Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL / MNSDS-DR

Introduction

This hearing dealt with two applications pursuant to the *Residential Tenancy Act* (the "**Act**"). The landlord RVA's application against tenant TH and LH for:

- authorization to retain all or a portion of the 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 $680 pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

And tenant TH's application against landlord AH for:

- a monetary order for $1,650 representing two times the amount of the security deposit, pursuant to sections 38 and 62 of the Act.

Tenant TH attended the hearing on behalf of both tenants. She was assisted by her boyfriend ("**CH**"). attended the hearing. Landlord RVA was represented by an agent ("**KC**") and its owner ("**PH**"). Landlord AH attended the hearing as well. AH is the former property manager of RVA. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both sides confirmed that they had received the other's notice of dispute resolution proceeding package and supporting documentary evidence. I find that all parties have been served with the required documents in accordance with the Act.

Issues to be Decided

Is landlord RVA entitled to:

1) a monetary order for $680;
2) recover the filing fee;
3) retain the security deposit in satisfaction of the monetary orders made?

Is tenant TH entitled to a monetary order of $1,650?

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 tenants and landlord RVA entered into a written, fixed term tenancy agreement starting July 1, 2021 and ending December 31, 2022. The tenancy ended by way of a mutual agreement to end tenancy on November 30, 2021. Monthly rent was $1,750 and is payable on the first of each month. The tenants paid RVA a security deposit of $875, which RVA continues to hold in trust for the tenants.

The parties conducted a move-in condition inspection at the start of the tenancy and a move-out condition inspection on November 30, 2021. RVA prepared a move-out condition inspection report and provided a copy to the tenant. The tenants provided their forwarding address to RVA, in writing, on November 30, 2021. RVA filed its application on December 13, 2021. TH made her application against landlord AH on December 26, 2021.

RVA alleges that the tenants were still in the process of moving out of the rental unit, when two of its agents arrived at 1:00 pm to do the move out inspection. The move out inspection did not occur until 2:00 pm. TH did not dispute this. RVA seeks $50 in compensation for the time its agents spent waiting (calculated at an hourly rate of $25, for two people).

RVA alleges that tenant TH smoked on the balcony of the rental unit, and threw cigarette butts off of it onto the common area lawn below. Its employees spent two hours cleaning up these butts at the end of the tenancy. RVA submitted photos of the rental unit balcony taken October 25, 2021 showing an ashtray full of cigarettes butts, in support of its claim that the tenant smokes on the patio. It also submitted a photo of the lawn showing taken from the bedroom window of the rental unit in which cigarette butts can be seen.

RVA submitted three letters AH sent to the tenants on RVA's behalf dated October 12, 2021, October 23, 2021, and November 16, 2021 respectively. The first stated:

> Furthermore, I have also received complaints from multiple tenants that have seen either you or your guest throw garbage or recycling off your balcony onto the common area below or onto the caretaker's balcony next to your unit. Any spillage must be cleaned up immediately by the person responsible.

The second stated:

> I have also continued to receive complaints from multiple tenants that have seen either you or your guests through garbage, including cigarette butts, or recycling off your balcony onto the common area on October 23, 2021. Any spillage must be cleaned up immediately by the person responsible.

The third stated:

> I have previously sent you two written notice is dated October 12 and October 23, 2021 regarding waste and recycling. You have been made aware of these issues, but I still receive complaints regarding you or your guest throwing cigarette butts and metal cans out your balcony and windows.

KC testified that an employee of RVA spent two hours cleaning up the cigarette butts after the tenants vacated. It seeks $50 compensation for this time spent ($25 hourly rate).

TH testified that she did not know whose cigarette butts were on the common property lawn. She denied throwing cigarette buts out the window or off the balcony and noted that the common area runs adjacent to the street, so it was likely they were thrown by passersby.

KC testified that the tenants created numerous holes in the walls of the living room, bedroom, and kitchen which RVA had to patch and then paint over. Additionally, KC testified that the tenants stained some of the walls as well, which necessitated repainting. In total, five wall faces were repainted. He testified that the rental unit was last painted in December 2020.

RVA seeks compensation of $25 for one hour spent taping the walls and patching the holes, and $150 compensation for the three hours taken repainting the damaged walls with two coats of paint and $50 for supplies. KC testified that RVA's employees taped and patched the walls on November 30, 2021 before 5:00pm but were only able to start painting after 5:00pm, which accounts for the increased hourly rate. He testified that new tenants were moving into the rental unit the next dad, so the repainting had to be done that night.

The move-out condition inspection report records the condition of the entry walls as "needs cleaning/stained", the living room walls as "damaged", the kitchen walls as "damaged/needs painting" the bedroom walls as "damaged" and "needs painting" and the bathroom walls as "needs cleaning/damaged".

TH signed the move-out report, but indicated that she did not agree that the report fairly represents the condition of the rental unit because she does "not smoke, outside is public". She made no remark on this report about disputing how the conditions of the walls were recorded.

RVA submitted eight photos of different walls in the rental unit which show numerous screw holes in the walls.

TH testified that one of the holes was drilled in the wall by the building manager to the tenant could have something to latch the bedroom door to. He installed a hook and an elastic band to make sure the bedroom door would stay closed, in response to the tenant's request for repairs.

TH also testified that another of the holes was made by an employee of RVA when they installed a curtain rod. She testified that this rod "fell out by itself" during the tenancy, and that CH reattached it (by drilling a new hole) a few inches to the right.

TH did not deny making the other holes pictured.

KC testified that the tenants removed two lightbulbs during the tenancy and did not replace them.

In RVA's written submissions, it wrote:

> On Oct 17, 2021 Tenant reported that her son locked the bathroom door from the inside and closed it. Building caretaker living next door heard the tenant hitting the door trying to get it open.
>
> In order to prevent damages, tenant was told by the property manager to call a locksmith to open the door at their own cost. Building caretaker was allowing tenant's children to use his bathroom in the meantime as the tenant was unwilling to pay for a locksmith. Building caretaker borrowed tools at his own cost to drill through the door knob with no additional charge to the tenant at the time. Tenant was unwilling to replace the door knob at their own expense

KC stated that during the tenancy, the tenants caused damage to the windowsill in one of the bedrooms by leaving the window open when it rained. RVA submitted photographs of the windowsill showing the paint peeling and the wood cracking.

RVA replaced the lightbulbs, installed a new doorknob and sanded down the windowsill and repainted it. It seeks $50 in compensation for the labour spent doing this work (2 hours at $25 per hour) and $25 for a replacement doorknob.

TH testified that there were only two lightbulbs in the fixture when she moved into the rental unit. Additionally, she testified that AH told her that she would not have to pay for a replacement lock, as the caretaker attended the rental unit and drilled the lock and kicked at the door to try to open it, against her will. She also testified that the windowsill was water damaged at the start of the tenancy.

The move out condition inspection report indicates that the condition of the windows was "satisfactory" at the beginning of the tenancy and had "water damage" at the end of the tenancy.

Finally, KC testified that the tenant did not adequate clean the rental unit prior to moving out. He testified that the refrigerator, stove, oven and baseboard heaters were dirty and that all of the surfaces needed to be "wiped down" after the tenant left. The tenant glued child locks on the refrigerator, which were difficult to remove. Additionally, RVA had to vacuum. RVA submitted photos of uncleaned or inadequately cleaned cabinets, baseboards, sinks, toilets, countertops, showers, and appliances.

KC testified that RVA spent five hours cleaning the rental unit the evening of November 30, 2021, and that it seeks $250 (at a rate of $50 per hour) for the labour, and $30 for cleaning supplies.

TH testified that she was not responsible for some of the unclean items depicted in the pictures. She stated that some of the dirt seen was mouse droppings, and the hair pulled from the bathtub drain was not hers, because it did not match her or her children's hair color.

In summary, the landlord seeks a monetary order of $680, calculated as follows:

Description	Hours	Rate	Amount
Waiting for Move Out	2	$25	$50
Cleaning cigarette butts	2	$25	$50
Preparing unit for painting (tape and fill holes)	1	$25	$25
Painting	3	$50	$150
Cleaning rental unit	5	$50	$250
Replacing doorknob, light bulb, sanding windowsill	2	$25	$50
Painting supplies	-	-	$50
Cleaning supplies	-	-	$30
Doorknob hardware	-	-	$25
Total			**$680**

Analysis

1. Tenants' Claim

Section 38 of the Act, in part, states:

> **Return of security deposit and pet damage deposit**
> 38(1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of
>
> (a) the date the tenancy ends, and
> (b) the date the landlord receives the tenant's forwarding address in writing,
>
> the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

[…]

(6) If a landlord does not comply with subsection (1), the landlord
(a) may not make a claim against the security deposit or any pet damage deposit, and
(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

The tenants provided their forwarding address to the landlord on November 30, 2021. RVA made an application claiming against the security deposit on December 13, 2021. This application was made within the 15-day window set out at section 38(1) of the Act. As such, the tenant is not entitled to the return of double the security deposit.

Instead, I will adjudicate the landlord's application, determine if the landlord is permitted to retain any portion of the security deposit, and then order that the landlord return the balance of the security deposit to the tenants.

2. RVA's Application

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 of the Act states:

> **Leaving the rental unit at the end of a tenancy**
> 37(1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.

(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, and
(b) 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.

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.

As such, RVA must prove it is more likely than not that TH breached section 37 of the Act, that it suffered a quantifiable monetary loss as a result, and it acted reasonably to minimize the loss.

a) Tenant late for inspection

I accept KC's undisputed evidence that the tenants were in the process of moving out of the rental unit at 1:00 pm on November 30, 2021. Section 37 requires tenants to provide vacant possession by 1:00 pm, absent an agreement to the contrary. I do not find that any such agreement existed. Accordingly, the tenants breached the Act. I accept that this delay caused two employees of the RVA to each waste an hour of their time.

However, I do not find that RVA acted reasonably to minimize it loss. I understand that one of those employees likely needed to stay at the rental unit to wait for the tenant to finish moving out. However, I do not see why the other employee could not have started cleaning up the cigarette butts outside of the rental unit or could not have attended to other duties. Accordingly, I find that RVA is entitled to recover $25 of $50 sought for this portion of its claim.

b) Cleaning cigarette butts

RVA did not provide any evidence to support KC's testimony that the tenants threw cigarette butts onto the common area lawn. In light of the fact that the letters it submitted refer to complaints received from other occupants of the residential property, corroborating evidence (such as statements from these neighbors) should have been relatively easy to obtain. I do not find that the second-hand evidence of KC is sufficient to satisfy RVA's evidentiary burden to prove that the tenants were responsible for the

cigarette butts on the common area lawn. Accordingly, I decline to order the tenants pay landlord any amount on this portion of its claim.

c) Painting walls

RTB 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.

Based on the photographs submitted into evidence, I find that there are an excessive number of nail or screw holes in the various walls of the rental unit. Even if two of the holes pictured were not created by the tenants (as TH stated) the remaining holes would still amount to an excessive number.

Accordingly, I find that the tenant is responsible for paying for their repairs. I find that it was not unreasonable for the landlord to have patched the holes at repainted the damaged walls. I find that $225 ($25 for taping and patching, $150 for painting, and $50 for supplies) is a reasonable amount for the repainting of the damaged walls. However, the walls were painted roughly one years prior. RTB Policy Guideline 40 sets the useful life of interior paint at four years. Accordingly, the landlord must reduce the amount it is entitled to recover to reflect the fact that the interior paint was 25% through its useful life. Accordingly, I order the tenants to pay the landlord $168.75 in compensation for the work RVA undertook to repair the walls.

d) Cleaning

Based are the photographs submitted into evidence, I find that the rental unit was not reasonably clean at the end of the tenancy. There were stains on the walls and baseboards, debris in the sinks and on the countertops and dirt on the baseboard heaters. The refrigerator and stove were not adequately cleaned.

I accept that the some of the photos depict uncleanliness not caused by the tenants (the mouse droppings and the hair pulled from the drain). However, even excluding these, I find the rental unit was not reasonably clean when the tenants vacated. I find that $280 ($250 for 5 hours of cleaning and $30 for cleaning supplies) is a reasonable amount to have incurred for the cleaning of the rental unit. I find that RVA acted reasonably when it had the unit cleaned in the evening of November 30, 2021 at an extra cost. I accept KC's testimony that new tenants were moving into the rental unit the next day. As such, it was reasonable of RVA to ensure that the rental unit would be clean prior to their moving in.

I order the tenants to pay RVA $280 for this portion of their application.

e) Lightbulbs, doorknob, and windowsill

RTB Policy Guideline 1 states:

> LIGHT BULBS AND FUSES
> 1. The landlord is responsible for:
> - making sure all light bulbs and fuses are working when the tenant moves in.
> […]
> 2. The tenant is responsible for:
> - Replacing light bulbs in his or her premises during the tenancy

The parties disagree as to whether the light fixture in question had all four lightbulbs at the start of the tenancy. This is not something that move-in reports usually record. RVA bears the evidentiary burden to prove that the lightbulbs were present at the start of the tenancy. In the absence of evidence corroborating KC's testimony, I find that it has failed to discharge its evidentiary burden, I decline to award RVA any amount for replacing the lightbulbs. RVA has only claimed compensation for the time spent replacing the lightbulbs. KC did not provide any evidence as to how much time was spent procuring two light bulbs and installing them. However, I think it reasonable to allot only a minimal amount of time to this task. I find that, of the two hours spent by RVA replacing lightbulbs, the doorknob, and sanding the windowsill, only 15 minutes of this time was spend dealing the lightbulbs.

The parties disagree as to who was responsible for the damage to the bathroom door. Both parties agree that the building caretaker attended the rental unit to deal with a problem the tenant was having with the bathroom door. However, RVA argues that the TH's actions necessitated the drilling of the lock, whereas TH testified that the caretaker acted without consulting her and damaged the door and doorknob.

RVA did not call the caretaker as a witness. As such, RVA has only provided second-hand evidence in support of its version of events, whereas TH has provided direct testimony of what happened. I favour the eyewitness account. Accordingly, I decline to award RVA any amount for this portion of its application.

Based on the photographic evidence provided, I find that the windowsill was water-damaged at the end of the tenancy. This damage is not noted on the move-in condition inspection report. This type of damage is something that would be captured on such a report. Accordingly, I find that the windowsill was damaged during the tenancy. I find that the damage is beyond reasonable wear and tear. Accordingly, I find that the tenants breached the Act.

I find that, of the two hours spent between replacing the doorknob and lightbulbs, and repairing the windowsill, one hour of this time was most likely spent sanding the windowsill. I find that this is a reasonable amount of time. Accordingly, I award RVA $25 as compensation for this time spent.

In summary, I order the tenants to pay RVA $442.50, representing the following:

Description	Amount
Waiting for Move Out	$ 25.00
Cleaning cigarette butts	$ -
Preparing unit for painting (tape and fill holes)	$ 18.75
Painting	$ 112.50
Cleaning rental unit	$ 250.00
Replacing doorknob, light bulb, sanding windowsill	$ 25.00
Painting supplies	$ 37.50
Cleaning supplies	$ 30.00
Doorknob hardware	$ -
Total	**$ 498.75**

Pursuant to section 72(1) of the Act, as RVA has been successful in the application, it may recover the filing fee from the tenants.

Pursuant to section 72(2) of the Act, RVA may retain a $598.75 of the security deposit in satisfaction of the monetary orders made above. It must return the balance of the security deposit to the tenants within 15 days of receiving this decision.

Conclusion

I dismiss tenant TH's application, without leave to reapply.

Landlord RVA has been partially successful in its application. Landlord RVA may deduct $598.75 from the security deposit in satisfaction of the monetary orders made above. It must return the balance ($276.25) to the tenants within 15 days of receiving this decision.

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: August 19, 2022

Residential Tenancy Branch