



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: FFL MNDL-S

Introduction

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

- a monetary order for money owed or compensation monetary loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Both parties were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing. Both parties confirmed that they understood.

The tenant confirmed receipt of the landlord's application for dispute resolution hearing and evidence. In accordance with sections 88 and 89 of the *Act*, I find that the tenant duly served with the landlord's application and evidence. The tenant did not submit any written evidence for this hearing.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation for requested?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or

arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This month-to-month tenancy began on February 1, 2013, and ended on November 30, 2021. Monthly rent was set at \$1,250.00, payable on the first of the month. The tenant paid a security and pet damage deposit of \$625.00 each deposit. The landlord filed an application on December 10, 2021 for monetary compensation in the amount of \$885.73 to cover losses associated with this tenancy, and retained that portion of the deposits. The remainder was returned to the tenant.

The landlord is requesting monetary compensation as follows:

Drywall Repair	80.00
Baseboards	155.00
Ceiling Light	20.29
Carpets	240.54
Cleaning of bathroom, windows, blinds, cupboards, vents, wall	287.50
Missing Smoke Detector & Shower Rod	101.40
Total Monetary Award Requested	\$884.73

The landlord is seeking the monetary order for the tenant's failure to leave the home in reasonably clean and undamaged condition. The landlord testified that the home was in excellent condition when the tenant had moved in. The landlord testified that the tenant neglected to repair the damaged drywall. The landlord testified that many of the holes in the walls exceeded wear and tear, which were not properly repaired by the tenant.

The landlord testified that the tenant's cat has also caused damage to the trim and baseboards, which had to be replaced. The landlord testified that the tenant did attempt to make some repairs, which were not properly done, and had to be repaired again, as shown in the photos submitted.

The landlord testified that the cost of the repairs actually exceeded the claims made above, although they did not amend their claim to include the additional cost. The landlord testified that the baseboards had heavy gouges that could not be patched, and had to be replaced in order to match. The landlord testified that the home was last painted in 2012, before the tenant moved in on February 1, 2013.

The landlord testified that the carpets had an odour from the cats, and had to be dry cleaned. The tenant confirmed in the hearing that they were not disputing the carpet cleaning claim, nor the claim for the ceiling light.

The landlord testified that the tenant failed to properly clean the home, as supported by the photos submitted. The landlord testified that the blinds were extremely dirty, as was other portions of the home such as above the refrigerator, vents, and fans.

The landlord is also seeking compensation for a missing smoke detector and shower rod. The landlord testified that they could not locate these missing items as the tenant had removed them, and the landlord had to purchase replacements.

The tenant testified in the hearing that they had forgotten to fill some holes in the drywall, which they offered to fix. The tenant testified that the damage was due to regular wear and tear and tear as they had resided in the home for a significant amount of time. The tenant testified that the paint was already peeling upon move-in, and that the damage was normal considering the fact that they had kids.

The tenant testified that they did attempt to clean the home, but ran out of the time. The tenant does not feel that the amount claimed by the landlord is reasonable.

The tenant testified that they did replace the shower rod, but placed the old one in the corner. The tenant also confirmed that they also removed the smoke detector as the smoke detector was going off. The tenant testified that the landlord should still have these items in their possession.

Analysis

Under the Act, a party claiming a loss bears the burden of proof. In this matter the landlord must satisfy each component of the following test for loss established by **Section 7** of the Act, which states;

Liability for not complying with this Act or a tenancy agreement

7 (1) *If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.*

(2) *A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.*

The test established by Section 7 is as follows,

1. Proof the loss exists,
2. Proof the loss was the result, *solely, of the actions of the other party (the landlord)* in violation of the *Act* or Tenancy Agreement
3. Verification of the actual amount required to compensate for the claimed loss.
4. Proof the claimant (tenant) followed section 7(2) of the *Act* by taking *reasonable steps to mitigate or minimize the loss*.

Therefore, in this matter, the landlord bears the burden of establishing their claims on the balance of probabilities. The landlord must prove the existence of the loss, and that it stemmed directly from a violation of the tenancy agreement or a contravention of the *Act* on the part of the other party. Once established, the landlord must then provide evidence that can verify the actual monetary amount of the loss. Finally, the landlord must show that reasonable steps were taken to address the situation to *mitigate or minimize* the loss incurred.

Section 37(2)(a) of the *Act* stipulates that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

I will first address the tenant's concerns about the lack of a move-in inspection report. Section 18 of the Residential Tenancy Regulation states the following:

18 (1)The landlord must give the tenant a copy of the signed condition inspection report

(a)of an inspection made under section 23 of the Act, promptly and in any event within 7 days after the condition inspection is completed

Based on the evidence and testimony before me, I find that the landlord did not provide the tenant with a copy of a move-in inspection report.

As noted in Residential Policy Guideline #17:

The right of a landlord to obtain the tenant's consent to retain or file a claim against a security deposit for damage to the rental unit is extinguished if:

- *the landlord does not offer the tenant at least two opportunities for inspection as required (the landlord must use Notice of Final Opportunity to Schedule a Condition Inspection (form RTB-22) to propose a second opportunity); and/or*
- *having made an inspection does not complete the condition inspection report.*

I must note, however, that the above does not exclude the landlord from being able to file a monetary claim for damages as noted in the policy guideline:

A landlord who has lost the right to claim against the security deposit for damage to the rental unit, as set out in paragraph 7, retains the following rights:

- *to obtain the tenant's consent to deduct from the deposit any monies owing for other than damage to the rental unit;*
- *to file a claim against the deposit for any monies owing for other than damage to the rental unit;*
- *to deduct from the deposit an arbitrator's order outstanding at the end of the tenancy; and*
- *to file a monetary claim for damages arising out of the tenancy, including damage to the rental unit.*

Accordingly, I will consider the landlord's monetary claims. The tenant is not disputing the landlord's claims for the ceiling light and for the carpet cleaning. Accordingly, I allow the landlord a monetary award for these two items as claimed.

The tenant disputes the remainder of the claims, stating that the landlord failed to establish that the tenant had caused the damage beyond what could be considered regular wear and tear after a tenancy of over seven years. Furthermore, the tenant submits that the landlord failed to provide sufficient evidence to support the true state of the home as the tenant was not provided with a move-in inspection report. Lastly, the tenant disputes that they should be responsible for the missing items, as they believed that these items were still in the landlord's possession.

As noted above, the burden of proof is on the applicant to support their claims. In this case, it is undisputed that the tenant did remove the shower rod and smoke detector during this tenancy. Although the tenant believes that these items should still be in the landlord's possession, the landlord's testimony is that they were unable to locate these items, and had to replace them. I find that on a balance of probabilities, that the landlord had no choice but to replace these items, as demonstrated by the receipts submitted. Furthermore, I find that the issue of the whereabouts of these missing items would not exist if the tenant did not remove them. I am not satisfied that the tenant had a valid reason to remove these two items, nor am I satisfied that the tenant had permission of the landlord to do so. Accordingly, I allow the landlord's claims for these missing items.

In consideration of the landlord's claims for the drywall and baseboards, section 40 of the *Residential Tenancy Policy Guideline* speaks to the useful life of an item. The useful life of drywall and panelling/trim is 20 years. Although the landlord did not complete a move-in inspection report, the landlord submitted photos of the home which were taken in October 2012 prior to the beginning of this tenancy. As noted by the tenant, the tenant had residing in the home until November 30, 2021, at least 9 years later. As per Residential Policy Guideline #40, the drywall and baseboards had

approximately 11 years of useful life left, if the items were brand new in October 2012. Although the home was re-painted in 2012, I am not satisfied that the landlord had provided sufficient evidence to support the age and condition of the drywall and baseboards at the end of this tenancy. Although the landlord did submit photos, in the absence of a move-in inspection report signed by both parties at the beginning of the tenancy, and in light of the disputed testimony as to what could be considered wear and tear, and what damage was pre-existing, I find the evidence falls short in terms of supporting the landlord's claims that the damage exceeded wear and tear.

As noted in Rule 6.6 of the Residential Tenancy Branch *Rules of Procedure*:

6.6 The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application.

I find that the landlord failed to meet the standards of proof required to support the claims for the baseboards and drywall. Accordingly, these claims are dismissed without leave to reapply.

Lastly, the landlord is seeking a monetary order for the tenant's failure to leave the home in reasonably clean condition. Although the tenant testified that they had ran out of time, the onus is on the tenant to return the home in reasonably clean condition. Although the tenant did attempt to clean the home, it is apparent by the photos submitted that the home was not properly cleaned at the end of this tenancy. I have also considered the tenant's testimony that they felt that the landlord's claim was unreasonable. Considering the detailed description of the cleaning required, I am satisfied that the landlord supported their claim, and that the amount claimed is reasonable. Accordingly, I allow the landlord's monetary claim for cleaning.

The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. Accordingly, I allow the landlord to recover the filing fee for this application.

In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain a portion of the tenant's deposits satisfaction of the monetary claim. The remaining amount shall be returned to the tenant.

Conclusion

I allow the landlord's monetary claims as set out in the table below. The remainder of the landlord's claims are dismissed without leave to reapply.

Ceiling Light	20.29
Carpets	240.54
Cleaning of bathroom, windows, blinds, cupboards, vents, wall	287.50
Missing Smoke Detector & Shower Rod	101.40
Filing Fee	100.00
Less Deposit Held	-884.73
Security Deposit to be returned to tenant	\$135.00

The tenant is provided with a Monetary Order for the return of the remainder of their deposit, and the landlord must be served with a copy of this Order as soon as possible. Should the landlord 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 09, 2022

Residential Tenancy Branch