Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S FFL

Introduction

The landlord seeks compensation against its former tenant pursuant to section 67 of the *Residential Tenancy Act* ("Act"). In addition, the landlord seeks to retain the tenant's security deposit in full or partial satisfaction of any compensation awarded, and they seek to recover the cost of the application filing fee.

A dispute resolution hearing was convened on June 10, 2022. In attendance were an agent for the landlord, the tenant, and the tenant's legal advocate. The parties (except for the advocate) were affirmed, no service issues were raised, and Rule 6.11 of the Residential Tenancy Branch's *Rules of Procedure* was explained to the parties.

Issue

Is the landlord entitled to compensation?

Background and Evidence

Relevant evidence, complying with the *Rules of Procedure,* was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the issue(s) of this dispute, and to explain the decision, is reproduced below.

The tenancy began on February 1, 2018 and ended on October 31, 2021. Monthly rent was $1,545.83. The tenant paid a $754.06 security deposit which the landlord holds in trust pending the outcome of this application. A copy of the written tenancy agreement was in evidence.

As for the claim for compensation, the landlord's agent (hereafter the "landlord") testified that the landlord is seeking $250.00 for cleaning costs and $1,060.50 for painting and repair costs. A Monetary Order Worksheet was submitted into evidence, along with a condition inspection report, numerous colour photographs, and invoices for the two claims.

The landlord argued that the damage and unclean condition of the rental unit at the end of the tenancy was outside reasonable wear and tear. There were stained countertops, marks to the walls, and so forth. More significantly, the landlord submitted that the rental unit was “not returned in the same as condition” as it was at the start of the tenancy. Approximately 90% of the walls had to be patched and repaired. In addition, there were a couple of broken doorknobs or handles, and the closet door had to be put back onto its track. It is worth noting that the rental unit was in a newly completed building and the tenant was the first tenant in this rental unit.

After completing his testimony, the tenant’s advocate briefly cross-examined the landlord, and asked how long the period between the completion of the build and when the tenant took occupancy. The landlord responded that it was within the first couple of months.

The advocate then conducted a direct examination of the tenant, and she testified that the rental unit was “in excellent condition” when she moved out. She was aware that a new tenant would very soon be moving in and wanted to ensure it was suitable for the new tenant.

The tenant then testified that she spent about six to seven hours deep cleaning the rental unit and using double soap. Moreover, the tenant hired a friend who did a professional cleaning of the rental unit about three weeks before she vacated the rental unit.

In respect of the patching on the walls, the tenant testified that cracks in the walls started to appear and occur naturally during the tenancy. Apparently, the neighbors below her also had the same issue with cracks in the walls. So, the tenant decided to fill the cracks herself.

Regarding the stains on the countertop, the tenant testified that these started to appear during the early stages of the tenancy. She tried to clean them, but they would not come out after regular cleaning. Last, the tenant testified in detail about the various issues with doorknobs coming off and handles not being of particular good quality.

In his closing argument, the tenants advocate argued that the landlord is under a misconception that the rental unit should be in the same condition as when the tenant moved in. That being said, the advocate referred to a few letters from third parties who attested to the rental unit being well cleaned.

The advocate further argued that even if the landlord is entitled to costs for painting, that the useful lifetime of interior paint according to the policy guideline is four years. Therefore, the almost four-year duration of the tenancy reduces the claim to zero.

In respect of the cracks in the walls, the tenant saved the landlord money by patching and painting them. She did the landlord of favor and in fact mitigated their loss, the advocate argued. However, through “some bizarre twist of events, the landlord is now trying to punish the tenant,” the advocate added.

As for the countertops, the advocate explained that they are used a lot to prepare food and so forth; It is normal that stains will appear over time. He added that the cleaning of the rental unit was primarily on the counter tops. The advocate further added that the issue with the door handle and or being put back on the track is not due to any intentional actions of the tenant.

Last, the advocate argued that the invoice for painting and repairs does not breakdown any of the individual items and the cost for these items has not been proven.

Analysis

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.

Section 7 of the Act states that if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Further, a party claiming compensation must do whatever is reasonable to minimize their loss. Section 67 of the Act permits an arbitrator to determine the amount of, and order a party to pay, compensation to another party if damage or loss results from a party not complying with the Act, the regulations, or a tenancy agreement.

Section 37(2)(a) of the Act requires that a tenant “leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear” when they vacate.

In carefully reviewing the documentary evidence, with particular attention being made to the colour photographs submitted by the landlord, it is my finding that, while the rental unit is fairly marked up, the marks on the walls and so forth are within what I could consider reasonable wear and tear.

Much of the marks and so forth would be cosmetically fixed with a fresh coat of paint. I find no breach of section 37(2)(a) of the Act that would lead to compensation being awarded for painting costs. As noted by the advocate, the useful life of interior painting is 4 years (see *Residential Tenancy Policy Guideline 40).* Thus, even if the tenant was responsible for these costs—which she is not—the amount awarded would need to be reduced by 100%.

Turning to the patching and painting of the walls, the tenant gave evidence that the patching and painting was to address cracks that had begun to naturally appear during the tenancy. What is particularly notable is that the landlord did not counter this evidence, nor make any objection to these facts as described by the tenant. Therefore, the tenants cannot be held liable for her attempts to patch cracks that appeared through no fault, intentional or otherwise, of her own.

In respect of the door handles, the generalized invoice does not clarify the costs for the labour required to repair them. Nor does the invoice break down the cost to put the closet door back on its track. An applicant must prove the actual loss or monetary amounts in a claim for compensation, and, with respect to the landlord, I am unable to ascertain the dollar amount of repairs to the door handles or the closet door repair.

Indeed, the only cleaning issue that is, I find, the fault of the tenant is that of the interior of the oven. The inside of the oven (as depicted by the colour photograph on page 7 of the landlord's package of photographs) is less-than-acceptable. While a rental unit does not need to be returned to a landlord in pristine condition, blobs of burnt food at the bottom of an oven are not within what one would consider a reasonably thorough cleaning. Certainly not after 6 or 7 hours were spent cleaning, that is.

For this reason, I am inclined to award a nominal award of $1.00 to represent the tenant's breach of section 37(2)(a) of the Act specifically for the uncleaned oven. The remainder of the landlord's claim is dismissed without leave to reapply.

The landlord is not entitled to recover the cost of the application filing fee.

Given the above, the landlord is ordered to return $753.06 of the security deposit to the tenant within 15 days of receiving a copy of this decision. A monetary order in this amount is issued in conjunction with this decision to the tenant.

Conclusion

IT IS HEREBY ORDERED THAT:

1. The application is dismissed, in part, without leave to reapply.
2. The application is granted, in part, and the landlord is entitled to a nominal damage award of $1.00.
3. The landlord shall return the balance of the security deposit of $753.06 to the tenant.

This decision is final and binding on the parties, and it is made on delegated authority under section 9.1(1) of the Act. A party's right to appeal this decision is limited to grounds provided under section 79 of the Act or by way of an application for judicial review under the *Judicial Review Procedure Act,* RSBC 1996, c. 241.

Dated: June 10, 2022

Residential Tenancy Branch