



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding AQUILLINI PROPERTIES LP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S, FFL

Introduction

On August 11, 2021, the Landlord made an Application for Dispute Resolution seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the “*Act*”), seeking to apply the security deposit towards this debt pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

S.K. attended the hearing as an agent for the Landlord and the Tenant attended the hearing as well. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could 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.

S.K. advised that the Tenant was served the Notice of Hearing package by registered mail on or around August 30, 2021, and the Tenant confirmed that he received this package. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenant was duly served the Notice of Hearing package.

She also advised that she served the Landlord’s evidence to Tenant by email on February 14, 2022. The Tenant confirmed that he received this evidence and that he

was prepared to respond to it. Despite the Landlord's evidence being served late and not in accordance with the timeframe requirements of Rule 3.14 of the Rules of Procedure (the "Rules"), as the Tenant was prepared to respond to this evidence, I have accepted all of the Landlord's evidence and will consider it when rendering this Decision.

The Tenant advised that his evidence was served to the Landlord by email on February 14, 2022 and S.K. confirmed that the Landlord received this. As this evidence was served in accordance with the timeframe requirements of Rule 3.15 of the Rules, I have accepted all of the Landlord's evidence and will consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. 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 Order for compensation?
- Is the Landlord entitled to apply the security deposit towards this debt?
- Is the Landlord entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

Both parties agreed that the most current tenancy started on January 1, 2018 and the tenancy ended on July 30, 2021 when the Tenant gave up vacant possession of the rental unit. Rent was established at \$2,042.54 per month and was due on the first day of each month. A security deposit of \$940.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

All parties agreed that a move-in inspection report was conducted on December 29, 2015. They also agreed that they met on July 30, 2021 to discuss deficiencies in the rental unit and that further discussions would ensue about rectifying these deficiencies.

However, the move-out inspection report was not completed together. A copy of the signed move-in condition inspection report was submitted as documentary evidence. As well, all parties agreed that the Tenant provided his forwarding address in writing to the Landlord by email on July 31, 2021.

S.K. advised that the Landlord is seeking compensation in the amount of **\$475.86** because the Tenant lit a candle, which started a fire that damaged the window and sill. She referenced the picture of the damage submitted as documentary evidence, as well as the invoice, to corroborate the cost to repair this damage.

The Tenant confirmed that he lit a candle that he forgot about, and he acknowledged that he was negligent for this damage.

As well, S.K. advised that the Landlord is seeking compensation in the amount of **\$2,572.50** to repair and repaint the smoke damage caused by the Tenant's candle. In addition, she testified that the Tenant left many holes and scratches on the walls that also needed to be repaired and repainted. She referenced the pictures of this damage submitted as documentary evidence, as well as the invoice, to support the cost to repair this damage. She indicated that the rental unit was last painted in 2015, prior to when the Tenant first moved in.

The Tenant referred to an email sent by an agent of the Landlord who had quoted much less to repair and repaint the rental unit. However, he did not have any written agreement where the parties had agreed to a fixed cost for repairs. He submitted that the fire was in the den and not likely to have damaged other rooms. It is his belief that the Landlord is attempting to repaint the rental unit and make the Tenant pay for it. He stated that he sought out his own quotes for the repainting, and these were lower than the Landlord's; however, he did not submit these quotes as documentary evidence.

S.K. advised that the agent for the Landlord in the email the Tenant is referring to was not a qualified painter and was just providing a cursory estimate of the cost to repaint. Emails were sent by both parties indicating that they would attempt to get other quotes for repainting.

Analysis

Upon consideration of the testimony before me, I have provided an outline of the

following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 23 of the *Act* states that the Landlord and Tenant must inspect the condition of the rental unit together on the day the Tenants are entitled to possession of the rental unit or on another mutually agreed upon day.

Section 35 of the *Act* states that the Landlord and Tenant must inspect the condition of the rental unit together before a new tenant begins to occupy the rental unit, after the day the Tenant ceases to occupy the rental unit, or on another mutually agreed upon day. As well, the Landlord must offer at least two opportunities for the Tenant to attend the move-out inspection.

Section 21 of the *Residential Tenancy Regulations* (the "*Regulations*") outlines that the condition inspection report is evidence of the state of repair and condition of the rental unit on the date of the inspection, unless either the Landlord or the Tenant has a preponderance of evidence to the contrary.

Sections 24(2) and 36(2) of the *Act* state that the right of the Landlord to claim against a security deposit or pet deposit for damage is extinguished if the Landlord does not complete the condition inspection reports in accordance with the *Act*.

Section 32 of the *Act* requires that the Landlord provide and maintain a rental unit that complies with the health, housing and safety standards required by law and must make it suitable for occupation. As well, the Tenant must repair any damage to the rental unit that is caused by their negligence.

Section 67 of the *Act* allows a Monetary Order to be awarded for damage or loss when a party does not comply with the *Act*.

I am satisfied that a move-in inspection report was conducted with the Tenant. While a move-out inspection report was not conducted with the Tenant, I am satisfied that the parties met on July 30, 2021 to discuss the condition of the rental unit and that ongoing discussions were engaged in on how to rectify the damages. As such, I find that the Landlord has not extinguished the right to claim against the deposit.

Section 38 of the *Act* outlines how the Landlord must deal with the security deposit at the end of the tenancy. With respect to the Landlord's claim against the Tenant's

deposit, Section 38(1) of the *Act* requires the Landlord, within 15 days of the end of the tenancy or the date on which the Landlord receives the Tenant's forwarding address in writing, to either return the deposit in full or file an Application for Dispute Resolution seeking an Order allowing the Landlord to retain the deposit. If the Landlord fails to comply with Section 38(1), then the Landlord may not make a claim against the deposit, and the Landlord must pay double the deposit to the Tenant, pursuant to Section 38(6) of the *Act*.

Based on the consistent evidence before me, I am satisfied that the tenancy ended on July 30, 2021, and that the Landlord received the Tenant's forwarding address by email on July 31, 2021. As the Landlord's Application was made within 15 days of July 31, 2021, I do not find that the doubling provisions apply to the security deposit in this instance.

With respect to the Landlord's claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

As noted above, the purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. When establishing if monetary compensation is warranted, it is up to the party claiming compensation to provide evidence to establish that compensation is owed. In essence, to determine whether compensation is due, the following four-part test is applied:

- Did the Tenant fail to comply with the *Act*, regulation, or tenancy agreement?
- Did the loss or damage result from this non-compliance?
- Did the Landlord prove the amount of or value of the damage or loss?
- Did the Landlord act reasonably to minimize that damage or loss?

With respect to the Landlord's claim for compensation in the amount of \$475.86 for damage to the window and sill, as the Tenant does not deny being negligent for this damage, I grant the Landlord a monetary award in the amount of **\$475.86** to satisfy this claim.

Regarding the Landlord's claim for compensation in the amount of \$2,572.50 for the cost to repair and repaint the rental unit, I note that this painting quote is separated into two issues. The first pertains to repair and repainting due to the smoke damage caused by the candle, totalling \$1,548.75. The second pertains to repair and repainting due to damage that the Tenant caused to the walls, totalling \$1,023.75.

With respect to the cost to repair and repaint due to smoke damage, the undisputed evidence is that the Tenant left a candle burning unattended, which caused a fire in the rental unit. While the Tenant claims that the smoke damage was isolated, I find that I give more weight to the quote from the painting professional to establish the extent of the damage. Furthermore, I note that it was the Tenant's belief that an agent for the Landlord provided him with a lesser amount to repair this damage. However, I agree that this person was not a professional and that this was simply a general estimate.

Moreover, while the Tenant advised that he found cheaper quotes to fix his damage, he did not provide any documentary evidence to support these quotes. Finally, I do not find that the Tenant provided any evidence that he had an agreement in writing with the Landlord for an accurate, agreed upon amount of the cost to repair this damage. As such, I find that the Landlord's evidence carries more weight, and I am satisfied that it likely cost **\$1,548.75** to repair and repaint the areas that were damaged by the Tenant's negligent use of the candle.

Regarding the cost to repair and repaint the walls due to other damages caused by the Tenant, I note that the Tenant did not dispute these damages. Policy Guideline # 40 outlines that the approximate useful life of interior paint is 4 years. However, this is just a guideline, and this number can vary depending on the quality of the materials used.

Given that the walls were painted approximately six years prior to the end of the tenancy, I am satisfied that the Landlord likely received the entire useful life of the existing paint, and would have had to repaint in any event. As such, I do not find that the Landlord has supported this claim in its entirety. However, given that it appears as if there was some damage to the walls that was undisputed, I grant the Landlord a monetary award of **\$100.00**, which I conclude would be a reasonable amount required to fix any damages prior to repainting.

As the Landlord was partially successful in these claims, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this Application. Under the offsetting

provisions of Section 72 of the *Act*, I allow the Landlord to retain the security deposit in partial satisfaction of these claims.

Pursuant to Sections 38, 67, and 72 of the *Act*, I grant the Landlord a Monetary Order as follows:

Calculation of Monetary Award Payable by the Tenants to the Landlord

Item	Amount
Window repair	\$475.86
Repair and repaint due to smoke damage	\$1,548.75
Repair of other damage to walls	\$100.00
Recovery of Filing Fee	\$100.00
Security deposit	-\$940.00
Total Monetary Award	\$1,284.61

Conclusion

I provide the Landlord with a Monetary Order in the amount of **\$1,284.61** in the above terms, and 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: February 24, 2022

Residential Tenancy Branch