



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Introduction

This hearing was convened in response to the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for Orders as follows:

- a monetary order for damage to the rental unit pursuant to section 67;
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain of all or a portion of the security deposit pursuant to section 38;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony and present evidence. No issues were raised with respect to the service of the application and evidence submissions on file.

The landlord's original application requested compensation in the amount of \$3520.00. The landlord submitted a monetary order worksheet in excess of this amount. The landlord did not submit an amended application. The landlord stated the original claim was based upon estimates but agreed that this claim be limited to the original amount sought.

Issues

Is the landlord entitled to a monetary award for compensation for loss and damage to the rental unit?

Is the landlord entitled to retain all or a portion of the security deposit pursuant to section 38?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background

The tenancy for this one-bedroom apartment began on November 1, 2020 and ended on August 27, 2022. The tenants paid a security deposit of \$612.50 at the start of the tenancy which the landlord continues to hold.

A move-in condition inspection was completed on November 1, 2020. A move-out condition inspection was completed on August 31, 2022. The tenants were present for both inspections but did not sign the move-out report.

Evidence & Analysis

Section 7 of the Act provides for an award for compensation for damage or loss as a result of a landlord or tenant not complying with this Act, the regulations or their tenancy agreement. Under this section, the party claiming the damage or loss must do whatever is reasonable to minimize the damage or loss.

Section 37 of the Act requires that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear.

The landlord's original claim was for \$200.00 for pest control. Although the complaint description states \$400.00 the total requested under this section was \$320.00 which includes \$120.00 for cleaning. The landlord testified there was no reports of any pest issues for the first 6-7 months of the tenancy. There were no issues with pests for the previous tenancy or the subsequent tenancy since the tenants vacated. There was no sign of pests on the move-in condition. The landlord submitted two pest control reports which identify sanitation issues in the unit as being a likely cause of the issue. The reports note spilled food and oil behind the stove area. The landlord submits that just prior to moving out, the tenants advised the landlord that they had 5 children residing in the rental unit. The landlord submits that having a total of 7 people in this one-bedroom apartment likely contributed to the sanitation issues in the unit. The landlord acknowledges previously treating the unit for pest issues but it was limited to the exterior and balcony area. The landlord also submitted various pictures depicting the condition of the unit on move-out.

The tenants counsel submits that the tenants did their relative best to report pest issues and maintain reasonable cleanliness standards and that the landlord has not proven the tenants are responsible for the pest issue.

I find the pictures submitted by the landlord and the pest control reports support a finding that the tenants failed to maintain reasonable standards of cleanliness in the unit. I find this was likely the cause of the pest issue and as such the tenants are responsible for this expense incurred by the landlord. The landlord submitted invoices in support of the loss. The landlord is awarded \$200.00 as originally claimed even though the loss incurred was greater than this amount.

The landlord is seeking \$2500.00 for carpet replacement. The landlord submitted an invoice for this expense as well as various pictures. The landlord submits there was staining in multiple spots of the carpet including bleach marks which were acknowledged by the tenants. The landlord submits the carpet was newly installed in March 2020. The landlord submitted proof of the carpet being steam cleaned by the previous tenant as well as the condition report on move-out indicating the carpets were in good condition. The landlord submits the carpets were damaged beyond repair or cleaning.

The tenants counsel submits that the Residential Tenancy Branch Policy Guideline only states the tenants are responsible for cleaning carpets and that there is nothing in the landlord's evidence that indicates the entire carpet required replacement. The tenants counsel submits that it is unreasonable to replace the entire carpet due to two small stains.

Based on the pictures of the carpet submitted as evidence, I find the tenants argument that the carpet could have been cleaned or patched to be unreasonable. I find the carpet was badly stained throughout. I accept the landlord's testimony and find the carpet was damaged beyond any repair or cleaning. I find the landlord had no choice but to replace the entire carpet. The landlord is awarded \$2500.00 as per the original claim amount even though the invoice was for a greater amount.

The landlord is claiming \$120.00 for cleaning. Pictures and invoice for cleaning was submitted as evidence. The landlord submits the rental unit was not left reasonably clean.

The tenants counsel submits the clause in the agreement requiring professional cleaning is not reasonable.

I find picture evidence as well as the move-out inspection report support the landlord's claim that the tenants did not leave the rental unit reasonably clean. I make no finding on the clause in the tenancy agreement requiring professional cleaning being reasonable, irrespective, the tenants are required to leave the unit reasonably clean which they did not. I find the tenants are responsible for the \$120.00 cleaning charge as supported by the invoice. The landlord is awarded \$120.00.

The landlord is claiming \$600.00 for paint supplies and labour to re-paint one wall of the unit. The landlord submitted various pictures depicting the condition of the paint. The landlord submits the paint was damaged beyond normal wear and tear and that unit was freshly painted before the tenants moved in.

The tenants counsel argues the unit was still left suitable for occupation as the damage was just minor scratches which are reasonable wear and tear. The tenants counsel submits the rental unit is in a low-income neighborhood so the condition of the unit does not need to be perfect.

In reply, the landlord submits they have a certain level of standards in providing clean units to tenants and they do not choose to provide units in bad condition even if they are in a low-income neighborhood.

Based upon the pictures submitted as evidence, I find that at least one wall in the rental unit was damaged beyond normal wear and tear. There are various markings and scratches on the wall which is not normal wear and tear for a unit that was freshly painted less than two years ago. I also dismiss the tenants argument that a lower standard of cleanliness could be acceptable for a low-income neighborhood. The requirement under section 32 of the Act for a landlord to maintain property in a state of decoration or repair, having regard to the age, character and location of the property is a minimum requirement under the Act. This does not mean that the landlord cannot hold a higher standard and provide rental units that exceed this standard. The landlord is awarded \$600.00 for painting related expenses even though the invoices submitted as proof of loss were greater than this amount.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application for a total monetary award of \$3520.00 as originally claimed.

The landlord continues to hold a security deposit and pet deposit in the total amount of \$612.50. I allow the landlord to retain the security deposit and pet deposit in partial satisfaction of the monetary award pursuant to section 38 of the Act.

Therefore, I find that the landlord is entitled to a Monetary Order in the amount of \$2907.50.

Conclusion

Pursuant to section 67 of the *Act*, I grant the landlord a Monetary Order in the amount of \$2907.50. Should the tenants fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court 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: June 15, 2023

Residential Tenancy Branch