



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S FFL

Introduction

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

- a monetary order for compensation for damages pursuant to section 67 of the *Act*;
- authorization to retain all or a portion of the security deposit in partial satisfaction of the monetary order requested pursuant to section 67 of the *Act*; and
- recovery of the filing fee from the tenants 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. Landlord M.N. spoke on behalf of both landlords and is herein referred to as "the landlord".

As both parties were present, service of documents was confirmed. The landlord testified that the tenant was served with the Notice of Dispute Resolution proceeding and evidentiary materials by Canada Post registered mail on July 25, 2018, which was confirmed by the tenant. Based on the undisputed testimonies of the parties, I find that the tenant was served in accordance with sections 88 and 89 of the *Act*.

The tenant served the landlord with her evidentiary materials by email on November 22, 2018. Although the tenant served her evidence late and not in accordance with section 88 of the *Act*, the landlord acknowledged receipt of the tenant's evidence and confirmed that he had reviewed the materials. As such, I find that the landlord was sufficiently served with the tenant's evidence pursuant to section 71(2)(c) of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to compensation due to damage or loss resulting from the tenant not complying with the *Act*, regulation and/or tenancy agreement?

Which party is entitled to all or a portion of the security deposit?

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 all the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. Only the aspects of this matter relevant to my findings and the decision are set out below.

A written tenancy agreement was submitted into documentary evidence. This fixed term tenancy began on September 1, 2017 with a scheduled end date of June 30, 2018. Monthly rent of \$1,100.00 was payable on the first day of the month. A \$550.00 security deposit was paid by the tenant at the beginning of the tenancy which the landlord continues to hold.

The parties confirmed that both parties participated in a walk-through condition inspection of the rental unit at move-in and move-out, however, the landlord acknowledged that they did not provide a written report to the tenant following the completion of the inspections. The tenant acknowledged that she took photographs of the written report.

The parties confirmed that the tenancy ended on June 30, 2018 and the landlord was in receipt of the tenant's forwarding address as of July 6, 2018.

The landlord claimed that the condition of the rental unit at move-out required him and his wife to spend 11 hours over the course of two days to clean the rental unit. The landlord has billed his labour cost at \$25.00 per hour at a total cost of \$550.00. The landlord stated that the rental unit is furnished and consists of one bedroom, one bathroom, a kitchen and a living area totalling approximately 600 square feet in size. In addition, the landlord claimed the costs of renting a carpet cleaner and cleaning supplies. The landlord claimed the tenant damaged the following furnishings included with the rental unit, requiring replacement: toaster; coffee maker; cutting board; roasting

dish; and pots. The landlord originally submitted estimates for fixing the oven gasket which the landlord claimed was damaged by the tenant, however the landlord acknowledged that the gaskets were never replaced and were salvaged by cleaning. The landlord claimed that the kitchen table had two burn marks and submitted the estimated cost for repair. However, the landlord acknowledged that the table was not repaired, and the rental unit has continued to be rented with the table in its current state.

The landlord submitted a copy of the written condition inspection report, receipts, estimates and some photographs into documentary evidence in support of his claims.

The tenant claimed that the landlord gave her the toaster and coffee maker, which she continues to use to this day. The landlord acknowledged that he did not check to see if the appliances worked or not, but felt they were not usable in his rental unit as he stated they were “totally destroyed” and gave them to the tenant as he planned to replace them. The landlord did not submit any photographic evidence of the condition of the toaster, coffee maker or pots. The landlord testified that the small appliances were approximately one year old at the start of the tenancy.

The tenant denied that she caused the burn mark damage to the table. She acknowledged that she damaged the cutting board and the roasting dish, though not intentionally. The tenant also confirmed that she vacuumed but did not clean the carpets at the end of the tenancy, and that there were some items in the rental unit she did not have an opportunity to clean, such as the glass stove top. The tenant testified that she did not provide authorization in writing for the landlord to retain all or a portion of the security deposit.

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 purpose of compensation is to put the claimant who suffered the damage or loss in the same position as if the damage or loss had not occurred. Therefore, the claimant bears the burden of proof to provide sufficient evidence to establish **all** of the following four points:

1. The existence of the damage or loss;

2. The damage or loss resulted directly from a violation – by the other party – of the *Act*, regulations, or tenancy agreement;
3. The actual monetary amount or value of the damage or loss; and
4. The claimant has done what is reasonable to mitigate or minimize the amount of the loss or damage claimed, pursuant to section 7(2) of the *Act*.

In this case, the landlord has claimed for compensation for cleaning and damages.

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,...

The landlord has acknowledged that the oven gaskets were never replaced and the kitchen table was not repaired, therefore I dismiss the landlord's claim for these items as he has failed to establish "the actual monetary amount or value of the damage or loss" as required in a claim for compensation.

The tenant has acknowledged damaging the cutting board and glass roasting dish, therefore I award the landlord these uncontested claims in the amount of \$18.03 (\$10.05 + \$7.98).

The tenant has acknowledged that she failed to clean the carpets and the stove glass top at the end of the tenancy. The condition inspection report submitted by the landlord referenced cleaning deficiencies pertaining to the floors, light fixtures, stove and refrigerator. Residential Tenancy Policy Guideline 1. Landlord & Tenant – Responsibility for Residential Premises provides explanation regarding the responsibility of the tenant at the end of a tenancy. The sections relevant to this matter have been noted below, in part:

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.

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.*

...

The landlord did not submit any quotes or estimates from professional cleaning companies to support his claim for cleaning labour costs. I find the landlord's claim for cleaning labour costs and cleaning supplies unreasonable given the size of the rental unit, the duration of the tenancy, and the minimal details regarding the cleaning deficiencies noted on the condition inspection report. Other than photos of the stove, the landlord did not submit any photographic evidence to support his claim for cleaning costs. As such, I do not find that the landlord mitigated his loss claimed for cleaning costs and supplies and is therefore not entitled to his full claim. However, I do find that there is evidence of cleaning deficiencies as acknowledged by the tenant and referenced in the photographic evidence of the stove.

As such, I award the landlord the costs of the carpet cleaner rental of \$35.83; half the claimed costs of cleaning supplies of \$17.80 (50% of \$35.59); and eight hours of cleaning labour cost at \$25.00 per hour for a total of \$200.00.

The remaining landlord's claim pertains to the \$75.00 cost for three replacement pots. I note that the pots are not listed on the move-in condition inspection report, and therefore the condition of the pots at move-in is not documented. Further to this, the tenant disputed the landlord's claim that she had damaged the pots. The tenant attributed any noticeable wear to normal use. The landlord did not submit any photographic evidence attesting to the damage of the pots beyond use. As the damage claim is disputed, and I find that the landlord has not submitted sufficient evidence to prove his claim that the pots were new at the beginning of the tenancy and left damaged beyond reasonable wear and tear at the end of the tenancy, I dismiss the landlord's claim for this item.

Therefore, based on the testimony and evidence before me, on a balance of probabilities, I find that the landlord is entitled to a monetary award of \$271.66 for the damages claimed as set out below:

Item	Amount
Damaged cutting board and glass roasting dish	\$18.03
Carpet cleaner rental	\$35.83
Cleaning supplies	\$17.80
Cleaning labour costs	\$200.00
Total monetary award for damages	\$271.66

Set-off of Landlord's Claim Against Security Deposit

The landlord continues to retain the tenant's \$550.00 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 in the amount of \$271.66.

Further to this, as the landlord was partially successful in retaining a portion of the security deposit through this application, I find that the landlord is entitled to a partial recovery of the filing fee from the tenant, in the amount of \$50.00.

In accordance with the offsetting provisions of section 72 of the *Act*, I set-off the compensation owed by the tenant to the landlord, and the recovery of half the filing fee to be paid by the tenant to the landlord, against the tenant's \$550.00 security deposit held by the landlord.

As such, I issue a Monetary Order in the tenant's favour in the amount of \$228.34, as explained in the following breakdown:

Item	Amount
Return of security deposit to tenant (currently held by landlord)	\$550.00
LESS: Monetary Award to landlord for compensation due to damages and cleaning	(\$271.66)
LESS: Recovery of filing fee awarded to landlord	(\$50.00)

Total Monetary Order in Favour of Tenant	\$228.34
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Conclusion

I issue a Monetary Order in the tenant's favour against the landlord in the amount of \$228.34 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: December 17, 2018

Residential Tenancy Branch