Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ONNI Property Management Services LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S, MNDCL-S, FFL

Introduction

This hearing dealt with a landlord's application for monetary compensation for damage to the rental unit and other damages or loss under the Act, regulations or tenancy agreement; and, authorization to make deductions from the tenant's security deposit.

Both parties appeared or were represented during the hearing and the parties were affirmed. Both parties had the opportunity to make **relevant** submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

The hearing was held over two dates and an Interim Decision was issued. The Interim Decision should be read in conjunction with this decision.

As seen in the Interim Decision, I issued orders and authorization to the parties with respect to serving evidence upon each other. At the outset of the reconvened hearing, I explored whether the parties satisfied those orders. I confirmed that the landlord emailed colour photographs to the tenant, via email, as ordered and the tenant received them. I also confirmed that the tenant delivered evidence, including digital evidence to the landlord, as ordered, and the landlord received the tenant's evidence and was able to view the content of the digital evidence. As such, I admitted the evidence of both parties and I have considered all of it in making my decision; however, with a view to brevity in writing this decision I have only summarized, described or referenced the most relevant evidence.

It should be noted that the tenant presented as being very argumentative and hostile toward the landlord which included attempts to provide his negative opinions of the landlord and interrupting the proceeding. I instructed the tenant to refrain from such conduct and cautioned him that he may be muted or excluded if he continued. During the hearing, the tenant interrupted again and was muted for a brief period of time until it

was his turn to speak. The hearing was able to conclude with the tenant remaining in the hearing.

Issue(s) to be Decided

1. Is the landlord entitled to made deductions from the tenant's security deposit for amounts claimed?
2. Award of the filing fee.

Background and Evidence

The tenancy started on August 1, 2019 and ended on July 31, 2021. The tenant paid a security deposit of $837.50. The tenant acquired a pet during the tenancy and the parties executed a "pet agreement". The tenant also paid a pet damage deposit of $837.50. The landlord refunded the tenant's pet damage deposit in full and continues to hold the security deposit pending the outcome of this proceeding.

A move-in inspection report was prepared and signed by the tenant.

A move-out inspection was done together; however, the tenant did not agree with the landlord's assessment and charges and did not sign the move-out inspection report.

Below, I have summarized the landlord's claims against the tenant and the tenant's position.

1. Wall repairs and repainting

The landlord submitted that the tenant damaged the walls by causing scuffs, scratches and chips in the walls. The walls were patched and repainted at a cost of $153.56 for labour and $272.78 for paint and painting supplies. The landlord's agent pointed to several photographs taken of the walls and trim as well as invoices for labour and supplies.

I noted that the paint and paint supplies was purchased on July 28, 2021 yet both parties confirmed the tenant was in possession of the rental unit until July 31, 2021. I asked the landlord's agent how the landlrod determined it was necessary to purchase paint for the rental unit before the move-out inspection was done. The landlord's agent responded that during showings to prospective tenants, the building manager will take

note of the condition of the rental unit and in this case, the landlord anticipated that repainting would be required so paint was purchased.

The tenant submitted that the walls and trim were showing signs of typical wear and tear over his two year tenancy. The tenant questioned whether the landlord's photographs were of his unit and when he made such an enquiry with the landlord the landlord did not respond. The tenant pointed to his photographs and videos taken of the rental unit.

I asked the landlord's agent when the last time the rental unit was painted, to which he responded just before the tenancy started. The tenant testified that the unit was brand new when his tenancy started and he was the first occupant.

The landlord acknowledged the tenant reached out to question the location seen in the photographs and that the landlord did not respond. The landlord explained that given the tenant's statements that he was recording his interactions with the landlord's agent and going to upload them to a pod-cast, the landlord determined it appropriate to not respond to the tenant and have the dispute heard by way of this proceeding.

2. Cleaning

The landlord submitted that the tenant did not leave the rental unit sufficiently clean and that a cleaner spent an hour cleaning the unit. The landlord pointed to a number of photographs that show lint left in a laundry machine, stains under the sink, and streaks on the stainless steel fridge, oven, dishwasher and range hood. The landlord paid $42.00 for the cleaner's time.

The tenant submitted that he left the rental unit clean. The tenant submitted that the stain under the sink was the result of a plumbing leak which left a permanent stain. The tenant submitted that during the tenancy the landlord replaced his stove with a used one that was showing signs of use already. The tenant pointed to the photographs and video he took of the rental unit.

3. Flea inspection

The landlord submitted that under the pet agreement signed by the parties, the tenant was required to have a professional flea inspection done of the rental unit. The tenant did not do so but purchased a product from a pet supply store which does not satisfy the

term in the pet agreement. The landlord paid to have the rental unit inspected for fleas at a cost of $157.50.

Below, I have reproduced the term in the pet agreement referred to by the landlord:

> 7. If any pet resides/enters the Premises for any length of time, a flea inspection of the Premises for the presence of fleas **must** be completed by a professional pest control company, at the sole cost of the Tenant, upon or before the pet or the tenant vacates the Premises.

The tenant was of the position that since the landlord refunded the entire amount of the pet damage deposit, the tenant fulfilled the terms of the pet agreement and the landlord is precluded from seeking this amount from his security deposit. The tenant also submitted that he had contacted the pest inspector and was told there were no fleas so the inspector would not come do the inspection. As such, the tenant purchased a flea product and applied it himself. The tenant gave the receipt to the landlord but the landlord would not accept it.

4. Move-out fee

The landlord had made a claim of $100.00 for a move-out fee; however, after discussion concerning the limited circumstance when a landlord may charge a tenant for a move-out fee, as provided under section 7 of the Residential Tenancy Regulations, the landlord withdrew this claim. As such, a response was not required from the tenant.

Analysis

Upon consideration of everything before me, I provide the following findings and reasons.
A party that makes an application for monetary compensation against another party has the burden to prove their claim. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. Awards for compensation are provided in section 7 and 67 of the Act, and, as provided in Residential Tenancy Policy Guideline 16: *Compensation for Damage or Loss* it is before me to consider whether:

- a party to the tenancy agreement violated the Act, regulation or tenancy agreement;
- the violation resulted in damages or loss for the party making the claim;
- the party who suffered the damages or loss can prove the amount of or value of the damage or loss; and

- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Section 32 of the Act provides that a tenant is required to repair damage caused to the rental unit or residential property by their actions or neglect, or those of persons permitted on the property by the tenant. Section 37 of the Act requires the tenant to leave the rental unit undamaged at the end of the tenancy. However, sections 32 and 37 provide that reasonable wear and tear is not considered damage. Accordingly, a landlord may pursue a tenant for damage caused by the tenant or a person permitted on the property by the tenant due to their actions or neglect, but a landlord may not pursue a tenant for reasonable wear and tear or pre-existing damage.

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Section 21 of the Residential Tenancy Regulations provide that a condition inspection report prepared in accordance with the regulations is the best evidence of the condition of the rental unit in a dispute resolution proceeding unless there is preponderance of evidence to the contrary.

I was presented a copy of a move-in inspection report, which was signed by the tenant, and neither party raised any issue that it was unreliable. Therefore, I accept the move-in inspection report accurately reflects the condition of the rental unit at the beginning of the tenancy.

The tenant did not agree with the landlord’s assessment at the move-out inspection. As such, I consider the move-out report as being under dispute and I have considered other evidence of both parties with a view to determining the condition of the rental unit at the end of the tenancy.

1. Wall damage and repainting

The landlord presented photographs which show some scuffs, scratches and chips. The tenant questioned whether those photographs were of his unit; however, I note that the landlord's agent also recorded wall damage on the move-out inspection report. As such, I am inclined to accept that the landlord's photographs are of the rental unit. I am also unpersuaded that the landlord has acted fraudulently by submitting photographs of walls of a unit other than the rental unit, as implied by the tenant. upon watching the tenant's videos, I do not see scuffs, scratches or chips; however, the tenant moved quite quickly from wall to wall in the videos and the slights scuffs and scratches would not be visible. Therefore, I accept that there were some scuffs, scratches and chips in some of the walls and trim at the end of the tenancy.

The tenant argued that any marks were typical wear and tear and I am inclined to agree. Many of the landlord's photographs caused me to have to strain or zoom in to see any marks on the walls and trim. Other photographs showed more obvious marks. As such, I am of the view that many of the scuffs and marks are wear and tear whereas a few areas exceeded that, such as the chips at the corner of one wall, the living room wall with several slight scratch marks and a closet with several dark scuff marks.

In making this claim, the landlord has charged the tenant the full cost of labour and supplies. Given the cost of the paint, it appears the landlord purchased a fair quantity of paint, say 5 gallons which appears excessive to painting over the few areas of damage. Further, it appears to me the landlord has not taken into consideration wear and tear, or depreciation, in making this claim, and that is unreasonable. Policy guideline 40 provides that the average useful life of interior paint is 4 years. This tenancy was 2 years in duration and the landlord ought to expect that after 2 years, the walls and trim and not going to look freshly painted or brand new as this unit looked before the tenancy began. To hold the tenant responsible to repaint the unit would constitute a betterment for the landlord since the landlord can expect another four years of life expectancy out of the paint job, but at the tenant's expense.

All of the above considered, I deny the landlord's claim for the cost of labour and painting supplies. Rather than dismiss the claim outright, in recognition that there were some areas, notably the chip at the corner of the wall, the several shallow scratches on the living room wall, and the numerous scuffs in one of the closets, I find it reasonable and appropriate to estimate a reasonable award. I grant the landlord recovery of 25% of the amount claimed, or $106.58 [calculated as ($153.56 + $272.78) x 25%] after

taking into account the walls had some ordinary wear and tear for which the tenant is not responsible and the limited life expectancy of interior paint.

2. Cleaning

Section 37 of the Act requires that a tenant leave a rental unit "reasonably clean" at the end of the tenancy. Reasonably clean is a standard that is less than perfectly clean or impeccably clean and it may be less than a standard the landlord provides to an incoming tenant. Where a landlord seeks to bring the rental unit to a level of cleanliness that exceeds "reasonably clean" the tenant is not responsible for the cost to do so.

I have reviewed the photographs and video evidence before me. I see there was some lint left inside the rubber gasket on the washing machine in the landlord's photographs and I note the tenant did not pull the gasket down in his video so I accept there was lint in the gasket. I see what appears to be water streaks on the surface of the stainless steel appliances I the landlord's photographs but not in the tenant's videos.

I also see a water stain under the sink but the tenant explained that was due to a plumbing leak which the landlord did not refute.

The tenant also submitted evidence that he was provided a used stove during the tenancy with pre-existing signs of use which the landlord did not refute.

Overall, I find I am satisfied the tenant left this rental unit "reasonably clean" at the end of the tenancy and the I find it more likely than not that the landlord spend another hour making the rental unit perfectly clean in every regard, which exceeds the tenant's legal obligation. I am of the view that most landlords would be very satisfied in how this rental unit was Therefore, I dismiss the landlords claim for cleaning costs.

3. Flea inspection

Under section 91 of the Act, the common law applies. The common laws apply to contracts and a tenancy agreement is a contract. Section 91 of the Act provides as follows:

> **Common law applies**
>
> **91** Except as modified or varied under this Act, the common law respecting landlords and tenants applies in British Columbia.

Section 6 of the Act, provides for enforcing rights and obligations of landlords and tenants, as follows:

> **Enforcing rights and obligations of landlords and tenants**
>
> **6** (1) The rights, obligations and prohibitions established under this Act are enforceable between a landlord and tenant under a tenancy agreement.
>
> (2) A landlord or tenant may make an application for dispute resolution if the landlord and tenant cannot resolve a dispute referred to in section 58 (1) *[determining disputes]*.
>
> (3) A term of a tenancy agreement is not enforceable if
>
> (a) the term is inconsistent with this Act or the regulations,
>
> (b) the term is unconscionable, or
>
> (c) the term is not expressed in a manner that clearly communicates the rights and obligations under it.

Upon review of the pet agreement, including term 7, I find term 7 is clearly worded and reflects the parties' agreement that the tenant would have the rental unit professionally inspected for fleas in obtaining the landlord's consent to acquire a pet during the tenancy. I am of the view the term is not unconscionable as the tenant received the benefit of receiving consent to keep a pet but keeping of a pet also comes with obligations and costs. Fleas are a common pest brought into homes by pets. Finally, I do not see any conflict of term 7 with the Act or its regulations. While I do not consider fleas, or an inspection for fleas, to constitute damage, arguably, ensuring there are no fleas could be viewed as part of the tenant's obligation to maintain reasonable health and sanitary standards in the rental unit and leaving the rental unit reasonably clean at the end of the tenancy. Therefore, I find term 7 of the pet agreement to be enforceable.

The tenant argued that in refunding the pet damage deposit, in full, means the tenant fulfilled his obligations under the pet agreement and the landlord is now precluded from seeking flea inspection costs from the tenant. However, I reject that position as a pet damage deposit may only be used to offset pet damage. Other costs or losses cannot be offset against a pet damage deposit. I do not consider cleaning or pest inspection to constitute damage. As such, I find the landlord acted appropriately in refunding the pet damage deposit to the tenant and making a claim for flea inspection costs against the tenant's security deposit.

The tenant submitted that he purchased flea control product and applied it himself; however, I did not hear any evidence to suggest the tenant is a professional pest inspector. As such, I find the tenant's efforts do not satisfy term 7 of the pet agreement.

The tenant argued that he contacted a pest inspector and the pest inspector would not inspect the unit because there were "no fleas"; however, I find it difficult to believe that a pest inspector would decline work when that is their business.

Given the above, I find the tenant did not fulfill term 7 of the pet agreement, causing the landlord to incur a cost to perform this obligation that belonged to the tenant. Therefore, I grant the landlord's request to recover the flea inspection cost of $157.50 from the tenant.

Filing fee and Monetary Order

The landlord had some success in this Application for Dispute Resolution and I award the pro-rate the filing fee to reflect the level of success, rounded to the nearest dollar, which I calculate to be $36.00. therefore, I award the landlord recovery of $36.00 of the $100.00 filing fee the landlord paid for this Application for Dispute Resolution.

In keeping with all of the above, I find the landlord entitled to deduct the sum of $300.08 [calculated as: $106.58 + $157.50 + $36.00] from the tenant's security deposit. The landlord is ordered to refund the balance of $537.42 to the tenant without delay. In keeping with Policy Guideline 17, I provide the tenant with a Monetary Order in the amount of $537.42 to ensure payment is made.

Conclusion

The landlord is authorized to deduct a total of $300.08 from the tenant's security deposit and is ordered to refund the balance of $537.42 without delay. The tenant is provided a Monetary Order in the amount of $537.42 to serve and enforce.

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 20, 2022

Residential Tenancy Branch