\$451.50
Repair of Garburator	\$250.00
Cleaning Supplies	\$49.91
Replacement of Blinds	\$228.48
Replacement of Closet Doors	\$471.52
Installation of Closet Doors	\$120.00
TOTAL	\$16,084.89

The tenant acknowledged that some repairs to the rental unit were required but disputes the amount claimed by the landlord as excessive. The tenant specifically agreed that they replaced the locks to the rental unit during the tenancy without the landlord's consent or knowledge, that the carpet required cleaning though not replacement and that some areas of the wall were marred requiring cleaning.

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 prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has

been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I am satisfied with the totality of the evidence that the rental unit was damaged considerably due to the tenancy and that the landlord incurred significant costs to restore the rental unit to its pre-tenancy condition.

The parties completed a move-in inspection report at the start of the tenancy. The report notes little damage indicating that the refrigerator has some dents and that the exterior door sticks. The copy of the report signed by the parties notes no other issues with the rental unit as at the start of the tenancy. Residential Tenancy Regulation 21 provides the evidentiary weight to be afforded a condition inspection report completed in accordance with the legislation stating that it is evidence of the state of repair and condition of the rental unit. Accordingly, I find that there was little if any issues with the rental unit at the start of the tenancy.

I do not find the tenant's submissions that additional issues were discovered after the tenancy commenced to be particularly persuasive or supported in the documentary materials. I further find the tenant's submissions and description of the rental unit are directly contradicted by the documentary materials submitted.

I am satisfied with the evidence of the parties that the rental unit had considerable damage at the end of the tenancy. The tenant testified that they agree with some portions of the landlord's claim including the replacement of locks, carpet cleaning and wall markings. I find the landlord has provided sufficient evidence of much of the other portions of their claim through their testimony, photographs and independent reports from third party companies.

The landlord received reports from the strata corporation and their agents about necessary repairs to the patio and the cost of the work that was required. Similarly, the landlord received third-party reports about the rental unit and the work that was required. I find the landlord acted reasonably in following professional advice and accepting the quotations provided by professional companies. The duty to mitigate damages does not require a landlord to find the cheapest labour or parts but to act reasonably. I find that following the advice of professionals and hiring third parties to be a reasonable step to mitigate their losses.

I find that the description of the work performed to be reasonable and commensurate with the damages shown and reported. This is not an instance of a landlord using the pretext of restoration to upgrade a rental unit but simply performing repairs and maintenance in response to damage caused by a tenant beyond the expected wear and tear from occupancy.

However, I am not satisfied with the landlord's submission that carpet cleaning, which was initially undertaken, was inadequate and full replacement of the carpets was ultimately required. Based on the documentary evidence I find that while professional carpet cleaning is a reasonable response to the damage noted, full replacement of carpets is excessive. Accordingly, I dismiss this portion of the landlord's claim.

Similarly, while I do find that the damage to the flooring seen in the documentary evidence appears to be significant, I am not satisfied that the individual areas could not be repaired without the whole rental unit be re-floored. The landlord's own report notes moisture damage in specific areas and in the absence of cogent submissions explaining why spot damage necessitates wholesale replacement, I find the landlord's response to be excessive. Therefore, I dismiss this portion of the landlord's claim.

Residential Tenancy Policy Guideline 40 outlines the expected useful life of building elements and notes that interior painting is expected to be replaced every 4 years. This tenancy started in 2017 and I find that painting would have been required within a matter of months in any event. Consequently, I find that an award of \$500.00, half of the claimed amount for painting to be reasonable in the circumstance.

For the reasons above I issue a monetary award in the landlords' favour in the amount of \$8,626.89 for damages and loss.

As the landlords were successful in their application they are entitled to recover their filing fee from the tenant.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlords to retain the tenant's security deposit in partial satisfaction of the monetary award issued in the landlords' favour.

Conclusion

I issue a monetary order in the landlords' favour in the amount of \$7,926.89. The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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: November 4, 2021

Residential Tenancy Branch