Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MAMRE HOLDINGS INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S, MNDCL-S, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for a monetary order of $4,473.00 for damages; for a monetary order of $500.00 for compensation for damage under the Act, retaining the security deposit for these claims; and to recover the $100.00 cost of his Application filing fee.

The Tenant and an agent for the Landlord, J.W. ("Agent"), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about it. During the hearing the Tenant and the Agent were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I considered service of the Notice of Dispute Resolution Hearing. Section 59 of the Act and Rule 3.1 state that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Landlord testified that he served the Tenant with the Notice of Hearing documents by Canada Post registered mail, sent on December 12, 2021. The Landlord provided Canada Post tracking numbers as evidence of service. The Tenant acknowledged having been served by the Landlord.

The Tenant said she served the Agent with her evidence in person when she initially made her claim, and she said she also dropped it off at his office the week prior to the hearing. However, the Agent denied having been served by the Tenant. Further, the Tenant did not refer to any documentary evidence in the hearing, therefore, for these reasons, I find that the Tenant's documentary submissions are not evidence before me

Preliminary and Procedural Matters

The Agent provided the Parties' email addresses in the Application, and they confirmed these addresses in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

Issue(s) to be Decided

- Is the Landlord entitled to a Monetary Order, and if so, in what amount?
- Is the Landlord entitled to recovery of the $100.00 Application filing fee?

Background and Evidence

The Parties agreed that the fixed-term tenancy began on April 1, 2021, and that it was to run to March 31, 2022, and then operate on a month-to-month or periodic basis. They agreed that the tenancy agreement required the Tenant to pay the Landlord a monthly rent of $1,500.00 due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of $450.00, and a $300.00 pet damage deposit. The Agent confirmed that he retained these deposits to apply to this claim.

The Parties agreed that they did not do a formal move-in inspection of the condition of the rental unit at the start of the tenancy; they agreed that nothing was recorded on paper and that it was more of a collegial walk-through.

However, the Agent said they did a move-out inspection on October 29, 2021, two days before the tenancy ended on November 1, 2021, and that this was recorded on a condition inspection report form ("CIR") and signed by the Parties. At the bottom of the CIR, the Tenant agreed to concede her $450.00 security deposit, and an additional $50.00 for the key. The Tenant signed the move-out CIR indicating her agreement to the recorded condition of the rental unit at the end of the tenancy.

#1 COMPENSATION - MONETARY LOSS/OTHER MONEY OWED → $4,473.00

The issues between the Parties surrounded a coat of paint the Tenant had applied to the rental unit. The Landlord says it was not a professional job and that it left a lot of

damage that had to be repaired by a professional painter. The Tenant acknowledges that she painted the rental unit and that she is not a professional painter; however, she said she had the Landlord's permission to paint via text messages, and that the Agent knew she was not a professional painter. The Agent agreed with this.

The Parties also agreed that they failed to do a formal condition inspection of the rental unit at the start of the tenancy, and therefore, they did not have a baseline to know what damage to attribute to the Tenant, versus damage left by prior tenants.

The Landlord has claimed $4,473.00 from the Tenant for the repairs to the residential property to correct the errors of the Tenant's paint job.

The Agent submitted photographs of the rental unit that he said indicates the damage left behind by the Tenant. These include:

- Small paint spots on the laminate flooring and on tile;
- Paint on the top edge of the tile against the wall;
- Incomplete coverage of the prior paint colour in spots;
- Inconsequential, tiny spots of paint on top of refrigerator, stove, and shower;
- Paint fingerprints on towel holder; and
- Minor damage to the corner edge of ceiling.

The Agent included two quotes he obtained for repairing these damages. He said he took the lower quote. The first quote was for interior painting of walls and ceilings for $4,105.50. This quote was to repaint the entire rental unit, including entry way, hall way, bedroom, bathroom, living room, kitchen – walls and trim. This quote indicated that extra preparation, patching and sanding, and priming a dark wall would be needed. It also included $975.00 for "painting mill work (window trim, base boards, and doors)".

The second quote was for $4,465.00. This includes work on the ceilings, trim and doors, walls, and floors. This quote included $350.00 plus GST for clean up of the flooring.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Before the Parties testified, I let them know how I analyze evidence presented to me. I told them that a party claiming compensation from another party has the burden of proving their claim on a balance of probabilities. Policy Guideline 16 sets out a four-part

test that an applicant must prove in establishing a monetary claim. In this case, the Landlord must prove:

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

Section 32 of the Act requires a tenant to repair damage that is caused by the action or neglect of the tenant, other persons the tenant permits on the property or the tenant's pets. Section 37 requires a tenant to leave the rental unit undamaged. However, sections 32 and 37 also provide that reasonable wear and tear is not damage and that a tenant may not be held responsible for repairing or replacing items that have suffered reasonable wear and tear.

Policy Guideline #1 helps interpret these sections of the Act:

> The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises), or for cleaning to bring the premises to a higher standard than that set out in the *Residential Tenancy Act* or *Manufactured Home Park Tenancy Act* (the Legislation).
>
> Reasonable wear and tear refer to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. An arbitrator may determine whether or not repairs or maintenance are required due to reasonable wear and tear or due to deliberate damage or neglect by the tenant. An arbitrator may also determine whether or not the condition of premises meets reasonable health, cleanliness, and sanitary standards, which are **not necessarily the standards of** the arbitrator, **the landlord** or the tenant.

As set out in Policy Guideline #16 ("PG #16"), "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. It is up to the party claiming compensation to provide evidence to establish that compensation is due."

I find the Landlord has submitted evidence that points to the Tenant as having left

behind minor damage in the form of a few paint spots left in a couple places on the floor, a few minor spots on a small part of the refrigerator, and a few other spots where the Tenant's inexperience left some imperfections. However, the Agent authorized the Tenant to paint the rental unit, and he knew that she was not a professional.

Further, Policy Guideline #40 ("PG #40") is a general guide for determining the useful life of building elements and provides me with guidance in determining damage to capital property. The useful life is the expected lifetime, or the acceptable period of use of an item under normal circumstances. If an arbitrator finds that a landlord makes repairs to a rental unit due to damage caused by the tenant, the arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant's responsibility for the cost of the replacement.

In PG #40, the useful life of interior is four years. The evidence before me is that the paint was new in 2017, so it was approximately four years old at the end of the tenancy and had zero years or 0% of its useful life left. There is no move-in CIR indicating the condition of the paint at the start of the tenancy, so there is no baseline to compare

Claims for compensation related to damage to the rental unit are meant to compensate the injured party for their actual loss. In the case of fixtures to a rental unit, a claim for damage and loss is based on the depreciated value of the item and **not** based on the replacement cost. This reflects the useful life of fixtures, such as carpets, countertops, doors, etc., which depreciate all the time through normal wear and tear. Based on this, I find that the paint in the rental unit had depreciated fully by the end of the tenancy.

Further, I find that the Landlord did not provide sufficient evidence that these few and minor painting errors required the entire rental unit to be repainted by professionals. The amount claimed, less $1,500.00 for supplies, leaves $2,973.00 for labour. Dividing this by an (expensive) hourly rate of $40.00, for example, means that the professional painters would have worked for 74 hours straight on a one-bedroom unit, which is hard to believe I find that this is not an example of a landlord minimizing or mitigating his damages incurred, contrary to step four of the Test.

Given the limited amount of damage left behind by the Tenant, the lack of a move-in CIR to establish what damage was left by prior tenants, and the high rate charged for the need to repair a few spots, I find that the Landlord has not met his burden to prove the validity of the claim on a balance of probabilities.

On the move-out CIR, the Tenant agreed to forfeit her $450.00 security deposit, plus $50.00 for a lost key. Accordingly, I **award** the Landlord with recovery of **$500.00** from

the Tenant for this Application, pursuant to section 67 of the Act. I authorize the Landlord to retain the Tenant's $450.00 security deposit, and $50.00 of her $300.00 pet damage deposit in complete satisfaction of this award. The **Landlord is Ordered** to return the Tenant's remaining **$250.00** pet damage deposit as soon as possible.

I **grant the Tenant** a Monetary Order of **$250.00** from the Landlord in this regard, pursuant to section 67 of the Act. The Landlord must be served with this Order.

Conclusion

The Landlord is partially successful in his claim for compensation from the Tenant. The Landlord is granted the amount the Tenant agreed to forfeit of her security and pet damage deposits of **$500.00**. The Landlord failed to provide sufficient evidence to succeed in the remainder of his claim, because he failed to provide sufficient evidence to meet his burden of proof for this on a balance of probabilities. The remainder of the Landlord's claim is dismissed wholly without leave to reapply.

The **Landlord is authorized to retain** the Tenant's **$450.00** security deposit and **$50.00** of her $300.00 pet damage deposit. The Landlord is Ordered to return the remaining $250.00 of the pet damage deposit to the Tenant as soon as possible.

The **Tenant is granted a Monetary Order of $250.00** from the Landlord in this regard. This Order must be served on the Landlord by the Tenant and may be filed in the Provincial Court (Small Claims) 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: July 22, 2022

Residential Tenancy Branch