



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNSD FF

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution. The participatory hearing was held, by teleconference, on November 16, 2021. The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage to the unit; and,
- authorization to retain all or a portion of the Tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38.

The Landlord and the Tenant both attended the hearing and provided affirmed testimony. Both parties confirmed receipt of each others documentation and evidence. No service issues were raised.

Both parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Is the Landlord entitled to a monetary order for damage to the unit?
- Is the Landlord authorized to retain all or a portion of the Tenant's security and pet deposit in partial satisfaction of the monetary order requested pursuant to section 38?

Background and Evidence

Both parties agreed that month rent was set at \$4,264.00 and was due on the first of the month. The Tenant paid a security deposit of \$2,000.00 and after the tenancy, the Landlord returned \$1,121.40, keeping \$878.60 to cover the costs of the items claimed on this application.

A condition inspection report was completed showing that a move-in inspection was completed at the start of the tenancy, which was approximately May 1, 2017. The Tenant signed the move-in portion of that report. At the end of the tenancy, on April 30, 2021, the Tenant met with the Landlord and did a final move-out inspection. However, the parties disagreed with the Landlord's characterization of the unit, and the expenses, so the Tenant did not sign the report. The Landlord took photos of the unit before the tenancy, and after, and the Tenants provided a couple of videos from 2017.

The Landlord is seeking 3 items on this application. They are as follows:

1) \$504.00 – Wall repair and repainting

The Landlord pointed to an invoice they paid for wall repair and repainting of the damaged areas in the rental unit. The Landlord stated that this rental unit was brand new at the start of the tenancy, and is reflected as such in the photos and the move-in condition inspection report. The Landlord pointed to the photos to demonstrate that there were multiple holes and scrapes in the wall. During the hearing, the Landlord was asked to clarify where the wall damage was, and he stated that it was throughout the rental unit, as shown in the photos. The Landlord stated that the Tenants patched most of the holes in the walls, with some sort of filler, but failed to properly sand the areas. As such, some further wall repair was required, as was repainting of the affected areas.

The Tenant stated that before he and his roommates left the rental unit, they patched any holes they made, and repainted some small areas. The Tenant pointed out that there is no remarkable damage in the photos provided by the Landlord.

2) \$240.00 – Cleaning

The Landlord stated that the Tenant failed to sufficiently clean the unit at the end of the tenancy, as shown in the move-out photos, taken on April 30, 2021. The Landlord pointed out that there was general dirt and dust on blinds, and windows, as well as stains on cupboards, and baseboards. The Landlord noted that most of the issues were located in the kitchens and bathrooms. However, the Tenant also left piles of garbage

that needed to be disposed of before the unit could be re-rented. The photos of the garbage show that the Tenant had thrown out and piled up more garbage than could be fit into the normal garbage can. The Landlord provided an invoice for this item.

The Tenant stated that he spent days cleaning, and he does not feel this charge is warranted.

3) \$34.60 – Light bulbs

The Landlord stated that there were 11 light bulbs that were burned out when the Tenant vacated the rental unit, and all of the bulbs were working at the start of the tenancy. The Landlord provided a copy of an Amazon invoice to show what it costs to replace the bulbs. The Landlord acknowledged that the bulbs were bought previously, and kept as inventory for the variety of properties they manage. The Landlord pointed to the photos taken at the end of the tenancy to show the burned out bulbs, but noted that he only had photos of some of the bulbs.

The Tenant acknowledged that there were some burned out bulbs, but stated that it was perhaps only 5 bulbs, not the 11 noted by the Landlord.

Analysis

The Landlord is seeking monetary compensation for several items, as laid out above. These items will be addressed in the same order for my analysis. A party that makes an application for monetary compensation against another party has the burden to prove their claim.

In this instance, the burden of proof is on the Landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenant. Once that has been established, the Landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord did everything possible to minimize the damage or losses that were incurred.

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

The Landlord is seeking 3 items on this application. They are as follows:

1) \$504.00 – Wall repair and repainting

I have reviewed the testimony and evidence on this matter. I note the rental unit was new at the start of the tenancy, and the walls were likely in good shape at that time, as is reflected in the move-in condition inspection report. With respect to the move-out portion of the condition inspection report, I note the Tenants did not sign the report, as they did not agree with the contents. I do not find the move-out portion of the condition inspection report provides a reliable account of the condition of the unit at the end of the tenancy. I find the photos taken at the end of the tenancy are more instructive than the move-out condition inspection report. As such, I afford the photos more weight than the move-out inspection report.

I find the photos provided by the Landlord show some minor damage, some of which was patched by the Tenant prior to vacating. I note these patches have either no repainting done, or a poor repainting job. Further, I note at least one of the holes was not filled, and would have required fixing before repainting. I also note the Tenant left some hooks on the wall, which caused some damage when removing, as can be seen in one of the photos, where there are strips of paint/drywall removed. This type of damage is consistent with removing peel and stick wall hooks.

I find there is some damage left behind by the Tenant, which goes beyond normal wear and tear, such as the unpatched hole, and the damage from the wall hooks. I find the Tenant ought to be liable for some of this damage, both patching, and very minor repainting of those areas. However, I find the Tenant sufficiently patched the majority of the other holes, and mitigated most of the damage. Further, I note the Landlord is seeking some costs for repainting. However, I note the useful life expectancy of interior painted walls is 4 years, as per the policy guidelines. The rental unit was due for a repaint, and given the Tenant patched the majority of the holes, I do not find he should be responsible, generally, for repainting costs. I find the Tenant could have done more to repair the walls, and I find he should be responsible for some of the repair costs. However, I am not satisfied the Tenant ought to be liable for this entire invoice, as it covers repairing of holes that were largely repairs already, and repainting of walls that should have been repainted anyways, under normal use.

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 a nominal award is more appropriate. I award the Landlord \$200.00 for wall repair.

2) \$240.00 – Cleaning

I have reviewed the testimony and evidence on this matter, and I note the following relevant portion of the Act:

Leaving the rental unit at the end of a tenancy

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

I accept that the unit was new and in a reasonably clean state at the start of the tenancy. However, as per the photos taken at the move-out inspection, I find the Tenants failed to return the unit in a reasonably clean state. I note there is excess garbage, which goes beyond what the normal garbage pickup could accommodate. I also note that the stove was not sufficiently cleaned, and had heavy staining on the door. I further note that some of the other surfaces, drawers and cabinets were visibly unclean, and had some debris. Although the Tenant likely did some cleaning, I find that they did not leave the entire unit in a reasonably clean state. I accept this would have warranted some further cleaning by the Landlord prior to re-renting the unit. I find the Landlord's costs on this item are reasonable. I award this item, in full.

3) \$34.60 – Light bulbs

I have reviewed the testimony and evidence on this matter. I note the Tenant is responsible for replacing bulbs that burn out during the course of the tenancy. I accept that this was not done for a few of the lights. However, I find the Landlord's photos are unclear, as there are only approximately 5 burned out bulbs in the photos provided. In this case, I find a nominal award is more appropriate for the bulbs that were burned out since there is a poor record of how many and which type of bulbs were burned out. I award the Landlord \$20.00 for this item.

Further, section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. As the Landlord was partially successful with his

application, I order the Tenant to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution.

Also, pursuant to sections 72 of the *Act*, I authorize that the security deposit paid by the Tenant be kept and used to offset the amount owed by the Tenant. In summary, I grant the monetary order based on the following. I note the Landlord already returned \$1,121.40, and only holds \$878.60, currently.

Claim	Amount
Total for items above	\$460.00
Filing fee	\$100.00
Less: Security Deposit currently held by Landlord	(\$878.60)
TOTAL:	(\$318.60)

I order the Landlord return \$318.60, which is the remaining balance of the security deposit.

Conclusion

The Tenant is granted a monetary order pursuant to Section 67 in the amount of **\$318.60**. This order must be served on the Landlord. If the Landlord fails to comply with this order the Tenant may file the order in the Provincial Court (Small Claims) and be 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 17, 2021

Residential Tenancy Branch