



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CENTURY 21 PERFORMANCE REALTY & MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFL MNDCL-S MNDL-S FFT MNSD

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlord requested:

- a monetary order for damage to the unit, site, or property, or for money owed or compensation for damage or loss pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants requested:

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

While the landlord’s agent, DD (‘landlord’), attended the hearing by way of conference call, the tenants did not. I waited until 1:43 P.M. to enable the tenants to participate in this scheduled hearing for 1:30 P.M. The landlord’s agent was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Rule 7.3 of the Rules of Procedure provides as follows:

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

Accordingly, **in the absence of any submissions in this hearing from the tenants, I order the tenants' application for the return of their security deposit dismissed without liberty to reapply.**

The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. As I was not required to make a decision on the merits of this case, I find that the tenants are not entitled to recover the \$100.00 filing fee paid for this application. The tenants must bear the cost of this filing fee. Therefore, the tenants' application to recover the filing fee is dismissed without leave to reapply.

The landlord's agent gave sworn testimony that on July 27, 2018, copies of the Application for Dispute Resolution hearing package ('Application') and evidence sent by registered mail to both tenants to the forwarding address provided by the tenants on July 18, 2018. The landlord's agent provided tracking numbers for both packages. In accordance with sections 88, 89 and 90 of the *Act*, I find that the tenants were deemed served with copies of the landlord's application and evidence on August 1, 2018, five days after mailing.

Issue(s) to be Decided

Is the landlord entitled to the monetary order requested?

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

Background and Evidence

This fixed-term tenancy began on November 1, 2017, with monthly rent set at \$1,800.00. The landlord still holds security deposit and pet damage deposit in the amount of \$900.00. The tenants moved out on June 30, 2018.

The landlord is seeking a monetary order in the amount of \$1,046.00 as set out in the table below:

Item	Amount
Damaged Walls	\$825.50
Move Out Cleaning	220.50
Total Monetary Order Requested	\$1,046.00

The landlord testified that the tenants left significant damage on the walls, which had to be repainted and repaired. The landlord testified that the carpet, which was over 10 years old, was not clean despite the fact that the tenants had paid for carpet cleaning.

In support of their monetary claim the landlord provided photos and invoices to support all the listed items above, as well as the move in and move out inspection reports.

The landlord testified that the move-out inspection was done in the absence of the tenants as they had consented to the inspection done in their absence.

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 tenants did not take reasonable care and attention when vacating the suite. I find that the landlord had complied with sections 23 and 35 of the *Act* by performing condition inspection reports for both the move-in and move-out. I also find that the landlord supported their claims with receipts and invoices. Accordingly, I find the landlord is entitled to compensation for these damages.

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 carpet. As per this policy, the useful life of carpets is ten years. As the carpet has exceeded its useful life, I dismiss this portion of the landlord's claim without leave to reapply.

I find that the landlord had sufficiently demonstrated that the tenants left damage to the walls, and accordingly I allow the landlord's monetary claim in the amount of \$825.50.

As the landlord was partially successful with their claim, I allow the landlord to recover half of the filing fee.

In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain a portion of the tenants' security and pet damage deposits plus applicable interest in partial satisfaction of the monetary claim. Over the period of this tenancy, no interest is payable on the security deposit.

Conclusion

I issue a Monetary Order in the amount of \$924.50 in the tenants' favour under the following terms which allows the landlord to retain a portion of the tenants' security and pet damage deposit in satisfaction of the monetary award for the tenants' failure to comply with section 37(2)(a) of the *Act*.

Item	Amount
Damage Deposit & Pet Damage Deposit	\$1,800.00
Damaged Walls	-825.50
Filing Fee	-50.00
Total Monetary Order	\$924.50

The tenants are provided with this Order in the above terms and the landlord must be served with a copy of 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.

The remaining portion of the landlord's application is dismissed without leave to reapply.

The tenants' application is dismissed without leave to reapply.

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 3, 2018

Residential Tenancy Branch