



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNSD FF

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, made on August 9, 2018 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage to the unit, site, or property; and
- a monetary order for money owed or compensation for damage or loss; and
- an order granting recovery of the filing fee.

The Landlord attended the hearing and was accompanied by T.R. and A.D., witnesses. The Tenant attended the hearing on her own behalf. All in attendance provided a solemn affirmation at the beginning of the hearing.

The Landlord testified the Application package was served of the Tenant registered mail. The Tenant acknowledged receipt. In addition, the Tenant testified that the documentary evidence upon which she intended to rely was served on the Landlord at his office. The Landlord acknowledged receipt. Neither party raised any issue with respect to service or receipt of these documents during the hearing. Pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were provided with a full opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Landlord entitled to a monetary order for damage to the rental unit?
2. Is the Landlord entitled to retain all or part of the security deposit and/or pet damage deposit?
3. Is the Landlord entitled to an order granting recovery of the filing fee?

Background and Evidence

The parties agreed the tenancy began roughly 10 years ago and ended on July 31, 2018. Although the parties were unsure about the amount of rent due, they agreed the Tenant paid a security deposit in the amount of \$772.50 and a pet damage deposit in the amount of \$722.50, both of which are held by the Landlord.

The Landlord's claim was set out in a spreadsheet filed with the Application. First, the Landlord claimed \$956.25 for general cleaning. The Landlord testified the amount of cleaning required was "pretty substantial" and included the oven, cabinets, bathroom, and kitchen. Photographs depicting the interior of the rental unit and a receipt for the amount paid were submitted in support. The photographs included images depicting a dirty window track for a sliding glass door, deck, carpeting, and kitchen floor.

In reply, the Tenant acknowledged the rental unit was not cleaned at the end of the tenancy. However, she suggested she was rushed out of the rental unit when painters showed up on the afternoon of July 31, 2018.

Second, the Landlord claimed \$200.00 to repair carpet damage he believes was caused by the Tenant's dog. The Landlord testified the amount was based on an estimate obtained by the new tenants in the rental unit but that the repair has not been completed. The Landlord submitted photographic evidence of damaged carpet in support.

In reply, the Tenant testified to her belief that the damage was caused through regular wear and tear, and that the carpet was of inferior quality.

Third, the Landlord claimed \$2,000.00 for time spent to repair holes and deep gouges in walls on the stairway. He testified the main damaged area measures about 6 inches wide and 3 feet long. The Landlord submitted photographic evidence in support. The Landlord testified to his belief the damage was caused by the Tenant's dog. He acknowledged the damaged area had not been painted during the tenancy.

In reply, the Tenant acknowledged that the downstairs area was previously painted about 5 years ago, but disagreed with the dimensions of the damaged area.

Fourth, the Landlord claimed \$340.00 for plumbing repairs. The Landlord testified this expense was incurred in relation to the kitchen tap, a bathtub inspection, and other minor repairs. In support, the Landlord referred me to photographic images of fixtures and the bathtub. However, the Landlord was unable to refer me to a receipt for the expense.

In reply, the Tenant confirmed the kitchen tap was not in perfect condition but suggested it was due to the "varnish" wearing off. The Tenant also acknowledged the bathtub scratches depicted in the Landlord's photographic evidence but claimed she did not know the cause.

Fifth, the Landlord claimed \$750.00 to replace the oven in the rental unit. He testified that A.D. tried repeatedly to clean the oven with limited success, and that a knob controlling an element was missing. The Landlord testified that the cost to repair the oven was about \$250.00 so he thought he would simply replace the oven with a new but inexpensive unit.

In reply, the Tenant disagreed the oven was as dirty as claimed. However, she acknowledged the knob was removed during the tenancy and placed in a cabinet because the corresponding element did not work.

Sixth, the Landlord claimed \$1,250.00 for the cost to repair damaged baseboards. This amount was estimated by a carpenter although an estimate was not submitted into evidence. The Landlord testified to his belief the Tenant's dog had chewed them. He testified the work has not yet been completed and that matching the baseboards may increase the cost.

In reply, the Tenant acknowledged that her dog chewed the corners of the baseboards as depicted but disputed the amount claimed.

Seventh, the Landlord claimed \$100.00 to replace a missing bedroom window screen.

In reply, the Tenant testified that her bedroom window screen was removed during the tenancy and placed in the cupboard. In response, the Landlord stated it would have been used if found.

Eighth, the Landlord claimed \$539.02 to repair glass closet doors that were cracked. Photographic images and a receipt for the amount claimed were submitted in support.

In reply, the Tenant denied the glass was cracked at the end of the tenancy and suggested the painters who arrived while she was moving out could have caused the damage. In response, the Landlord testified he entered the rental unit before the painters and observed the damage independently.

Ninth, the Landlord claimed \$338.22 to replace lightbulbs and repair a broken thermostat knob in the rental unit. A receipt was submitted in support.

In reply, the Tenant acknowledged that a few light bulbs were burned out but not enough to justify the expense. In addition, she acknowledged that the thermostat knob broke “years ago”.

Finally, the Landlord sought to recover the \$100.00 filing fee paid to make the Application.

Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Act*. An applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on the Landlord to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenant. Once that has been established, the Landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord did what was reasonable to minimize the damage or losses that were incurred.

With respect to the Landlord's claim for \$956.25 for cleaning, I find that the cleaning cost claimed, while high, is reasonable in the circumstances. The Landlord's claim was supported by a receipt and photographic images of the rental unit. Significantly, the Tenant acknowledged during the hearing that the rental unit was not cleaned at the end of the tenancy. The Landlord is granted a monetary award in the amount of \$956.25.

With respect to the Landlord's claim for \$200.00 to repair carpet damage, I find there is insufficient evidence before me to grant the relief sought. The Landlord testified that the repair cost was based on an estimate but acknowledged the work has not been completed although more than 5 months has passed since the tenancy ended. This aspect of the Landlord's claim is dismissed.

With respect to the Landlord's claim for \$2,000.00 to repair holes and scratches in walls, Policy Guideline #40 provides guidance with respect to the useful life of building elements. It suggests interior painting has a useful life of 4 years. The undisputed testimony is that part of the rental unit was painted 5 years ago. However, I am satisfied that repair of the damage depicted has resulted in a loss to the Landlord. Policy Guideline #16 confirms an arbitrator may award nominal damages "where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right." In this case, I accept that the testimony and photographic evidence depicts damage to the walls and baseboards. However, I do not accept the Tenant is responsible for the cost to re-paint the rental unit. Accordingly, I grant the Landlord nominal damages in the amount of \$750.00.

With respect to the Landlord's claim for \$340.00 for plumbing repairs, I find there is insufficient evidence to conclude the Landlord is entitled to this amount. The Landlord did not provide a receipt confirming the value of the loss, and the photographs appear to depict delamination of the fixtures rather than damage caused by the Tenant. This aspect of the Landlord's claim is dismissed.

With respect to the Landlord's claim for \$750.00 to replace the oven, I find there is insufficient evidence before me to grant the relief sought. The Landlord did not provide photographic evidence or a receipt for the amount claimed. Further, the Landlord suggested that while repairs would have cost roughly \$250.00, he decided to replace the oven instead. Accordingly, in the absence of sufficient evidence supporting the claim that the Tenant caused the Landlord's alleged loss, I find this aspect of the Landlord's claim is dismissed.

With respect to the Landlord's claim for \$1,250.00 to repair damaged baseboards, the Landlord's claim was based on an estimate provided to him by a carpenter and was supported by photographic images of the baseboards. The estimate was not written or submitted into evidence. The Landlord testified repairs have not been completed but could exceed the amount claimed. However, The Tenant confirmed the baseboards depicted in the photographic evidence were damaged by her dog. The Landlord's speculation that the cost could increase depending on unknown factors is rejected. Nevertheless, I find it appropriate in the circumstances to apply Policy Guideline #16 and grant the Landlord an award of nominal damages in the amount of \$500.00 to repair the damaged baseboards.

With respect to the Landlord's claim for \$100.00 to replace a window screen, I find there is insufficient evidence before me to grant the relief sought. The Tenant testified it was stored in the closet when it fell out several years ago. This aspect of the Landlord's claim is dismissed.

With respect to the Landlord's claim for \$539.02 to repair a glass closet door, I find there is sufficient evidence to grant the relief sought. The Landlord's claim was supported by a receipt and a photograph of the damaged glass. I do not accept the Tenant's suggestion that the damage was caused by painters after she vacated the rental unit. The Landlord is granted a monetary award in the amount of \$539.02.

With respect to the Landlord's claim for \$338.22 to replace lightbulbs and repair a broken thermostat knob, I find the Landlord has demonstrated an entitlement to the relief sought. The Landlord provided photographic evidence of the missing thermostat knob, which the Tenant acknowledged was broken years ago. Policy Guideline #1 confirms that tenants are responsible to replace light bulbs in the premises during the tenancy, and the Tenant acknowledged that some lightbulbs were not replaced. Therefore, I find the Landlord has demonstrated an entitlement to an award of \$338.22.

Having been successful, I find the Landlord is entitled to recover the filing fee paid to make the Application, and I order that the security deposit and pet damage deposit be applied to the Landlord's award.

Pursuant to section 67 of the *Act*, I find the Landlord is entitled to a monetary order in the amount of \$1,688.49, which has been calculated as follows:

Claim	Amount
Cleaning:	\$956.25
Wall repairs:	\$750.00
Baseboard repairs:	\$500.00
Closet door repair:	\$539.02
Replace light bulbs and thermostat knob:	\$338.22
Filing fee:	\$100.00
LESS security deposit:	(\$772.50)
LESS pet damage deposit:	(\$722.50)
TOTAL:	\$1,688.49

Conclusion

The Landlord is granted a monetary order in the amount of \$1,688.49. The order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: January 11, 2019

Residential Tenancy Branch