



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MND, FF, MNSD

Introduction

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

- a monetary order for damage to the suite and a loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for its 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 parties acknowledged receipt of evidence submitted by the other.

Issue to be Decided

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

Background, Evidence

The landlord's testimony is as follows. The tenancy began on December 1, 2011 and ended on March 15, 2017. The tenants were obligated to pay \$1600.00 per month in rent in advance and at the outset of the tenancy the tenants paid an \$800.00 security deposit and an \$800.00 pet deposit. The landlord testified that the tenants damaged a quartz countertop. The landlord testified that the tenants damaged the baseboards in

the bathroom due to their negligence. The landlord seeks to recover the costs of repairs and the filing fee.

The landlord is applying for the following:

1.	Quartz Countertop	\$336.00
2.	Bathroom Baseboards	1689.96
3.	Filing Fee	100.00
4.		
5.		
6.		
	Total	\$2125.96

The tenants gave the following testimony. The tenants testified that they take responsibility for the damage to the quartz countertop and have no issue paying for that. The tenants testified that they categorically deny damaging the baseboards. The tenants testified that the damage is nothing more than wear and tear and some poor craftsmanship.

Analysis

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

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 provide **sufficient evidence of the following four factors**; the existence of the damage/loss, that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party, the applicant must also show that they followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed, and that if 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.

I address the landlords claim and my findings as follows.

First Claim – Quartz countertop \$336.00 – The tenants accept responsibility for this claim. Based on the above I find that the landlord is entitled to \$336.00.

Second Claim – Bathroom Baseboard, \$1689.96 – The landlord testified that “in her opinion the tenants were responsible for this damage”. The tenants adamantly dispute this claim. The tenants testified that the pictures provided clearly show that this was a very small “swelling” of the baseboard which didn’t require an emergency restoration company to repair it, as conducted by the landlord. The tenants testified that this was simply a matter of general wear and tear over five years and that the tub had a slight slope to it that attributed to the water dripping onto the baseboard. Based on the testimony of the parties, the documentary evidence before me and on balance of probabilities, I find that the tenants are not responsible for the damage as claimed by the landlord. The landlord has failed to provide sufficient evidence that the tenants were reckless or negligent in causing this damage or that it was beyond wear and tear. Based on the insufficient evidence before me, I dismiss this portion of the landlords’ application.

The landlord is entitled to the recovery of the \$100.00 filing fee.

Conclusion

The landlord has established a claim for \$436.00. I order that the landlord retain \$436.00 from the deposit in full satisfaction of the claim and to return the balance of \$1164.00 to the tenant. I grant the tenant an order under section 67 for the balance due of \$1164.00. This order may be filed in the Small Claims 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: August 30, 2017

Residential Tenancy Branch