



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

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A matter regarding 520 MOODY PARK RENTALS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S FFL

Introduction

The landlord seeks compensation pursuant to the *Residential Tenancy Act* (the “Act”).

Preliminary Issue: Service of Landlord’s Evidence

The landlord testified that they served both the *Notice of Dispute Resolution Proceeding* and their first package of evidence upon the tenant in April 2022. The tenant acknowledged receiving this. The landlord testified that they served a second package of evidence upon the tenant in early December 2022 by registered mail.

The tenant testified that he never received this mail, though he explained that his address for service is where his son lives. Canada Post registered mail information (on the Canada Post website) indicates that the second package was received and signed for on December 6, 2022. For the purposes of this dispute, it is my finding that both packages of the landlord’s evidence were properly served upon the tenant.

Issue

Is the landlord entitled to compensation?

Background and Evidence

In reaching this decision, I carefully considered all relevant evidence that complied with the *Rules of Procedure*. Only the necessary oral and documentary evidence that helped resolve the issue of the dispute and explain the decision is included below.

The tenancy began on May 2, 2002 and ended on March 31, 2022. The tenant paid a \$290.00 security deposit. With interest, the security deposit has grown to \$300.27.

The landlord seeks to retain the \$300.27 security deposit as compensation for a balcony that the tenant allegedly damaged beyond reasonable wear and tear. A Condition Inspection Report was completed at the start and end of the tenancy. Under the entry for "BALCONY, PATIO" the condition is marked as good and new in 2002. Upon move-out the condition is check-marked, meaning that it was clean. There is also a handwritten entry that reads "contacted the worker. waiting for a solution."

The landlord testified under oath that the tenant damaged the balcony in some fashion resulting in large stain spots. He admitted that while the actual surface of the balcony is not damaged in such a manner that it is unusable, there are nevertheless stains. A photograph of the balcony was in evidence, as were photographs of other balconies in the multi-unit residential building.

There are 28 balconies that were worked on in May 2021. The work involved installing a new coating and waterproofing membrane. The cost of the work is about \$800.00 per balcony. Thus, the landlord's claim does not cover what it would actually cost to resurface the balcony. The landlord testified that no work has yet been done on the rental unit's balcony but that at some point it will be worked on. Weather permitting, of course.

The tenant testified that there are several possibilities for the source of the staining. He noted that the balcony was a favourite place for birds. They provided plenty of bird droppings, which are organic, and which may have caused the stains. There are a large number of pine trees near the building which release huge amounts of pollen. Pollen also causes stains. The surface of the balcony, the tenant noted, is prone to absorbing dirt and it cannot simply be washed off with regular household soap.

Flowers in pots were kept on the balcony, the tenant then explained. Keeping flowers in pots on a balcony "is normal," he noted. And yes, the discoloration from the standing pots may have resulted, but he reiterated that the balcony is not damaged. The tenant should not, he argued, be responsible for what happens to an external balcony exposed to the elements.

In rebuttal, the landlord testified that the tenant kept up to two dozen potted plants and flowers on the deck. And he said that the tenant kept "an excessive number of plants" on the deck. Upon my inquiring as to whether there was any documentary evidence of previous landlord communication to the tenant about the number of potted flowers or plants, the landlord acknowledged that there was not.

Analysis

Section 7 of the Act states that if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. A party claiming compensation must do whatever is reasonable to minimize their loss.

Section 67 of the Act permits an arbitrator to determine the amount of, and order a party to pay, compensation to another party if damage or loss results from a party not complying with the Act, the regulations, or a tenancy agreement.

To determine if a party is entitled to compensation, the following four-part test must be met: (1) Did the respondent breach the Act, the tenancy agreement, or the regulations? (2) Did the applicant suffer a loss because of this breach? (3) Has the amount of the loss been proven? (4) Did the applicant take reasonable steps to minimize their loss?

Section 37(2)(a) of the Act requires that a tenant “leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear” when they vacate.

There is no dispute that the balcony incurred dozens of what appear to be light, medium, and dark brown spots or splotches. They are consistent with someone having placed potted flowers and plants on a balcony. The landlord argued that the tenant kept an excessive number of plants or flowers on the deck, but there is no evidence before me to find that the tenant was restricted from keeping such items on the balcony. In the absence of any written prohibition or rule against the keeping of plants on the balcony, I accept the tenant’s argument that doing so is “normal.” Tenants store all manner of items on balconies, from BBQs to chairs to bikes to plants and flowers. Keeping such items on balconies is reasonable and normal, as is any reasonable wear and tear.

Given the parties’ submissions on this matter, I am not persuaded that tenant breached section 37(2)(a) of the Act. The brown stains on the balcony are from what I consider to be reasonable wear and tear. Wear and tear from the completely reasonable, normal, and permitted activity of storing plants and flowers in pots on the balcony.

Having found no breach of the Act the landlord’s application must therefore fail. To this end, the landlord is ordered to return the security deposit of \$300.27 to the tenant within 15 days of receiving a copy of this decision. The landlord’s claim to recover the cost of the application filing fee (\$100.00) is also dismissed.

Conclusion

The application is hereby dismissed, without leave to reapply.

The landlord is ordered to return the \$300.27 security deposit to the tenant within 15 days of receiving this decision. A monetary order in this amount is issued to the tenant in conjunction with this decision.

This decision is made on delegated authority under section 9.1(1) of the Act.

Dated: December 23, 2022

Residential Tenancy Branch