



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Introduction

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

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67; 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. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

Issue to be Decided

Is the landlord entitled to a monetary award for loss or damages arising out of this tenancy?
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 June 1, 2010 and ended on March 31, 2018. The tenants were obligated to pay \$1500.00 per month in rent. The landlord testified that he did not collect a security deposit as the tenants are police officers and felt he could trust them. The landlord testified that the tenants caused extensive damage to the unit that far exceeds wear and tear. The landlord testified that the tenants' recklessness and neglect led to all the damage. The landlord testified that the unit was left dirty and damaged. The landlord testified that he attempted to contact the tenants and work it out but they refused. The landlord testified that a written condition inspection report wasn't done at move in as the house

was brand new and that he conducted one at move out which the tenant refused to participate in. The landlord testified that his claim is very reasonable and should be granted in full.

The landlord is applying for the following:

1.	Island Overhead Door Install	\$1839.00
2.	Vacuum attachment	100.75
3.	Lime fertilizer	111.79
4.	Paint	50.89
5.	Toilet, smoke detector	371.29
6.	Hallway floor grill	11.30
7.	Dirt Delivery	313.95
8.	Microwave	458.44
9.	Price locks	78.97
10.	Door damage\cat door	109.04
11.	Blind Cleaning	519.75
12.	Replace Missing Patio Screen	156.80
13.	Repair/Refinish/Repaint	3517.50
14.	Install Patio Blinds	123.90
15.	Cost of Shipping to Repair Blind	22.40
16.	2 Patio Blinds	2751.00
17.	Garage Door Replacement (quote)	3833.00
18.	Blind Replacement (quote)	420.53
19.	Blind Replacement (quote)	1360.28
20.	Blind Replacement (quote)	562.28
21.	Rental Loss\Travel Ferry\Fuel	2878.63
22.	Filing Fee	100.00
	Total	\$19691.49

The tenant gave the following testimony. The tenant testified that he agrees with claim #10 and #12 as listed above but disputes the rest of the landlords claim. The tenant testified that his family was subject to a campaign of harassment and that the landlord is being completely unreasonable in his claims. The tenant testified that they lived in the home for 8 years and that almost all of the landlords' claims can be attributed to normal wear and tear. The tenant testified that he made several attempts to work this out with the landlord but each time he spoke to him the claim amount went up. The tenant testified that the landlord is attempting to upgrade and renovate the home at his expense.

Analysis

The relationship between the parties is an acrimonious one. It was evident during the hearing the level of hostility the parties had towards one another. 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.

Firstly, I address the issue of the condition inspection report. The landlord testified that written condition inspection reports were conducted, one at move in and move out, the tenant disputes one was ever done. The landlord testified that he had copies of the report but neither the tenant nor the Branch was provided a copy of this report. Although the landlord submits there is a report, it is not before me. Secondly, the landlord testified that he waived his right to collect a security deposit as he felt that since the tenants were police officers he could trust them. The tenant testified that he did pay a security deposit and that the tenancy agreement reflects that. However, as with the condition inspection report, neither party submitted a copy of tenancy agreement or proof of security deposit being paid; accordingly I find that there is no security deposit as part of this tenancy. Both parties do agree that the home was brand new when the tenants moved in with no significant deficiencies.

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.

I address the landlords' claims and my findings as follows.

Garage Door - \$1839.00

The landlord testified that the tenant's children kept shooting ice hockey pucks at the garage door causing extensive damage requiring the replacement of the garage door. The tenant disputes this claim and submits that the door is fine working order and that there was only a small mark on it. As noted above, both parties agree that the home was brand new when the tenants moved in. The landlord provided a video of the condition of the garage door at move out that supports his testimony. I find that the landlord has provided sufficient evidence to support this claim, on a balance of probabilities. Applying Residential Tenancy Policy Guideline 40 to address the "useful life" of building elements, garage door is listed at ten years. Both parties agree that the tenancy was eight years long. I find that the landlord is entitled to the remaining 20% of value in the amount of \$367.80.

Vacuum attachment – 100.75

The landlord did not provide sufficient evidence to illustrate the damage to the attachment, accordingly; I dismiss this portion of the landlords claim.

Lime, fertilizer, dirt delivery \$111.79 & \$313.95

The landlord testified that the tenant put a stand up pool in the backyard without his consent. The landlord testified that when the tenant's moved out the lawn beneath the pool was damaged so severely that it required new top soil, fertilizer and lime to get it back to a good condition. The tenant didn't dispute the damage but stated that it was wear and tear and could be reasonably expected that lawn would need attention in the spring time.

Residential Tenancy Policy Guideline 1 states that a tenant is required to do a reasonable amount of yard maintenance, which I find the tenants have not. The landlord provided sufficient evidence to show that the damage was far beyond wear and tear and that this was as a direct result of the tenants stand up pool. Based on the above and on the balance of probabilities, I find that the landlord is entitled to both costs as claimed in the amount of \$425.74.

Smoke Detector and Toilet- \$371.29

The tenant disputed this claim. The tenant provided documentation that the smoke detector was required to be replaced in 2014. Residential Tenancy Policy Guideline 40 addresses the "useful life" of building elements; as the smoke detector exceeded the useful life as noted on the detector itself; the landlord is not entitled to the replacement cost of this item. The tenant provided documentation to show that the toilet was replaced in May 2011 and that the tenants paid half the cost even though they had not requested a replacement. The landlord stated that the toilet lid was damaged by the tenants however the landlord has not provided sufficient evidence to show that the tenants caused the crack in the toilet lid or that it was through recklessness or neglect. Based on the above and the insufficient evidence before me, I dismiss this part of the landlords claim.

Replace Locks and Keys – 78.97

The landlord testified that the tenant only returned one key at move out. The tenant testified that all keys were returned. The landlord did not provide sufficient documentation, such as a move out condition inspection report to support this claim, accordingly; I dismiss this portion of the landlords' claim.

Cat door \$109.04 and Patio screen door \$156.80.

The tenant accepts responsibility for this claim; accordingly I find that the landlord is entitled to \$265.84.

Paint – \$50.89

The landlord testified that he had to repaint the door that the tenant cut a hole in to install the cat door. The tenant disputes this claim and finds the amount excessive. The tenant did admit that he did cut the hole in the laundry room door to install a cat door without the landlords' permission. I find that the landlord has provided sufficient evidence to prove this claim and the amount is reasonable, accordingly, I find that the landlord is entitled to 50.89.

Hallway Grill – \$11.30

The landlord provided sufficient evidence to show the damage to this item was beyond wear and tear and that the tenant was responsible for this. I find that the landlord is entitled to \$11.30.

Microwave – \$458.44

Again, and as noted above, both parties agreed that the unit was brand new when the tenants moved in. The tenant testified that he believes it's a poor model and that after 8 years normal wear and tear would result in the handle falling off. The landlord has provided sufficient evidence that the damage was beyond wear and tear and that he is entitled to this claim. However, applying Residential Tenancy Policy Guideline 40 to address the "useful life" of building elements, a microwave is listed at ten years. Both parties agree that the tenancy was eight years long. The landlord is entitled to 20% of the value in the amount of \$91.69.

Repair/ refinish/ repaint – \$3517.50

The landlord has not provided sufficient evidence to support his claim that the damage was beyond normal wear and tear after 8 years. In addition, Residential Tenancy Policy Guideline 40 addresses the "useful life" of building elements; paint is listed at four years. Both parties agree that the tenancy was eight years long. I find that not only has the landlord not proven his claim, but also that the paint had gone beyond its "useful life", accordingly, I dismiss this portion of the landlords claim.

Claims 11, 14, 15, 16 as listed on the table in this decision – Blind cleaning, install patio blinds, cost of shipping blinds, and replace two patio blinds - \$3417.05.

The landlord testified that the tenant caused excessive damage to numerous blinds in the home by tearing them, soiling them with ink or other materials and misusing and breaking them. The tenant disputes this claim. The tenant testified that the landlord has been unclear with which blinds he is claiming for and that the damage was nothing more than wear and tear. I agree with the tenant. It is worth noting that the landlord was extremely disorganized when presenting this portion of his claim. He was unable to answer basic questions or provide answers' to the claim he put forth or able to explain the amount he noted on the application and what he was seeking on the day of the hearing. The landlord presented his evidence in a very disjointed and vague fashion. In addition, the landlord would add and subtract items from his claim during the hearing

and would alter the amount he was seeking. Based on the conflicting testimony and documentation of the landlord I must dismiss this portion of his claim.

Claims 17-20 as listed on the table in this decision - Blinds and Garage Door Replacement – \$6176.09

The landlord testified that he obtained quotes for these items but has yet to conduct the work. The landlord has not satisfied me that the tenant caused the damage to these items requiring their replacement. In addition, as the landlord has not incurred any out of pocket costs for these claims, he has failed to satisfy the four factors as listed above under section 67, accordingly; I dismiss this portion of the landlords claim.

Rental Loss, Travel, Ferry, Fuel - \$2878.63

The landlord testified that the condition of the unit was such that he was unable to rent it and incurred one month's loss of revenue. In addition, the landlord testified that he had to travel back and forth to the unit which cost him to travel to and from home. As I have noted in the above claims, very few items are a result of the tenants' actions. Furthermore, the landlord lives 267 kilometers from his rental property. The landlord should expect the cost to travel back and forth as reasonable since he lives far from his rental property, specifically at the end of an eight year tenancy where it would be reasonable to expect some small deficiencies and the time required to rectify them. Based on the above, the landlord has not provided sufficient evidence to meet the requirements of section 67 and I therefore dismiss this portion of the landlords claim.

As the landlord has been partially successful, he is entitled to the recovery of the \$100.00 filing fee.

Conclusion

In summary, the landlord has been successful in the following claims:

Garage Door	\$367.80
Dirt and lawn supplies	\$ 425.74
Cat door and screen door	\$265.84
Paint	\$50.89
Hallway grill	\$ 11.30
Microwave	\$ 91.69
Filing Fee	\$100.00
Total:	\$1313.26

The landlord has established a claim for \$1313.26. I grant the landlord an order under section 67 for the balance due of \$1313.26. 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: October 23, 2018

Residential Tenancy Branch