



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: FFL MNDL-S

Introduction

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

- a monetary order for compensation for monetary loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

While the landlord attended the hearing by way of conference call, the tenant did not. I waited until 1:40 p.m. to enable the tenant to participate in this scheduled hearing for 1:30 p.m. The landlord was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord testified that the tenant was served with the landlord's application for dispute resolution hearing package on by way of registered mail on September 22, 2018 to the forwarding address provided by the tenant when the tenant moved out. The landlord provided Canada Post tracking numbers and receipts in her evidence. In accordance with sections 89 and 90 of the *Act*, I find that the tenant deemed served with the landlord's application and evidence on September 27, 2018, five days after its registered mailing. The tenant did not submit any evidence for this hearing.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation for damage and losses?

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

Background and Evidence

This fixed-term tenancy began on February 27, 2018, and ended on August 31, 2018. Monthly rent was set at \$1,960.00, payable on the first day of each month. The landlord collected a security deposit and pet damage deposit of \$980.00 each deposit, which the landlord still holds.

The landlord is requesting monetary compensation as follows:

Ozone Treatment	\$472.50
Painting of Bedroom	942.90
Steam Cleaning	787.50
Internal Window Cleaning	94.50
Cleaning	315.00
Blind Cleaning & Repair	173.39
Locksmith - rekeying	154.00
New FOBs	100.00
Stove Repair	75.00
Total Monetary Award Requested	\$3,114.79

The landlord testified that both move-in and move-out inspections were completed, although the tenant failed to attend the move-out inspection. The landlord testified that the tenant had stated on her rental application that she was a non-smoker, and was approved on that basis. The landlord testified that the tenant smoked inside the furnished rental unit, which damaged the unit due to the smoke. The landlord incurred the above costs due to the tenant's failure to leave the unit in clean and undamaged condition. The tenant also failed to return the keys and FOBs upon move-out.

The landlord testified that she mitigated her losses by only painting the bedroom. The 2011 home was last painted in January of 2018 before this tenancy began.

The landlord submitted documentary evidence, including the condition inspection reports, rental application, notices of breaches, and receipts in support of her claim.

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 condition except for reasonable wear and tear. I find that the landlord provided sufficient evidence to show that the tenant did not take reasonable care and attention when vacating the suite. I find that the landlord 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 interior painting. As per this policy, the useful life of interior paint is four years. The rental unit was repainted before the tenant moved in and therefore at the end of the tenancy had approximately 3 year and 4 months of useful life left. The approximate prorated value of the remainder of the useful life of the interior painting is \$785.75. ($\$942.90/48 \times 40$). Accordingly, I find the landlord is entitled to \$785.75 for the painting.

Section 25(1) of the *Act* addresses the issue of new locks.

Rekeying locks for new tenants

25 (1) At the request of a tenant at the start of a new tenancy, the landlord must

- (a) rekey or otherwise alter the locks so that keys or other means of access given to the previous tenant do not give access to the rental unit, and
- (b) pay all costs associated with the changes under paragraph (a).

(2) If the landlord already complied with subsection (1) (a) and (b) at the end of the previous tenancy, the landlord need not do so again.

The landlord applied for the cost of new keys, as she did receive the keys from the tenant. As stated in section 25(1) of the *Act*, the responsibility of providing a new lock at the start of the new tenancy falls on the landlord, and therefore the cost of rekeying is the obligation of the landlord, and not the previous tenant. On this basis, I dismiss the landlord's application for compensation for the rekeying of the lock.

I accept the undisputed evidence of the landlord that the tenant did not return the FOB to her. Although the landlord applied for \$100.00 for the new FOB, I find that the document submitted by the landlord shows that the new FOB replacement was \$75.00. On this basis, I allow the landlord \$75.00 for the new FOB.

I am satisfied that the landlord has provided sufficient evidence to support that the tenant failed to leave the home in reasonably clean and undamaged condition, and as a result suffered the losses claimed. On this basis, I allow the landlord's monetary claim for the cleaning and repairs as claimed.

I find that the landlord's Application has merit and that the landlord is entitled to recover the fee for filing this Application.

In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain a portion of the tenant's 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 \$918.64 in the landlord's favour as set out in the table below. I allow the landlord to retain the tenant's security deposit in satisfaction of their monetary claim. The remainder of the landlord's monetary claim is dismissed without leave to reapply.

Ozone Treatment	\$472.50
Painting of Bedroom	785.75
Steam Cleaning	787.50
Internal Window Cleaning	94.50
Cleaning	315.00

Blind Cleaning & Repair	173.39
New FOBs	75.00
Stove Repair	75.00
Filing Fee	100.00
Less Deposits Held by Landlord	-1,960.00
Total Monetary Award	\$918.64

The landlord is provided with this Order in the above terms and the tenant(s) must be served with a copy of this Order as soon as possible. Should the tenant(s) 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: January 22, 2019

Residential Tenancy Branch