



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL FFL

Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act). The landlord applied for a monetary order in the amount of \$657.28 for damage to the unit, site or property, and to recover the cost of the filing fee.

The landlord and the tenant attended the teleconference hearing and gave affirmed testimony. The parties were advised of the hearing process and were given the opportunity to ask questions about the hearing process during the hearing. A summary of the testimony and evidence is provided below and includes only that which is relevant to the hearing. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Neither party raised any concerns regarding the service of documentary evidence. Given the above, I find there are no service issues and that the parties were sufficiently served in accordance with the Act.

Preliminary and Procedural Matters

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 6.11. The parties were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, the parties were informed that if any recording was surreptitiously made and used for any purpose, they will be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation under the Act. Neither party had any questions about my direction pursuant to RTB Rule 6.11.

In addition, the parties confirmed their respective email addresses at the outset of the hearing and stated that they understood that the decision would be emailed to them.

The parties also confirmed that a previous decision dated March 1, 2022 (Previous Decision) found in favour of the tenant and resulted in the tenant receiving double their security deposit less the security deposit balance paid by the landlord to the tenant. The file number of the Previous Decision has been included on the style of cause for ease of reference and is included as this decision will not deal with security deposit as it has already been dealt with in the Previous Decision.

Issues to be Decided

- Is the landlord entitled to a monetary order under the Act, and if so, in what amount?
- Is the landlord entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

The tenancy began in July 2015. Monthly rent was \$1,850.00 per month and was due on the first day of each month.

The landlord's monetary claim for \$657.28 is comprised of \$557.28 to cover the cost of damages to the staircase walls and hallway walls. The landlord writes in their application that the tenant left numerous patched spots to cover the damages and that painting was required before new tenants moved in.

The tenancy was a total of 6 years. The landlord testified that the home was built in 1940. The landlord was asked when the interior paint was last painted, and the landlord stated they could not recall. The landlord was asked if there were previous tenants in the rental unit before the tenant moved in, and the landlord confirmed that there were previous tenants that lived in the home for 2 years. The landlord claims the rental unit was painted but could not recall or guess at when that painting was completed. As a result, it appeared that the rental unit was not painted for 8 years, which is the 6-year tenancy before me and the 2-year tenancy prior to that.

As the useful life of interior paint is 4 years, the entire claim was dismissed as the interior paint has been depreciated by 100%, which I will address further below.

The landlord failed to do a written incoming and outgoing Condition Inspection Report, which I will also address below.

Analysis

Based on the documentary evidence presented, the testimony of the parties and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what was reasonable to minimize the damage or loss.

In the matter before me, the landlord bears the burden of proof to prove all four parts of the above-noted test for damages or loss.

Firstly, I will address the lack of an incoming and outgoing Condition Inspection Report. Sections 23 and 35 of the Act apply and state:

Condition inspection: start of tenancy or new pet

23(1) The landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.

(2) The landlord and tenant together must inspect the condition of the rental unit on or before the day the tenant starts keeping a pet or on another mutually agreed day, if

(a) the landlord permits the tenant to keep a pet on the residential property after the start of a tenancy, and

(b)a previous inspection was not completed under subsection (1).

(3) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.

(4) The landlord must complete a condition inspection report in accordance with the regulations.

(5) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.

(6) The landlord must make the inspection and complete and sign the report without the tenant if

(a)the landlord has complied with subsection (3), and

(b)the tenant does not participate on either occasion.

Condition inspection: end of tenancy

35(1) The landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit

(a)on or after the day the tenant ceases to occupy the rental unit, or

(b)on another mutually agreed day.

(2) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.

(3) The landlord must complete a condition inspection report in accordance with the regulations.

(4) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.

(5) The landlord may make the inspection and complete and sign the report without the tenant if

(a)the landlord has complied with subsection (2) and the tenant does not participate on either occasion, or

(b)the tenant has abandoned the rental unit.

I find the landlord breached sections 23 and 35 of the Act by failing to complete the incoming and outgoing Condition Inspection Report in writing as required. Given the above, I **caution** the landlord to comply with sections 23 and 35 of the Act in the future.

Item 1 - The landlord has claimed \$557.28 for repainting costs; however, RTB Policy Guideline 40 – *Useful Life of Building Elements* states that the useful life of interior paint is 4 years. I find that based on the landlord being unable to tell me when the rental unit was last painted that it is more likely than not 8-year-old paint given that the tenancy was 6 years long, and there was a 2-year previous tenancy before that. As a result, I find the interior paint would be 100% depreciated and find that the landlord is not entitled to any compensation under the Act as a result.

Given the above, I find the landlord has not met the burden of proof for this item and as a result, I dismiss this item, without leave to reapply, due to insufficient evidence.

I do not grant the filing fee as this claim has no merit.

Conclusion

The landlord's claim fails in its entirety. The filing fee is not granted.

The landlord has been cautioned to complete both an incoming and outgoing Condition Inspection Report in writing for all future tenancies.

This decision will be emailed to both parties.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: March 11, 2022

Residential Tenancy Branch