



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, 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 pursuant to section 67; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The landlord testified that he served the tenant with the dispute resolution package in person. The tenant did not raise any issues with service.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for damage arising out of this tenancy? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the landlord's claim and my findings around it are set out below.

This tenancy began 1 March 2015. The parties entered into a written tenancy agreement on 7 March 2015. The tenant entered into the tenancy agreement as a cotenant with CD. Monthly rent in the amount of \$1,200.00 was due on the first. The

landlord collected a security deposit in the amount of \$600.00 at the beginning of the tenancy. The landlord has returned \$300.00 of the security deposit to CD. The tenancy ended 6 July 2015.

The tenant and cotenant were in a physical altercation. In the course of the altercation the cotenant's head made contact with the stained-glass window in the front door. The window broke. The tenant asserts that, as the cotenant was the aggressor, the cotenant should be responsible for at least half the cost of the repair.

The landlord provided me with a photograph of the damaged window. Some of the panes of the stained glass have been shattered. The landlord testified that the window was approximately one hundred years old. The landlord provided me with a receipt of the cost of repairing the window. The receipt is in the amount of \$89.60. The landlord testified that he spent \$80.00 of his own time on the repair.

The landlord claims for the cost of the mini blinds. The landlord testified that the top rail of the blinds snapped. The landlord testified that the blinds were two years old. The landlord provided a receipt for replacing the blind in the amount of \$14.53.

The landlord testified that the tenant left a mattress and some chairs on the residential property after he vacated the rental unit. The landlord testified that he incurred costs of \$19.75 to dispose of these items. The landlord provided me with a receipt from the landfill in the amount of \$29.75. The landlord testified that this receipt includes the cost of disposing of some items for which the tenant is not responsible. The landlord seeks recovery of \$25.00 for his labour in removing the debris.

The landlord claims for \$278.00:

Item	Amount
Mini Blind	\$14.53
Remove Debris (Labour and Transportation)	25.00
Landfill Fee	19.75
Window Labour	80.00
Window Repair	89.60
Filing Fee	50.00
Total Monetary Order Sought	\$278.88

Analysis

The tenant and CD were cotenants under one tenancy agreement. Pursuant to *Residential Tenancy Policy Guideline*, “13. Rights and Responsibilities of Co-tenants”:

Co-tenants are jointly and severally liable for any debts or damages relating to the tenancy. This means that the landlord can recover the full amount of rent, utilities or any damages from all or any one of the tenants. The responsibility falls to the tenants to apportion among themselves the amount owing to the landlord.

As the tenant and CD are joint tenants, the landlord is entitled to seek compensation against either tenant.

Subsection 37(2) of the Act specifies that when a tenant vacates a rental unit, the tenant must leave the unit reasonably clean and undamaged except for reasonable wear and tear. *Residential Tenancy Policy Guideline*, “1. Landlord & Tenant – Responsibility for Residential Premises” sets out the responsibility for garbage removal from a rental unit: Unless there is an agreement to the contrary, the tenant is responsible for removal of garbage and pet waste during, and at the end of the tenancy.

Section 67 of the Act provides that, where an arbitrator has found that damages or loss results from a party not complying with the Act, an arbitrator may determine the amount of that damages or loss and order the wrongdoer to pay compensation to the claimant. The claimant bears the burden of proof. The claimant must show the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the Act by the wrongdoer. If this is established, the claimant must provide evidence of the monetary amount of the damage or loss. The amount of the loss or damage claimed is subject to the claimant’s duty to mitigate or minimize the loss pursuant to subsection 7(2) of the Act.

On the basis of the evidence before me, I find that the tenant left items behind that the landlord had to dispose of. I find that the tenant breached subsection 37(2) of the Act by leaving garbage behind. As the result of the tenant’s breach of subsection 37(2) of the Act, the landlord incurred costs in disposing of the debris. The landlord provided a receipt showing that he incurred costs of \$29.75 in removing debris. I accept the landlord’s testimony that \$19.75 of this amount is attributable to the debris left by the tenant. I accept the landlord’s testimony that he incurred losses of one hour of his time (which the landlord values at \$20.00) and \$5.00 in fuel. I find that the landlord has proven a loss in the amount of \$44.75 for removing the debris left behind by the tenant. The landlord is entitled to recover this amount.

Subsection 32(3) of the Act requires a tenant to repair damage to the rental unit or common areas that was caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

On the basis of the evidence before me, I find that the tenant or cotenant caused damage to the rental unit. In particular, the tenant caused damage to the mini blind and a window. I find that failure to repair this damage by the end of the tenancy constitutes a breach of subsections 32(3) and 37(2) of the Act. I find that as a result of these breaches, the tenant caused the landlord to incur costs of repair. I find that the landlord incurred costs of repair of \$14.53 for the mini blind and \$169.60 for the window.

Residential Tenancy Policy Guideline “40. Useful Life of Building Elements” (Guideline 40) provides me with direction in determining damage to capital property. This guideline sets out that the useful life expectancy of drapes and venetian blinds is ten years. As mini blinds are sufficiently analogous to drapes and venetian blinds, I assign mini binds a useful life expectancy of ten years. The landlord provided a testified that indicates that the blinds were two years old. As such, the capital value of the blinds had depreciated by 20%. On this basis, I find that the landlord is entitled to recover 80% of the cost of the blinds replacement: \$11.64.

Guideline 40 sets out that the useful life expectancy of a window is fifteen years. The landlord provided a testified that indicates that the window was much older than fifteen years. As such, the capital value of the window had fully depreciated and has no remaining value. On this basis, I find that the landlord is not entitled to recover the cost of the window repair.

As the landlord has been successful in his application, he is entitled to recover his filing fee from the tenant.

The total monetary award to the landlord is less than the remaining security deposit held by the landlord. *Residential Tenancy Policy Guideline*, “17. Security Deposit and Set off” provides guidance in this situation:

1. The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:
 - a landlord's application to retain all or part of the security deposit, or
 - a tenant's application for the return of the depositunless the tenant's right to the return of the deposit has been extinguished under the Act. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for arbitration for its return.

There is no evidence before me that indicates that the tenant's right to the security deposit has been extinguished. As there is a balance in the amount of \$193.61, I order that the balance of the tenant's security deposit shall be returned to the tenant forthwith.

Conclusion

I issue a monetary order in the tenant's favour in the amount of \$193.61 under the following terms:

Item	Amount
Security Deposit Amount	\$300.00
Offset Mini Blind	-11.64
Offset Dispose of Debris	-44.75
Offset Filing Fee	-50.00
Total Monetary Order	\$193.61

The tenant is provided with a monetary order in the above terms and the landlord(s) must be served with this order as soon as possible. Should the landlord(s) 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 subsection 9.1(1) of the Act.

Dated: April 08, 2016

Residential Tenancy Branch