



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MND MNSD FF

Introduction

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

- authorization to retain the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38;
- a monetary order for compensation for damage, money owed or losses under the Act, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application, 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 tenant confirmed receipt of the landlord's dispute resolution application ('Application') and evidence. In accordance with sections 88 and 89 of the Act, I find that the tenant was duly served with the Application and evidence. The tenant did not submit any written evidence for this hearing.

Issue(s) to be Decided

Is the landlord entitled to a Monetary Order for damage to the unit, site, or property, money owed or compensation for loss under the Act, regulation or tenancy agreement?

Is the landlord entitled to retain all or a portion of the tenant's security 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 and Evidence

This fixed-term tenancy began on September 1, 2016, with monthly rent set at \$2,200.00. The landlord collected, and still holds, a security deposit the amount of \$1,100.00, and a pet damage deposit in the amount of \$500.00. The tenant moved out at the end of the tenancy on April 30, 2017. The tenant provided the landlord with her forwarding address on May 16, 2017.

Both parties confirmed in the hearing that although a move in inspection and report was done, a move out inspection report was not provided to the tenant. The move-out inspection was completed with the tenant and the landlord's mother on April 30, 2017. The tenant testified that she was told during the inspection that everything looked good, and that the landlord would be in touch with her. A week later she received an email from the landlord that there were damages.

The landlord submitted the following list of items for their monetary claim:

Item	Amount
Arm Chair	\$250.00
Dining Room Seat Covers (6 x \$50.00)	300.00
Cleaning and Removal of Cat Hair	150.00
Kitchen Island	300.00
Filing Fee	100.00
Total Monetary Order Requested	\$1,000.00

The tenant agreed in the hearing that she would pay \$250.00 for the damaged arm chair.

The landlord testified that living room chair covers were damaged, and would cost approximately \$50.00 per chair to replace. The landlord testified that there were 6 chairs, and these chairs were 5 years old. The tenants dispute this damage.

The landlord testified that the tenant had a cat, that they did not request permission to have. The landlord testified that the pet damage deposit only covered the dog that was approved. The tenants admitted in the hearing that they had purchased a cat 5 days before moving out, without the landlord's permission. The landlord testified that they had cleaned the rental unit, which required an entire day. The landlord is requesting \$150.00 for the cost of cleaning and removal of the cat hair.

The landlord also provided undisputed evidence that the tenants had left a stain on the kitchen island, which is a standalone piece of kitchen furniture purchased by the landlord. The landlord testified that they had paid \$549.00 for the island, but was claiming only \$300.00 for the damage. The landlord testified in the hearing that he had attempted to remove the stain from the stainless steel surface, but was not successful in doing so.

In support of the monetary claim, the landlord provided photos in their evidence.

Analysis

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of

the tenancy agreement or *Act*, establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

Section 37(2)(a) of the *Act* stipulates that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. I find that the landlord provided sufficient evidence to show that the tenant did not take reasonable care and attention when vacating the suite.

The tenant does not dispute the \$250.00 damage claim to the arm chair, and accordingly I find the landlord is entitled to \$250.00 for the chair.

The tenant dispute the damage to the chair covers, which the landlord stated were 5 years old. The landlord provided a photo depicting the damage to the chair cover. Although I find that the photo depicts damage to the chairs, the landlord did not provide any invoices, receipts, or supporting evidence to support the value of their claim. The landlord had not replaced or repaired these chairs or the covers. I find the landlord failed to provide sufficient evidence to demonstrate that the damage does done during this tenancy, and further more I find that the landlord has failed to establish the value of their loss in relation to these covers. The landlord's monetary claim for the chair covers is dismissed.

The landlord also made a monetary claim for cleaning and removal of cat hair. The landlord did not provide any receipts or invoices to support this claim, stating that they did the cleaning themselves. The tenant admitted to purchasing a cat, which was not approved by the landlord. In the absence of any invoices or receipts supporting the value of the loss or damage, I find the landlord is entitled to nominal compensation for the removal of the cat hair in the amount of \$50.00.

Lastly the landlord also made a monetary claim for the kitchen island stain, which the tenant did not dispute. The landlord testified that he had paid \$549.00 for the island.

Section 40 of the *Residential Tenancy Policy Guideline* speaks to the useful life of an item. I will use this guideline to assess the remainder of the useful life of the kitchen island. As per this policy, the useful life of furniture is 10 years. The island was 5 years old, and therefore at the end of the tenancy had approximately half of its useful life left. The approximate prorated value of the remainder of the useful life of the kitchen island is \$274.50. ($\$549.00/2$). Accordingly, I find the landlord is entitled to \$274.50 for the kitchen island.

As I find the landlord partially successful in their application, I find they are entitled to recover half of the filing fee for this application.

In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain a portion of the tenant's security and pet damage deposit plus applicable interest in partial

satisfaction of the monetary claim. Over the period of this tenancy, no interest is payable on the security deposit. The remainder of the tenant's deposits are to be returned to her.

Conclusion

I issue a Monetary Order in the amount of \$975.50 in the tenant's favour under the following terms which allows for the return of their security and pet damage deposits, minus the monetary claim awarded to the landlord as stated below. The remainder of the landlord's monetary claim is dismissed without leave to reapply.

Item	Amount
Return of Pet Damage and Security Deposits	\$1,600.00
Arm Chair	-250.00
Cleaning and Removal of Cat Hair	-50.00
Kitchen Island	-274.50
Filing Fee	-50.00
Total Monetary Order	\$975.50

The tenant is provided with this Order in the above terms and the landlord(s) must be served with a copy of 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: December 1, 2017

Residential Tenancy Branch