



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNDCL-S, MNDL-S

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;
- authorization to retain the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- an order authorizing the landlord the recovery of the filing fee for this 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 tenants acknowledged receipt of evidence submitted by the landlords. The tenants did not submit any documentation for this hearing.

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 deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to the recovery of the filing fee?

Background, Evidence

The landlord's testimony is as follows. The tenancy began on October 1, 2017 and ended on May 2, 2018. The tenants were obligated to pay \$1650.00 per month in rent and at the outset of the tenancy the tenant paid an \$825.00 security deposit which the landlord still holds. The landlords testified that the tenant left the unit dirty and damaged at move out. The landlord testified that the tenants damaged a window, some wood panelling and left the unit very dirty.

The landlord is applying for the following:

1.	Window Damage	\$656.25
2.	Wood Panel	400.00

3.	Cleaning	200.00
4.	Filing Fee	100.00
5.		
6.		
7.		
8.		
9.		
10.		
	Total	\$1356.25

The tenants agree with the wood panel damage but not the balance of the landlords claim. The tenants testified that the window had a small crack in it when they moved it and the window continued to crack even though it was untouched. The tenants testified that the unit was left clean.

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.

I address the landlords claim and my findings as follows.

Glass- \$656.25

The tenant submits that the window had a small crack that got worse with the cold weather. The tenant testified that the window handle didn't work since they moved in so they never used it. The landlords have not provided sufficient evidence to show that then tenants were reckless or negligent to cause this damage as noted in section 67 of the *Act* above. Based on the insufficient evidence before me I dismiss this portion of the landlords claim.

Wood Panel damage - \$400.00

The tenants take responsibility for this claim and agree that the landlords are entitled to it, accordingly; I find that the landlords are entitled to \$400.00.

Cleaning - \$200.00

MV testified that she cleaned the unit herself. MV did not provide a breakdown of the work conducted and the time she spent doing it. MV has not provided sufficient proof of the actual cost as required under section 67 of the Act, accordingly; I dismiss this portion of the landlords claim.

As the landlords have had some success in their application, they are entitled to the recovery of the \$100.00 filing fee.

Conclusion

The landlord has established a claim for \$500.00. I order that the landlord retain \$500.00 from the security deposit in full satisfaction of the claim and to return the remaining \$325.00 to the tenants. I grant the tenants an order under section 67 for the balance due of \$325.00. 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: October 22, 2018

Residential Tenancy Branch