



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PEMBERTON HOLMES AS AGENT FOR THE OWNER
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S FFL

Introduction

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

- a monetary order for damage and loss pursuant to section 67;
- authorization to retain the security deposit for this tenancy pursuant to section 38; and
- authorization to recover the filing fees from the tenants 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 corporate landlord was represented by its agent MW (the "landlord"). The tenant MH primarily spoke on behalf of both co-tenants (the "tenant").

As both parties were present service of documents was confirmed. The parties each confirmed receipt of the other's materials including the application for dispute resolution and evidentiary materials. Based on the undisputed testimonies I find that each party was served with the respective materials in accordance with sections 88 and 89 of the *Act*.

At the outset of the hearing, the landlord made an application requesting to amend the monetary amount of the claim sought. The landlord indicated that since the application was filed based on estimates, they have received accurate quotes for repairs and the actual amount of their monetary claim is \$3,316.18. Pursuant to section 64(3)(c) of the *Act* and Rule 4.2 of the Rules of Procedure, as the amount of the monetary amount sought changing based on accurate quotes being obtained is reasonably foreseeable, I amend the landlord's Application to decrease the landlord's monetary claim from \$3,853.50 to \$3,316.18.

Issue(s) to be Decided

Is the landlord entitled to a monetary award as claimed?

Is the landlord entitled to retain the security deposit for this tenancy?

Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

This tenancy began in May, 2014 and ended in August, 2018. A security deposit of \$895.00 was paid at the start of the tenancy and is still held by the landlord. The parties prepared a move-in and move-out condition inspection report. A copy of the report was submitted into documentary evidence. The tenants provided their forwarding address on the inspection report dated August 24, 2018. The tenants agreed to a deduction of \$100.00 from their deposit on the report. The report indicates other damage to the rental suite, the amounts for which further discussion is required.

The landlord submits that there was damage to the rental suite which required repairs and replacement of fixtures. The landlord seeks a monetary award in the amount of \$3,316.18 for the following items:

Item	Amount
Baseboard Repair	\$1,050.00
Kitchen Counter Repair	\$1,741.18
Cupboard Repair	\$525.00
TOTAL	\$3,316.18

The landlord submitted photographs of the rental suite condition and the receipts as evidence of the repairs required. The landlord submits that there was wear and tear to the baseboards in excess of what would be expected from reasonable use. The landlord said that the counter top was burnt by the tenants and that the cupboards had child locks placed on them causing damage.

The tenants submit that they do not dispute the existence of damage to the rental unit but believe that the amounts requested by the landlord to be excessive given the condition of the suite at move-in and the age of the fixtures. The tenants also submit that the costs of repairs are in excess of what would be required to bring the suite back to its original state.

Analysis

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing. If that does not occur, the landlord must pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenant's written permission to keep all or a portion of the security deposit as per section 38(4)(a).

This tenancy ended on August 31, 2018 and the landlord filed their application for dispute resolution on September 7, 2018. As such, I find that the landlord filed for dispute resolution within the allotted 15 day time period. The tenants authorized the deduction of \$100.00 on the written inspection report. The parties dispute the dispensation of the remaining portions of the deposit.

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the *Act*, regulations or a tenancy agreement. 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 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. The claimant also has a duty to take reasonable steps to mitigate their loss.

I find I am satisfied with the landlord's evidence including, photographs, testimony, quotations and correspondence that the repairs performed were necessary and resulted from the tenancy. I find that the state of the suite as shown in the photographs to be more than simple wear and tear as would be expected from a tenancy. I find that the nature of the repairs performed by the landlord to be reasonable.

While the tenant submits that more economical options may have been available, I find the landlord's actions to be reasonable under the circumstances. As outlined in Residential Tenancy Policy Guideline 5 the duty to mitigate does not obligate a party to do everything possible to minimize the loss. I find that the landlord took sufficient mitigating steps, contemplating the nature of repairs required and obtaining quotes.

While the tenant testified that the landlord did not engage in sufficient negotiation regarding the monetary amount claimed, I do not find that the landlord is obligated to negotiate or that the failure to do so constitutes a failure to mitigate.

I am satisfied based on the evidence that the landlord incurred the losses claimed despite taking reasonable steps to mitigate their damages. I accept the evidence that the cost of the repairs incurred totalled \$3,316.18. Accordingly, I issue a monetary award in that amount in the landlord's favour.

As the landlord's application was successful the landlord may recover the \$100.00 filing fee.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenants' \$895.00 security deposit in partial satisfaction of the monetary award issued in the landlord's favour.

Conclusion

I issue a monetary award in the landlord's favour in the amount of \$2,521.18 in the following terms:

Item	Amount
Baseboard Repair	\$1,050.00
Kitchen Counter Repair	\$1,741.18
Cupboard Repair	\$525.00
Filing Fee	\$100.00
Less Security Deposit	-\$895.00
TOTAL	\$2,521.18

The tenants must be served with this Order as soon as possible. Should the tenants 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: October 29, 2018

Residential Tenancy Branch