



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, 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 to the rental unit and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The landlord's agent (the landlord) and the tenant's agent attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. At the outset of the hearing the tenant's agent submitted that the tenant was not able to participate in the hearing due to reduced mental faculties. The tenant's agent (the tenant) stated that they were authorized by the power of attorney in this matter.

The hearing was originally convened via teleconference on October 22, 2018. I adjourned the hearing pursuant to my Interim Decision dated October 22, 2018 and it was reconvened on December 03, 2018.

While I have turned my mind to all the documentary evidence, including the testimony of the parties, only the relevant details of the respective submissions and/or arguments are reproduced here.

The tenant acknowledged receipt of the Application for Dispute Resolution (the Application) and evidence which were sent to them by registered mail. In accordance with sections 88 and 89 of the *Act*, I find that the tenant is duly served with the Application and evidence.

The tenant confirmed that they did not submit any evidence.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for damage to the rental unit and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

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 recover the filing fee for this application from the tenant?

Background and Evidence

Written evidence was provided by the landlord showing that this tenancy began on April 01, 2013, with a monthly rent in the amount of \$900.00, due on the first day of each month and a security deposit in the amount of \$450.00. The landlord confirmed that the monthly rent was increased to \$983.00 during the tenancy and that they currently retain the security deposit.

The landlord also provided in evidence:

- A copy of a caution notice to the tenant for an occurrence on August 06, 2017, in which the tenant left the kitchen tap on to fill the sink and fell asleep while the water was running which caused water damage to a unit below the rental unit. The notice indicates that the tenant caused extraordinary damage and put the landlord's property at significant risk which are grounds to terminate the tenancy;
- A copy of an invoice dated August 31, 2017, for replacing the damaged carpet due to the flooding in the amount of \$3,340.35;
- A copy of an invoice for the carpet installation including materials and labour in the amount of \$2,692.03 which is a part of the total invoice dated August 31, 2017;
- A copy of a letter from the landlord to the tenant dated October 31, 2017, which responds to previous correspondence from the tenant in which the landlord refuses to disclose their insurance policy due to confidentiality but notes that it was not more cost effective to submit a claim as opposed to paying directly for the damages. The landlord gives more details about damage to another unit in the building affected by the flood and the amount of carpet needed for the repair. The letter also reduces the administration fee to \$164.16. for all the repairs;
- Copies of timesheets for labour involved with the replacement of the floor, one for \$168.00 and the other for \$180.00 which are a part of the total invoice dated August 31, 2017;

- A copy of a notice to end tenancy from the tenant to the landlord dated February 23, 2018, with an effective date of March 31, 2018, and the tenant's forwarding address;
- A copy of a letter from the landlord to the tenant dated March 16, 2018, offering an opportunity to complete a move-out condition inspection report with the landlord at 1:00 p.m. on March 31, 2018;
- A copy of a Condition Inspection Report which is signed by the landlord and the tenant just prior to the beginning of the tenancy on March 13, 2013, which indicates new carpet in the bedrooms and living room, new vinyl in the bathroom and satisfactory laminate in other areas of the house. The Report is only signed by the landlord at the end of the tenancy and shows areas of the rental unit as needing cleaning and multiple items left behind by the tenant ;
- Copies of pictures taken from within the rental unit at the end of the tenancy;
- A copy of an invoice dated April 10, 2018, for the rental unit in the amount of \$3,491.19 which includes \$115.00 for the replacement of locks; and
- A copy of a Monetary Order Worksheet which shows the landlord's monetary as follows:

Item	Amount
NSF and late fee	\$50.00
Carpet Cleaning and Drape Cleaning	140.00
Two Hours Cleaning and Removing Items	50.00
Storage Room Light	10.00
Deadbolt Lock	75.00
Mailbox Lock	40.00
Damage to Carpets in other unit	\$3,176.19
Requested Monetary Award	\$3,541.19

The landlord confirmed that they are seeking to be compensated for multiple items from the tenancy. The landlord stated that damage to all of the carpet of a unit below needed to be replaced, so it would match. The landlord submitted that the damage was caused by the tenant's actions for which the landlord incurred a loss and are now seeking to be compensated by the tenant for that loss. The landlord testified that they gave the tenant a chance to complete a condition inspection report when the tenant moved out but that the tenant did not participate and left the rental unit dirty with items that had to be removed. The landlord stated that the tenant had a cheque bounce for March 2018 rent and that they incurred a fee of \$25.00 from their bank in addition to the landlord's fee of \$25.00 for late payment of rent.

The tenant did not dispute the NSF/late fees, cleaning fees, or the charge for the lightbulb. The tenant stated that the keys were given back to the landlord and disputed those charges. The tenant did not dispute the circumstances surrounding the flooding which occurred and that the tenant's actions which caused the damage. The tenant did question the amount being charged to them and stated that the landlord did not submit an insurance claim to minimize the tenant's loss. The tenant questioned the amount of carpet that was replaced as there was 864 square feet of carpet required for a 770 square foot apartment. The tenant also submitted that the whole carpet was replaced when only a portion was damaged.

Analysis

Pursuant to section 67 of the Act, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. In this case, to prove a loss, the landlord must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the tenant in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the landlord followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Having reviewed the evidence and affirmed testimony I find that the tenant did not dispute the landlord's claim for NSF/ late fees for March 2018, the carpet cleaning charges, drape cleaning charges and other general cleaning charges. As the landlord's claim for these items are undisputed, I allow the landlord to recover the amounts associated with the above items related to cleaning and late fees.

Regarding the landlord's claim for the replacing the locks, although the tenant's agent stated that the keys were returned, I find that the tenant's agent was not an occupant of the rental unit and did not provide any testimony or evidence that the tenant was able to tell them that the keys were returned or that they witnessed the keys being returned to the landlord. Based on a balance of probabilities, I accept the landlord's testimony that the keys were not returned and I allow the landlord to recover the cost of the changing the locks for the unit and the mailbox in the amount of \$115.00.

Having reviewed the evidence and affirmed testimony I find that it is undisputed that the tenant caused damage to another unit due to their neglectful actions. I find that the

carpet would not have needed to be replaced if not for the actions of the tenant and that the landlord could have obtained multiple additional years of use from the carpet. I find that the landlord has proven that they incurred a loss, that the loss was due to the neglect of the tenant and that the landlord has provided evidence to prove the actual amount required to be compensated for the loss. I accept the landlord's submission that the entire carpet needed to be replaced in order to match and I find that the landlord has already reduced their administrative fees associated with the carpet repair for the tenant to mitigate damages.

For the above reason I allow the landlord to recover the full amount claimed for the replacement of the carpet in the amount of \$3,176.19. As the landlord has been successful in their Application to be compensated for their loss for damages under the Act, I allow them to recover their filing fee in the amount of \$100.00

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. Therefore, I find that the landlord is entitled to a monetary award in the amount of \$3,641.19 for damage to the rental unit, for compensation or other money owed for damage or loss under the Act, regulations or tenancy agreement and to recover the filing fee.

Section 35 of the *Act* states that the landlord must offer the tenant at least two opportunities to inspect the condition of the rental unit with the tenant and complete a condition inspection report in accordance with the Residential Tenancy Regulations (the *Regulations*) before a new occupant occupies the rental unit on or after the day the tenant ceases to occupy the rental unit or on another mutually agreed day.

Section 17 of the *Regulations* provides that a landlord must offer to a tenant a first opportunity to schedule the condition inspection by proposing one or more dates and times, and that if the tenant is not available at the first times offered, the tenant may propose an alternative time to the landlord. The Regulations goes on to state that the landlords must consider the tenants' proposed time before proposing a second opportunity to the tenants, different from the first opportunities described above, by providing the tenants with a notice in the approved form.

I find that the landlord was obligated to provide the tenant a Notice of a Final Opportunity to Schedule a Condition Inspection, the approved form pursuant to section 17 (2) (b) of the Regulations, before completing a final condition inspection of the rental unit. I find that the landlord had the tenant's forwarding address to which they could have

served the final notice for an inspection. I find that the landlord did not provide any evidence or affirmed testimony that they complied with section 17 of the *Regulations* and provided the approved form to the tenant to give notice of a final opportunity to schedule a condition inspection when the rental unit was vacant.

Section 36 (2) of the *Act* establishes that, unless the tenant has abandoned the rental unit, the right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to the rental unit is extinguished if the landlord has not given two opportunities for inspection as per section 35 of the *Act* and Part 3 of the *Regulations*.

Residential Tenancy Policy Guideline #17 B 7 also states that the right of a landlord to retain the security deposit and pet damage deposit is extinguished if the landlord does not offer the tenant at least two opportunities for inspection as required and that the landlord must use Notice of Final Opportunity to Schedule a Condition Inspection (form RTB-22) to propose a second opportunity.

As I have found that the tenant was not given an opportunity to complete a Condition Inspection Report at the end of the tenancy in accordance with section 35 of the *Act*, I find that the landlord's right to retain all or a portion of the security deposit is extinguished pursuant to section 36 of the *Act*. For the above reason, the landlord's Application to retain all or a portion of the security deposit is dismissed, without leave to reapply.

Residential Tenancy Policy Guideline # 17 C 3 states that unless a tenant has specifically waived the doubling of the deposit, the arbitrator will order the return of double the deposit if the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the *Act*. As I have dismissed the landlord's Application to retain the security deposit due to the extinguishment of their right to keep it under the section 36 of the *Act*, I find that the tenant is entitled to a monetary award of \$900.00 (450.00 X 2) for double the return of the security deposit. Using the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenant's doubled security deposit in the amount of \$900.00 in partial satisfaction of the monetary award given to the landlord for loss under the *Act*.

Conclusion

Pursuant to section 67 of the *Act*, I grant a Monetary Order in the landlord's favour under the following terms, which allows the landlord to recover their loss under the *Act*, to retain the doubled security deposit in partial satisfaction of that loss and the recovery of the landlord's filing fee:

Item	Amount
NSF and late fee	\$50.00
Carpet Cleaning and Drape Cleaning	140.00
Two Hours Cleaning and Removing Items	50.00
Storage Room Light	10.00
Deadbolt Lock	75.00
Mailbox Lock	40.00
Damage to Carpets in other unit	\$3,176.19
Less Doubled Security Deposit	-900.00
Filing Fee for the Application	100.00
Total Monetary Order	\$2,741.19

The landlord is provided with this Order in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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 18, 2018

Residential Tenancy Branch