



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding FHBW INVESTMENTS COMPANY
LIMITED and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **MNDL-S, FFL**

Introduction

This hearing was re-convened after the issuance of a November 15, 2022 interim decision. I determined that the landlord's application could not be heard on November 15th because the tenant was not served with the Notice of Dispute Resolution Hearing and the landlord's evidence. I determined that it would be procedurally unfair to proceed with the hearing without allowing the tenant the opportunity to prepare a full response to the claims against him.

Both parties attended the reconvened hearing. Both parties acknowledged receiving a copy of my interim decision and the tenant acknowledged being served with the landlord's original dispute resolution package and evidence.

Preliminary Issue

The tenant testified that the day before today's hearing, he uploaded documentary evidence to the Residential Tenancy Branch's dispute resolution management system which I did not have before me. The tenant acknowledged he did not serve the landlord with copies of these documents 7 days before the hearing as was required by my interim order dated November 15th. Consequently, as the tenant's evidence was not before me and because the tenant did not serve the landlord with his evidence as I ordered him to do, no documentary evidence from the tenant was considered for this decision.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for damages?

Can the landlord retain the tenant's security deposit?

Can the landlord recover the filing fee?

Background and Evidence

At the commencement of the hearing, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony pursuant to rule 7.4. In accordance with rules 3.6, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The landlord gave the following testimony. The rental unit is located in an apartment building built in 1982. The finishes in the unit were all original and are difficult to find replacements for.

There was a written tenancy agreement with this tenant and another co-tenant however it was not provided as evidence for this hearing. The tenancy began in February 2014 with a different landlord. At the commencement of the tenancy, the previous landlord did not perform a condition inspection report with the tenants. Despite this, the landlord testified that the condition of the rental unit was good at the commencement of the tenancy and he points to a letter from the building's maintenance worker as evidence of that. The landlord did not call this person to provide testimony.

The tenancy ended on February 28, 2022, after the tenant gave a notice to end tenancy. The parties did a walkthrough of the unit at the end of the tenancy and the landlord testified that a move-out condition inspection report was filled in, however it was not provided as evidence for me to consider for this hearing. Photos were also taken, and the landlord provided very small thumbnail copies of them for me to view as evidence.

The landlord testified that there was damage to the unit when the tenant moved out. In the application for dispute resolution, the landlord provided the following list of damages:

-Labour to:

1. Install one LED kitchen light \$45 (missing)
2. Install curtain rods system in bedroom and living room \$140 (missing)
3. install toilet seat \$:25 (damaged)

4. Re-hang new 3011 bedroom door \$160 (damaged)
 5. Replace two 3611 x 93" bedroom closet bi-pass doors \$325 (damaged)
 6. Replace and re-install closet rods and shelf systems in vestibule and bedroom closets \$150 (missing)
 7. Replace 2 hallway globe lights \$22 (missing)
- Parts & materials: \$403.16

The landlord provided an invoice from the same maintenance man who wrote the letter attesting to the condition of the unit at the commencement of the tenancy. In the invoice, the maintenance man charges \$867.00 for the labour to perform the work and an additional \$403.16 as parts and materials. The landlord was unable to advise me how many hours it took for the maintenance man to perform the work or the rate he charges to do the work. The landlord was unable to advise me how the sum of \$867.00 for labour was arrived at or what parts and materials were purchased to justify the charge of \$403.16.

The landlord is holding the tenant's security deposit in the amount of \$650.00 together with an additional deposit of \$51.50 for a garage remote control. The landlord has not returned either deposit, although the tenant has returned the remote control.

The tenant gave the following testimony. Throughout the tenancy, the tenant has made improvements to the unit, including installing a new modern ceiling fan and lighting which he allowed the landlord to keep. When ending the tenancy, he asked the landlord if the landlord wanted to purchase some of the other upgrades and the landlord declined to do so. The tenant took the items he purchased with him when he left. The original drapery hardware and closet rods were given to the previous landlord to be stored. The tenant testified that shortly before his last day of tenancy, the current landlord brought the original hardware back to the tenant and told him to reinstall it which the tenant did not have time to do.

The tenant agrees that the original landlord did not do a condition inspection report with him at the beginning of the tenancy. This landlord did not provide the tenant with the condition inspection report completed at the end of the tenancy, so the tenant took pictures of the report. I note again that no copy of the tenant's documents were before me for the hearing, but the tenant alleges that the only notation of damage to the unit noted on the report is the damaged closet door. The tenant denies this damage, stating that it is reasonable wear and tear to a flimsy particleboard door.

The tenant disputed each of the items in the landlord's list of things to be replaced or repaired. The tenant did acknowledge item 7, the globe lights at \$22.00 which he says he either broke or took down at the beginning of the tenancy.

Analysis

When a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property pursuant to section 37 of the Act. In this matter, there is no dispute the tenant returned the keys to the unit or the garage remote control.

In order for me to determine whether the unit was reasonably clean and undamaged, I am required to look to a condition inspection report done at the commencement of the tenancy in accordance with section 21 of the Residential Tenancy Regulations:

Evidentiary weight of a condition inspection report

21 In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

While the landlord presented a letter from the maintenance man who states the unit was "in excellent condition" when the tenant moved in, this letter does not qualify as a preponderance of evidence regarding the condition at the time the tenancy began. I further note that the tenancy began some 8 years prior and the maintenance man is relying on his memory to provide this opinion. Consequently, I find the letter holds little weight as to the original condition of the rental unit on move in. I must accept the landlord's testimony that the fixtures in the unit when the tenant moved in and when he moved out were original to the building, built in 1982. It would be reasonable to expect pre-existing wear and tear when the tenant first moved in.

PG-40 [Useful life of building elements] states:

When applied to damage(s) caused by a tenant, the tenant's guests or the tenant's pets, the arbitrator may consider the useful life of a building element and the age of the item. Landlords should provide evidence showing the age of the item at the time of replacement and the cost of the replacement building item. That evidence may be in the form of work orders, invoices or other documentary evidence.

If the 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 or replacement.

In other words, if I find the tenant did damage beyond reasonable wear and tear, I must consider whether the damaged items were beyond their useful life. The policy guideline notes the useful life of the following elements claimed by the landlord:

Asset	Useful life in years
Light fixture	15
Drapes, venetian blinds	10
Tubs, toilets, sinks	20
Doors	20
Cabinets, counters: bath, kitchen	25

The landlord testified that the fixtures in the unit were original and are therefore approximately 40 years old. While I accept the landlord's assertion that the some of the damage to the unit was beyond reasonable wear and tear, I find the useful life of all the assets claimed by the landlord had outlived their useful life. In accordance with the policy guideline, I assign no residual value to the items claimed to be damaged. Accordingly, the landlord's application is dismissed. The only exception to the dismissal is the \$22.00 hallway globe light charge that the tenant acknowledges he is responsible for.

The landlord continues to hold the tenant's security deposit of \$650.00 and a remote control deposit of \$51.50. The remote control deposit should have been returned to the tenant when he surrendered the remote control. As this has not yet happened, the landlord is ordered to return both deposits, less \$22.00 [$\$650.00 + \$51.50 - \$22.00 = \679.50].

The landlord was not successful in his application and the filing fee will not be recovered.

Conclusion

The tenant is awarded a monetary order in the amount of \$679.50.

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: December 07, 2022

Residential Tenancy Branch