



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, MNDC, FF

Introduction

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

- a monetary order for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's pet damage and security deposits (the deposits) in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 9:43 a.m. in order to enable her to connect with this teleconference hearing scheduled for 9:30 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, and to make submissions. The landlord testified that on October 9, 2013, he sent the tenant a copy of his dispute resolution hearing package by registered mail to a forwarding address provided by the tenant. The landlord provided a copy of the Canada Post Tracking Number to confirm this registered mailing and testified that the Canada Post Online Tracking System revealed that the package was successfully delivered to the tenant on October 11, 2013. In accordance with sections 89(1) and 90 of the *Act*, I am satisfied that the tenant was deemed served with the landlord's dispute resolution hearing package on October 14, 2013, five days after its registered mailing.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for damage and losses arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenant's deposits in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

This periodic tenancy commenced on October 15, 2011. Monthly rent was set at \$825.00, payable in advance by the first of each month. The landlord continues to hold the tenant's \$412.50 security deposit paid on September 17, 2011, and \$200.00 pet damage deposit paid on November 23, 2011. The landlord entered into written evidence a copy of the October 14, 2011 joint move-in condition inspection report. The landlord testified that the tenant failed to attend two scheduled joint move-out condition inspections, the last of which was to have occurred on September 2, 2013, the day after the tenancy ended. The landlord entered into written evidence a copy of his own move-out condition inspection report of September 2, 2013 and photographs of the condition of the rental unit at the end of this tenancy. The landlord testified that he provided copies of the above items to the tenant.

The landlord's original application for a monetary award of \$1,500.00 included requests for the recovery of the following items:

Item	Amount
Toilet Repair	\$120.00
General Cleaning	100.00
Professional Carpet Cleaning	120.00
Repairs to Holes in Walls and Closet Shelves	90.00
Damage to two sets of Blinds	155.00
Damage to Kitchen Cabinets	250.00
Key Replacement	25.00
Recovery of Filing Fee for this Application	50.00
Total of Above Items	\$910.00

On December 31, 2013, the Residential Tenancy Branch (the RTB) received a revised breakdown of the landlord's claim, including copies of receipts, which totalled \$1,534.48. This breakdown included the following items:

Item	Amount
Drywall and Ceiling Repairs	\$118.34
Paint and Supplies	198.77
Plumbing Repairs and Supplies	275.22
Flooring Replacement and Supplies	755.52
Cabinet Replacement	163.30
Disposal, Photocopying and Mailing	23.33
Two Registered Letters (2 x \$9.76 = \$19.52)	19.52
Total of Above Items	\$1,554.00

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

Although I am satisfied that the landlord is entitled to recover damages and losses arising out of this tenancy, I find that the landlord's claim is to be reduced to take into account only the remaining useful life of some of the items included in his application. Residential Tenancy Branch (RTB) Policy Guideline #40 is used by Arbitrators as a guide to the loss in value of various items in a tenancy.

Policy Guideline #40 establishes that the useful life of an internal paint job is set at 4 years (48 months). In this case, the landlord testified that the rental unit was painted on October 12, 2011, shortly before this tenancy commenced. Based on this sworn testimony, I find that the landlord incurred \$198.77 in painting costs approximately 22 months after the rental unit was last painted. I find that this entitles the landlord to a monetary award of \$107.73 (i.e., $\{ \$198.77 \times (1 - 22/48) = \$107.73 \}$) for painting.

Policy Guideline #40 establishes that the useful life of carpeting is 10 years. The landlord testified that the flooring in this rental unit was last replaced in June 2011. He testified that he had to replace the carpet because of damage caused by the tenant's pet and due to a flea infestation. I find that the landlord replaced the flooring 26 months after it was last replaced. On the basis of the landlord's undisputed evidence, I find that the landlord is entitled to a monetary award of \$591.82 (i.e., $\{ \$755.52 \times (1 - 26/120) = \$591.82 \}$) for the replacement of flooring in the rental unit.

Policy Guideline #40 establishes that the useful life of a toilet is 20 years. The landlord testified that the toilet was last replaced in June 2011, 26 months before this tenancy ended. On the basis of the landlord's sworn testimony and with reference to Policy Guideline #40, I find that the landlord is entitled to a monetary award of \$245.50 (i.e., $\$275.22 \times \{ 1 - 26/(20 \text{ years} \times 12 \text{ months}) \} = \245.50) for expenses incurred by the landlord to replace the toilet in this rental unit.

I find that the landlord is entitled to recover the \$118.34 in losses he incurred in repairing damage to the ceiling and drywall in this rental unit. I also find that the landlord is entitled to recover \$163.30 to replace a cabinet in this rental unit, damaged during the course of this tenancy. I also allow the landlord's application to recover the \$21.25 cost of disposing items left behind from this tenancy at the local landfill site.

I dismiss the landlord's application for the recovery of photocopying and mailing costs without leave to reapply. The only fee that the landlord can recover for this type of expense associated with his application, is the \$50.00 filing fee, which I allow him to recover from the tenant.

I allow the landlord to retain the tenant's deposits plus allowable interest to partially satisfy the monetary award issued in this decision. No interest is payable over this period.

Conclusion

A monetary Order is issued in the landlord's favour under the following terms, which allows the landlord to recover damage and losses arising out of this tenancy and his filing fee and to retain the tenant's deposits:

Item	Amount
Drywall and Ceiling Repairs	\$118.34
Paint and Supplies	107.73
Plumbing Repairs and Supplies	245.50
Flooring Replacement and Supplies	591.82
Cabinet Replacement	163.30
Disposal Fees	21.25
Less Pet Damage & Security Deposits (\$412.50 + \$200.00 = \$612.50)	-612.50
Filing Fee	50.00
Total Monetary Order	\$685.44

The landlord is provided with these Orders in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: January 06, 2014

Residential Tenancy Branch

