



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: FFL MNDCL MNDL-S
Tenant: FFT MNDCT MNRT MNSD

Introduction

This hearing dealt with applications from both the landlord and the tenant pursuant to the *Residential Tenancy Act* (the *Act*).

The landlord applied for:

- a Monetary Order for compensation of damage or loss caused by the tenant, and authorization to retain the tenant's security deposit in satisfaction of this claim pursuant to section 67 of the *Act*; and
- recovery of the filing fee for this application from the tenant pursuant to section 72 of the *Act*.

The tenant applied for:

- a Monetary Order for compensation of damage or loss caused by the landlord pursuant to section 67 of the *Act*;
- a Monetary Order for the cost of emergency repairs paid for by the tenant pursuant to section 25 of the *Act*;
- return of the security deposit pursuant to section 38 of the *Act*; and
- recovery of the filing fee for the application from the landlord pursuant to section 72 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Preliminary Issue – Withdrawal of Tenant's Application for Dispute Resolution

As both parties were present, and both parties had applied for dispute resolution, I confirmed service of each parties' notice of dispute resolution and evidentiary materials. The tenant testified that she was in receipt of the landlord's Notice of Dispute Resolution Proceeding

package and evidentiary materials for his application. Therefore, I find that the landlord's application and evidence was served in accordance with section 89 of the *Act*.

The landlord testified that he had received some evidence from the tenant in the mail, which he stated to be a couple of printed out emails, but he was not aware of the nature of the claim in the tenant's application as he had not received the tenant's Notice of Dispute Resolution Proceeding package. The tenant acknowledged that she was unaware she was required to serve on the landlord the Notice of Dispute Resolution Proceeding in relation to her application.

Rule 3.5 of the Residential Tenancy Branch Rules of Procedures sets out the requirement of an applicant to demonstrate proof of service:

3.5 Proof of service required at the dispute resolution hearing:

At the hearing, the applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Notice of Dispute Resolution Proceeding Package and all evidence as required by the Act and these Rules of Procedure.

The landlord stated that as he was not aware of the nature of the tenant's claims, he was not adequately prepared to address those issues at this hearing.

Pursuant to Rule 3.5 noted above, I do not find that the Notice of the tenant's application was served by the tenant to the landlord as required by the *Act* and the Rules of Procedure.

As such, the tenant requested to withdraw her application in order to retain the opportunity to reapply at a future date.

Based on the undisputed testimony of the parties, and the tenant's request to withdraw her application, I order that the tenant's application be dismissed in its entirety with leave to reapply, except for her request to recover the filing fee as that aspect of her application is dismissed without leave to reapply. I make no findings on the merits of the tenant's application. My order to dismiss the tenant's application with leave to reapply does not extend any applicable time limits under the *Act*.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for compensation as a result of loss? If so, is the landlord entitled to retain the security deposit in satisfaction of that claim?

Is the landlord entitled to recover the cost of the filing fee for this application from the tenant?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. The principal aspects of this matter and my findings are set out below.

A copy of the written tenancy agreement was submitted into documentary evidence. Both parties agreed to the following information pertaining the tenancy agreement. The tenancy began on April 1, 2017 as one-year fixed term tenancy, which converted to a month-to-month tenancy on April 1, 2018. Monthly rent of \$1,700.00 was payable on the first of the month. A security deposit of \$850.00 was paid by the tenant at the beginning of the tenancy and continued to be held by the landlord. The tenancy ended on April 30, 2018. A condition inspection report was completed by both parties at move-in and move-out. The tenant acknowledged receiving a copy of the move-in condition inspection report but stated that she never received a copy of the move-out condition inspection report, other than in the landlord's notice of dispute resolution proceeding package. The landlord stated that he had emailed the move-out condition inspection report to the tenant approximately a week after it was completed and signed by both parties.

The landlord confirmed that he received the tenant's forwarding address for the return of the security deposit on April 30, 2018. On May 13, 2018, the landlord filed his application for dispute resolution to retain the security deposit in satisfaction of his claims for damages, which is within the 15-day time limit pursuant to section 38 of the *Act*.

The landlord alleged that the tenant had a dog in the rental unit, in contravention of the no pets term of the tenancy agreement. As a result, the landlord testified that additional cleaning of the rental unit was required after the tenant left the rental unit. The landlord sought to retain the \$850.00 security deposit as compensation for the cleaning costs. The landlord submitted a \$63.00 receipt for the cost of carpet cleaning, a condition inspection report and photographic evidence in support of his claim. The landlord stated that he had to wash the walls and steam-clean the blinds to remove the dog odour and dirt as he claimed that the dog bed was placed beside the blinds. This was supported by a photograph of what appeared to be a dog bed beside the window with blinds. The landlord stated that other required cleaning was not done, including the outside balcony windows, inside the dishwasher, light fixtures, appliances and flooring. The landlord also noted that a plastic shelf was missing from the refrigerator.

The landlord also claimed \$1,950.00 for lost rental revenue because a prospective renter reneged on renting the unit due to the residual dog odour and an allergy to dogs.

The tenant testified that she paid someone to clean the rental unit at move-out but as she paid cash she did not have a receipt as proof. She also stated that she rented a carpet cleaner to clean the carpets at move-out but did not submit a receipt in support of her claim. The tenant acknowledged that she did not clean the outside balcony windows as she was not aware that was her responsibility and thought it was the responsibility of the condominium strata. She also acknowledged that she did not clean the drain inside the dishwasher or the light fixtures.

Analysis

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*, regulations, or tenancy agreement, an arbitrator may determine the amount of that damage or loss and order 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 other party. 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 section 7(2) of the *Act*.

The landlord has claimed for compensation due to loss of rental revenue and he has claimed against the security deposit for damages due to additional cleaning required to the rental unit.

Claim for Loss of Rental Revenue

As explained above, one of the criteria that must be satisfied in order to find a claimant is entitled to compensation for damages pursuant to section 67 of the *Act* is that the loss **stemmed directly from a violation of the agreement by the other party**, and further that the claimant **must show the existence of the damage or loss** and **must provide evidence of the monetary amount of the damage or loss**. In this case, the landlord and a prospective new tenant had a verbal agreement to rent the unit at \$1,950.00 a month starting May 1, 2018. This agreement was not fulfilled when the other party decided to renege on the agreement on April 30, 2018. Regardless of the reason why the agreement was not fulfilled, which in this case was reportedly due to a dog allergy issue, the prospective new tenant's failure to follow through with the verbal agreement on the day before the scheduled move-in date created the loss of rental revenue. The landlord acknowledged that the prospective new tenant had not: signed a tenancy agreement; provided a security deposit; provided a rent cheque; or provided any witness statement attesting to the issues regarding dog odour or dog allergy as the only cause for reneging on the tenancy agreement. As such, the landlord did not submit any documentary evidence to support his claim or any proof of the actual amount of his loss, other than a receipt for re-posting the rental unit on April 30, 2018.

Therefore, based on the testimony and evidence presented, and on a balance of the probabilities, I do not find that the tenant in this matter can be held responsible for a prospective new tenant reneging on a verbal agreement with the landlord the day before the scheduled move in date, regardless of alleged reasons. Further, the landlord has not submitted sufficient evidence to show the existence of the loss, or to support his claim for the monetary amount of the loss. As such, I do not find that the landlord's loss stemmed directly from the tenant's violation of the tenancy agreement and as a result, I decline the landlord's request for compensation from the tenant for this loss.

Claim for Damages Due to Cleaning Costs

Section 37(2) of the *Act* sets out the requirements for a tenant to fulfill when vacating the rental unit, as follows, in part:

- 37(2) When a tenant vacates a rental unit, the tenant must
- (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear,...

Residential Tenancy Policy Guideline 1. Landlord & Tenant – Responsibility for Residential Premises provides further explanation regarding the responsibility of the tenant for cleaning the rental unit at the end of a tenancy. The sections relevant to this matter has been noted below, in part, as follows:

CARPETS

...

- 3. *The tenant is responsible for periodic cleaning of the carpets to maintain reasonable standards of cleanliness. Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year. Where the tenant has deliberately or carelessly stained the carpet he or she will be held responsible for cleaning the carpet at the end of the tenancy regardless of the length of tenancy.*
- 4. *The tenant may be expected to steam clean or shampoo the carpets at the end of a tenancy, regardless of the length of tenancy, if he or she, or another occupant, has had pets which were not caged or if he or she smoked in the premises.*

INTERNAL WINDOW COVERINGS

...

- 3. *The tenant is expected to leave the internal window coverings clean when he or she vacates. The tenant should check with the landlord before cleaning in case there are any special cleaning instructions. The tenant is not responsible for water stains due to inadequate windows.*
- 4. *The tenant may be liable for replacing internal window coverings, or paying for their depreciated value, when he or she has damaged the internal window coverings deliberately, or has misused them e.g. cigarette burns, not using the "pulls", claw marks, etc.*

WINDOWS

...

2. *The tenant is responsible for cleaning the inside windows and tracks during, and at the end of the tenancy, including removing mould. The tenant is responsible for cleaning the inside and outside of the balcony doors, windows and tracks during, and at the end of the tenancy. The landlord is responsible for cleaning the outside of the windows, at reasonable intervals.*

MAJOR APPLIANCES

1. *At the end of the tenancy the tenant must clean the stove top, elements and oven, defrost and clean the refrigerator, wipe out the inside of the dishwasher.*
2. *If the refrigerator and stove are on rollers, the tenant is responsible for pulling them out and cleaning behind and underneath at the end of the tenancy. If the refrigerator and stove aren't on rollers, the tenant is only responsible for pulling them out and cleaning behind and underneath if the landlord tells them how to move the appliances without injuring themselves or damaging the floor. If the appliance is not on rollers and is difficult to move, the landlord is responsible for moving and cleaning behind and underneath it.*

...

WALLS

Cleaning: The tenant is responsible for washing scuff marks, finger prints, etc. off the walls unless the texture of the wall prohibited wiping.

Although the parties disputed each other's version of the condition of the rental unit at move-out, the landlord submitted a condition inspection report into evidence along with photographs to support his claims. The landlord has claimed that the carpets required cleaning due to the tenant allowing a dog to either live in or visit the rental unit, and he has provided a receipt for the cost of this damage to support his claim. The tenant did not provide any receipts to support her claim that she had paid for cleaning of the rental unit and that she had steam-cleaned the carpets herself with a rented cleaner.

Residential Tenancy Policy Guideline 16. Compensation for Damage or Loss provides direction in determining an amount for compensation when damages have been claimed, as follows:

An arbitrator may award monetary compensation only as permitted by the Act or the common law. In situations where there has been damage or loss with respect to property, money or services, the value of the damage or loss is established by the evidence provided.

An arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward:

- *"Nominal damages" are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.*

Based on the fact that the landlord presented a preponderance of evidence to support his claim regarding the condition of the rental unit at move-out and a receipt to support his claim for carpet cleaning, I find that the landlord has proven his entitlement to compensation for damages related to carpet cleaning and some additional cleaning required as a result of cleaning not completed by the tenant at move-out and as a result of a dog either living in or visiting the rental unit. The landlord provided a receipt for the cost of carpet cleaning. As such, I award the landlord the cost of the carpet cleaning in the amount of \$63.00 as I find that the amount of this damage was established by the receipt submitted into documentary evidence.

The landlord failed to “provide evidence of the monetary amount of the damage or loss” for the other cleaning costs, as required by section 67 of the *Act*. The landlord stated that he did the cleaning himself, which shows the landlord has attempted to mitigate his loss as required by section 7 of the *Act*. The landlord did not submit any quotes from a cleaning service or provide a clear breakdown of the hours required to bring the rental unit to the standard of reasonably clean as defined by Policy Guideline 1. Therefore, I find that the landlord failed to provide a receipt to establish the actual cost of these damages, however, I find that the damage was established by the landlord’s photographic evidence, condition inspection report and the testimony of the parties.

As such, I also award the landlord nominal damages in the amount of \$200.00 for the additional cleaning required to the blinds, walls, dishwasher, flooring and outside balcony windows.

Therefore, I find, on a balance of probabilities, that the landlord is entitled to a monetary award for compensation due to losses incurred as a result of additional cleaning and carpet cleaning in a total amount of \$263.00. The breakdown is provided below:

Item	Amount Allowed
Nominal damages for additional cleaning	\$200.00
Carpet cleaning – receipt provided	\$63.00
Total Monetary Award to Landlord for Damages	\$263.00

Set-off of Landlord’s Claim Against Security Deposit

The landlord continues to retain the tenant’s \$850.00 security deposit and has requested to retain this deposit or a portion of it in satisfaction of the claims for damages. No interest is payable on the deposit during the period of this tenancy.

In summary, I find that the landlord is entitled to a monetary award for compensation for damages and loss in the amount of \$263.00.

Further to this, as the landlord was successful in retaining a portion of the security deposit through this application, I find that the landlord is entitled to recover the \$100.00 filing fee from the tenant.

In accordance with the offsetting provisions of section 72 of the *Act*, I set-off the \$263.00 of compensation owed by the tenant to the landlord, and the recovery of the \$100.00 filing fee to be paid by the tenant to the landlord, against the tenant's \$850.00 security deposit held by the landlord.

As such, I issue a Monetary Order in the tenant's favour in the amount of \$487.00, as explained in the following breakdown:

Item	Amount
Return of security deposit to tenant (currently held by landlord)	\$850.00
LESS: Monetary Award to landlord for compensation (carpet cleaning cost and additional cleaning)	(\$263.00)
LESS: Recovery of filing fee awarded to landlord	(\$100.00)
Total Monetary Order in Favour of Tenant	\$487.00

Conclusion

I issue a Monetary Order in the tenant's favour against the landlord in the amount of \$487.00 for the return of the remaining amount of the security deposit currently held by the landlord.

The tenant is provided with this Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord 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: July 20, 2018

Residential Tenancy Branch