Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNDCL-S, FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for damage or compensation, pursuant to section 67;
- a Monetary Order for damage, pursuant to section 67;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee from the tenant, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties agree that the landlord personally served the tenant with her application for dispute resolution on March 23, 2020. I find that the tenant was served in accordance with section 89 of the *Act.*

Preliminary Issue- Landlord's Video Evidence

The landlord testified that she served the tenant with her video evidence via email. The tenant testified that she did not receive the landlord's video evidence. The landlord did not enter into evidence a proof of service document for the video evidence.

Section 3.14 of the *Residential Tenancy Branch Rules of Procedure* (the "Rules") states that evidence not submitted at the time of Application for Dispute Resolution that are intended to be relied on at the hearing must be received by the respondent not less than 14 days before the hearing.

I find that the landlord has not proved, on a balance of probabilities, that the tenant was served with her video evidence. Therefore, the landlord's video evidence is omitted from consideration.

Issues to be Decided

1. Is the landlord entitled to a Monetary Order for damage or compensation, pursuant to section 67 of the *Act*?
2. Is the landlord entitled to a Monetary Order for damage, pursuant to section 67 of the *Act*?
3. Is the landlord entitled to retain the tenant's security deposit, pursuant to section 38 of the *Act*?
4. Is the landlord entitled to recover the filing fee from the tenant, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on February 1, 2016 and ended on January 31, 2020. Monthly rent in the amount of $1,510.00 was payable on the first day of each month. A security deposit of $725.00 was paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

Both parties agree that a joint move in condition inspection report was completed by the parties on January 1, 2016. Both parties agreed that where the listed items were left blank, both parties understood this to mean that no repairs were required, and the items were in good condition. Both parties agree that the landlord accidentally wrote the damaged areas in the move out section of the report.

Both parties agree that the tenant provided the landlord with her forwarding address via regular mail. The landlord testified that she received the tenant's forwarding address on

March 4, 2020, the tenant could not recall on what date she sent it. The landlord filed this application for dispute resolution on March 23, 2020.

The landlord testified that the tenant verbally authorized her to retain the security deposit on January 31, 2020. Witness D.M. testified that he heard the tenant agree to allow the landlord to retain her security deposit. The tenant testified that she did not verbally authorize the landlord to retain any portion of her security deposit.

The landlord entered into evidence a recording of a telephone conversation between herself and the tenant. The landlord testified that in the telephone conversation the tenant agrees to allow the landlord to retain the deposit. The tenant testified that she neither agreed not disagreed to allow the landlord to retain her security deposit in the call. In the telephone call the landlord sets out why the tenant will not be receiving her security deposit back. The tenant does not dispute the landlord's statement but does not verbally state that the landlord is permitted to retain her security deposit. Both parties agree that the tenant did not authorize the landlord to retain her deposit in writing.

The landlord testified that the parties agreed to complete a move out condition inspection report on January 31, 2020 at 2:00 p.m. but when she attended to complete the move out condition inspection report the tenant had not packed most of her belongings and was not ready for the inspection. The landlord testified that the inspection was pushed back to 5:00 p.m., then 7:00 p.m. and at 11 p.m. she had to help the tenant move out so that the property would be ready for the new tenants the following day. The landlord testified that the tenant did not move out until midnight and she and some friends cleaned the subject rental property until 4 a.m. The tenant did not dispute the above testimony. Both parties agree that a move out condition inspection report was not completed.

The landlord testified that the following damages arose from this tenancy:

Items	**Amount**
Replace flooring	$1,287.82
Repair walls	$19.62
Paint property	$345.77
Total	**$1,653.21**

The landlord testified that she is not seeking to recover the cost of labour for completing the above repairs.

Replace flooring

The landlord testified that the tenant's dog urinated throughout the subject rental property and that after she moved out the entire property smelt like dog urine. Witness M.Q. testified that he helped the landlord clean the subject rental property and that the floors smelt like urine. The landlord entered into evidence a letter from the new tenant who moved into the subject rental property after the tenant which stated that the floors smelt of urine.

The landlord testified that the floors and underlay required replacement. The landlord entered into evidence receipts totalling $1,200.82 for the cost of replacement underlay and flooring. The landlord testified that she had to rent a vehicle to transport the flooring from the store to the subject rental property. A receipt in the amount of $87.00 was entered into evidence. The landlord testified that the floors were installed in 2012.

The tenant testified that because the landlord did not complete a move out condition inspection report she is not responsible for the damage.

The move in condition inspection report does not mention the smell of urine.

Repair walls

The landlord testified that the walls at the subject rental property were full of holes and required repair. Witness D.M. testified that he spent ½ day filling all the holes in the subject rental property.

The tenant testified that she bought spackle and filled all the holes in the subject rental property. The tenant entered into evidence a receipt showing the purchase of spackle.

The landlord testified that the tenant spackled some holes but did not sand them down and left many more holes unfilled.

The move in condition inspection report does not mention any wall damage.

Paint property

The landlord testified that the entire property needed to be repainted due to the wall damage and urine damage from the tenant's dog. The landlord testified that the walls were last painted in 2014. The landlord entered into evidence receipts for paint and painting supplies totalling $345.77.

The move in condition inspection report does not note any issues with the paint.

The tenant testified that the paint was more than four years old.

Analysis

Section 67 of the *Act* states:

> Without limiting the general authority in section 62 (3) *[director's authority respecting dispute resolution proceedings]*, if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Policy Guideline 16 states that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To be successful in a monetary claim, the tenant must establish all four of the following points:

1. a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
2. loss or damage has resulted from this non-compliance;
3. the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
4. the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Failure to prove one of the above points means the claim fails.

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that 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.

When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails.

Replace flooring

Based on the move in condition inspection report, the testimony of the landlord, the testimony of witness D.M. and the statement from the new tenant, I find that the floor and underlay of the subject rental property required replacement due to the tenant's dog urinating on them.

The lack of a move out condition inspection report does not mean that the tenant is not responsible for damages she caused or allowed to occur. The burden of proof is on the landlord to prove that the claimed damages were caused or allowed to occur by the tenant. The move in condition inspection report does not mention dog urine and the landlord, witness D.M. and the new tenant stated that the smell of dog urine emanated from the floors.

Residential Tenancy Guide #40 states:

> This guideline is a general guide for determining the useful life of building elements for considering applications for additional rent increases and determining damages which the director has the authority to determine under the Residential Tenancy Act and the Manufactured Home Park Tenancy Act . Useful life is the expected lifetime, or the acceptable period of use, of an item under normal circumstances.
>
> 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….

> If a building element does not appear in the table, the useful life will be determined with reference to items with similar characteristics in the table or information published by the manufacturer. Parties to dispute resolution may submit evidence for the useful life of a building element. Evidence may include documentation from the manufacturer for the particular item claimed.

Policy Guideline #40 states that the useful life for tile flooring is 10 years and hardwood flooring is 20 years. I find that the useful life for laminate flooring is 15 years (180 months). The floors were installed in 2012, therefore, at the time the tenant moved out, there was approximately 7 years (84 months) of useful life that should have been left for the flooring of this unit. I find that since the unit required new flooring after only 8 years (96 months), the tenant is required to pay according to the following calculations:

> $1,287.82 (cost of new flooring and transport) / 180 months (useful life of flooring) = $7.15 (monthly cost)
>
> $7.15 (monthly cost) * 84 months (expected useful life of flooring after tenant moved out) = **$600.60.**

Repair walls

Based on the move in condition inspection report I find that the holes were not in the walls when the tenant moved in.

Based on the testimony of the landlord and witness D.M., I find that the tenant left numerous holes in the walls of the subject rental property. I find that the holes the tenant attempted to patch were not properly sanded.

The landlord provided a receipt in the amount of $19.62 for the cost of the materials used to repair the wall. I find that the tenant is responsible for this cost.

Paint property

Residential Tenancy Policy Guideline states that the useful life of interior paint is four years. The landlord testified that the property was last painted approximately six years ago. As the useful life of the interior paint of this unit has expired, I find that the landlord is not entitled to recover any amount for the cost of re-painting.

Filing Fee

As the landlord was successful in this application for dispute resolution, I find that the landlord is entitled to recover the $100.00 filing fee from the tenant, pursuant to section 72 of the *Act.*

Security Deposit

Section 38 of the Act requires the landlord to either return the tenant's security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the Act, equivalent to double the value of the security deposit.

However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenants to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

I find that the tenant did not provide the landlord with written authorization to retain all or a portion of the security deposit. Whether or not the tenant verbally agreed that the landlord could retain her deposit is immaterial because the *Act* clearly states that the landlord must return the deposit within 15 days of the later of the end of the tenancy and the tenant's provision of the forwarding address in writing unless the landlord has obtained the tenant's written authorization to retain the security deposit.

The landlord received the tenant's forwarding address in writing on March 4, 2020 and 19 days later filed this application for dispute resolution on March 23, 2020.

I find that the landlord did not file her application within 15 days of receiving the tenant's forwarding address in writing. Pursuant to section 38(6)(b) of the *Act*, I find that the tenant is entitled to receive double her security deposit, in the amount of $1,450.00.

Conclusion

I issue a Monetary Order to the tenant under the following terms:

Item	Amount
Doubled security deposit	$1,450.00
Less cost of flooring repair	-$600.60
Less cost of wall repair	-$19.62
Less filing fee	-$100.00
TOTAL	**$729.78**

The tenant is provided with this Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord 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: July 29, 2020

Residential Tenancy Branch