



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDL-S, FFL**

Introduction

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

- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- a monetary order for damage to the rental unit in the amount of \$190 pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant attended the hearing. The landlord was represented by its property manager ("**CC**"). Both were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Preliminary Issue – Service of Documents

CC testified that he served the tenant with the dispute resolution package. He testified that he did not serve copies of the landlord's documentary evidence with this package. The tenant testified that the dispute resolution package listed the documentary evidence the landlord would be relying on at the hearing. He stated that he had received some of this evidence during or shortly after the tenancy (the tenancy agreement, the invoice for repairs, and the condition inspection reports) but that he never received the photographs of the damage to the rental unit walls that the landlord had submitted to the Residential Tenancy Branch (the "**RTB**").

RTB Rule of Procedure 3.1 requires that the applicant serve copies of all documents it intends to rely on at the hearing to the respondent with the notice of dispute resolution package. The landlord did not do this.

However, per section 71(2)(c) of the Act, I find that the tenancy agreement, invoice, and the move-in and move-out condition inspection report have been sufficiently given to the tenant for the purposes of this Act. The tenant was able to refer to these documents at the hearing.

As such, I admit these documents into evidence. I exclude the photographs from evidence, as the tenant has never been provided with them.

The tenant did not provide any documentary evidence of his own in response to the landlord's application.

Preliminary Issue – Unit Number

The landlord inadvertently omitted the unit number of the rental unit from his application. With the consent of the parties, I amend the application to include the unit number (reproduced on the cover of this decision) to the address of the rental unit.

Issues to be Decided

Is the landlord entitled to:

- 1) a monetary order for \$190;
- 2) recover the filing fee; and
- 3) retain a portion of the security deposit in satisfaction of the monetary order made?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into a written tenancy agreement starting July 1, 2012. The tenancy ended on November 30, 2020. At the end of the tenancy monthly rent was \$2086.86. The tenant paid the landlord a security deposit of \$850 at the start of the tenancy. The parties agree that CC returned \$660 of the deposit on December 11, 2020. The tenant provided his forwarding address to the landlord on December 14, 2020. The landlord filed this application on December 15, 2020.

The parties conducted a move-in inspection at the start of the tenancy and completed a move in condition inspection report. At the end of the tenancy, the parties conducted a move out inspection and the landlord completed a move-out condition inspection report (the "**move-out report**"). These reports were submitted into evidence.

The move-out report recorded the condition of the wall and trim in the master bedroom and hallway as "damaged" and the wall and trim in the living room as "scratched and damaged".

On the move-out report, the landlord wrote that, at the end of the tenancy, the tenant was responsible for "several damaged wall areas caused by picture hangers that ripped drywall. Required patch and sanding."

CC testified, and the tenant agreed, that the tenant used "command strips" (adhesive strips) to hang pictures to various walls of the rental unit. He testified that, over the

duration of the tenancy, these picture “fell off” and tore off the paint and part of the drywall.

The tenant signed the move-out report and indicated that it fairly represented the condition of the rental unit. The tenant indicated that he authorized a deduction of “~\$100” from his security deposit (he did not sign next to this indication, as prompted by the move-out report form, but he did sign the move-out report lower down). CC testified that this amount represented an estimate of what he thought at the time the repair of the walls would cost.

CC testified that the repairs actually cost \$190. He submitted into evidence an invoice dated December 10, 2020 corroborating this amount.

At the hearing, contrary to the move-out report, the tenant testified that he did not agree that the landlord could deduct any portion of the security deposit. He testified that he understood this portion of the move out inspection report to mean that the cost of the repairs could be \$100 or less.

The tenant also testified that he did not believe that any sanding or patching was required to repair the damaged portions of the wall, despite the fact the move-out report indicated this was the case and that he indicated on the report that he agreed it fairly represented the condition of the rental unit. He testified that he was mistaken when he signed the move-out report.

The tenant testified that only a thin layer of paint was removed by the hangers, and that it could have been painted over.

The tenant argued that the damage to the wall was minimal and amounted to reasonable wear and tear of the rental unit to be expected over the course of an eight-year tenancy. He testified that the walls were repainted after he left, at the landlord’s expense, and that this repainting should have been sufficient to fix the minimal damage done by the “command strips”.

CC testified that the damage was also to the drywall, as well as the paint, and that patching and sanding was necessary. He testified that the tenancy agreement required that the tenant obtain the landlord’s written consent before using any hanging implement on the walls. It states:

Hooks, nails tapes or other devise for hanging pictures or plants or for affixing anything to the rental unit or residential property will be of a type approved by the landlord and used only with the landlords prior written consent.

[as written]

CC testified, and the tenant did not deny, that the tenant never sought the landlord's consent to use "command strips" to hang anything from the walls. However, CC testified that, had the tenant asked, he would have authorized him to use "command strips" as they usually cause no damage to walls. He testified that these strips are the landlord's preferred method for tenants to hang items on the walls.

Analysis

Residential Tenancy Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

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 who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage 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 37(2)(a) of the Act states:

Leaving the rental unit at the end of a tenancy

37(2) When a tenant vacates a rental unit, the tenant must

- (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear,

Rule of Procedure 6.6 states:

6.6 The standard of proof and onus of proof

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. In most circumstances this is the person making the application.

So, the landlord must prove it is more likely than not that the tenant damaged the rental unit, and that this damage was beyond wear and tear that could reasonably be expected after an eight-year tenancy.

Policy Guideline 1 states:

Nail Holes:

1. Most tenants will put up pictures in their unit. The landlord may set rules as to how this can be done e.g. no adhesive hangers or only picture hook nails may be used. If the tenant follows the landlord's reasonable instructions for hanging and removing pictures/mirrors/wall hangings/ceiling hooks, it is not considered damage and he or she is not responsible for filling the holes or the cost of filling the holes.

2. The tenant must pay for repairing walls where there are an excessive number of nail holes, or large nails, or screws or tape have been used and left wall damage.

3. The tenant is responsible for all deliberate or negligent damage to the walls.
[emphasis added]

I find that, despite not having received written approval from the landlord to use “command strips” to hang pictures on the wall of the rental unit, the landlord has not suffered any damage as a result of this failure to obtain written approval. The landlord would have authorized their use had it been requested, and CC testified that it was the landlord’s preferred manner for tenants to hang objects on walls. According, I find that by using “command strips” the tenant acted in accordance with what the landlord’s instructions would have been, had they been requested.

There is nothing in the documentary record to indicate that tenant negligently or improperly installed or used the “command strips” which would have accounted for their falling off the walls.

I find that, per Policy Guideline 1, as he used the landlord’s preferred method of hanging pictures on the wall, the tenant is not responsible for the cost of filling the holes or sanding them in preparation for painting.

As such, it is not necessary for me to determine whether it drywall was damaged by the “command strips” or whether it was just the paint that was removed. In either case, since the tenant used the landlord’s preferred method of hanging pictures, the landlord would not be permitted to recover the cost of the repairs from the tenant.

For the reasons stated above, I find that the damage to the walls of the rental unit was reasonable wear and tear, that this does not amount to a breach of the Act, and that the tenant is not required to pay for their repairs.

As such, and as the tenant did not sign next to the term of the move-out report authorizing the landlord to retain a portion of the security deposit, and as the move-out

agreement did not specify an exact amount of the security deposit that the landlord could withhold (I understand a “~” to indicate that the following number is an estimate), I order the landlord to return the balance of the security deposit (\$190) to the tenant.

Conclusion

I dismiss the landlord’s application, in its entirety, without leave to reapply.

Pursuant to section 65 of the Act, I order that the landlord return the balance of the security deposit (\$190) to the tenant and I attach a monetary order to that effect.

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: April 23, 2021

Residential Tenancy Branch