



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFL MNDCL-S (Landlord); FFT MNSD (Tenant)**

Introduction

This hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* (“*Regulation*”) or tenancy agreement pursuant to section 67 of the *Act*;
- Authorization to retain all or a portion of the tenants’ security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*; and
- Authorization to recover the filing fee for this application pursuant to section 72.

This hearing also dealt with an application by the tenants under the *Residential Tenancy Act* (the *Act*) for the following:

- An order for the landlord to return the security deposit pursuant to section 38; and
- Reimbursement of the filing fee pursuant to section 72.

The landlord appeared. The tenants attended with their legal advocate OV who represented them throughout the hearing (“the tenants”). The lawyer OD-C audited the hearing on behalf of the tenants and did not participate. Each party had the opportunity to make affirmed submissions, present documentary evidence, call witnesses and cross examine the other party.

Each party acknowledged receipt of the other party's Notice of Hearing and Application for Dispute Resolution. Neither party raised issues of service. I find each party was served in accordance with section 89 of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to a monetary order pursuant to section 67 of the *Act*?

Is the landlord entitled to retain the security deposit pursuant to section 72 of the *Act*?

Is the landlord entitled to reimbursement of the filing fee pursuant to section 72 of the *Act*?

Are the tenants entitled to return of double their security deposit pursuant to section 38(6)(b) of the *Act*?

Are the tenants entitled to reimbursement of the filing fee pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. The principal aspects of this matter and my findings are set out below. Each party submitted substantial documentary evidence and submissions. The hearing lasted 1:22 hours.

The parties testified the 1-year fixed term tenancy began on August 1, 2017 and ended on July 31, 2018. The rent was \$1,600.00 monthly payable on the first of the month. A copy of the tenancy agreement dated July 15, 2017 signed by all parties was submitted as evidence which included a 1-page addendum stating the "trees and law must be watered during the month of May through to September".

At the beginning of the tenancy, the tenants provided a security deposit in the amount of \$800.00. The deposit was applied by the landlord to the damages pursuant to written authorization by the tenants made at the end of the tenancy in the condition inspection report form.

A condition inspection was conducted by the parties at the time of moving in and signed by them. A copy of the condition inspection report was submitted as evidence which indicated that the unit had no damage relevant to these claims when the tenancy started.

At the time of moving out, the parties agreed they met in the unit's kitchen. The landlord was accompanied by two friends. The tenants were accompanied by two friends as well – one tenant's boyfriend and the other tenant's sister.

At the end of the meeting, the tenant JH signed the condition inspection report on moving out on behalf of both tenants which authorized the \$800.00 deposit to be retained by the landlord.

However, at the hearing, the tenants claimed they were intimidated by the landlord into signing as he was very upset about the condition of the unit and was "yelling and screaming". They said he pulled at a door trim and broke it. They said, "it was an extremely hostile environment" and they "just wanted to get out". The tenants did not claim the landlord made verbal or physical threats.

The landlord denied the tenants' characterization of his demeanor during the meeting. He acknowledged he was shocked and upset to observe the condition of the unit. He testified that the tenants had done considerable damage to the unit, particularly while moving furniture in the stairwell. For the first time, he saw the condition of the unit which included holes in the drywall and damage to trim done by a dog's chewing. He also saw that the unit was very dirty and needed considerable cleaning to be rentable to another tenant. He was dismayed and distressed but denied he was intimidating or threatening.

The landlord testified the parties viewed the unit together and talked about the damage. He stated he informed the tenants that the deposit would not cover the repairs and cleaning needed. The landlord testified he informed the tenants that he would be making a claim against them for the damage to the unit once he had an opportunity to calculate repair and cleaning costs. He stated the tenants freely signed the authorization permitting the landlord to retain the deposit.

The tenants submitted that the landlord could not retain the deposit even though they provided a signed authorization in the condition inspection report on moving out. Firstly, as mentioned, the tenants claim they were forced into signing. Secondly, they state the landlord cannot retain the deposit because the form was not fully completed, and they were not provided with a copy as required in the *Act*.

The parties agreed the column in the report for describing the unit's condition was left blank and the tenants did not get a copy. The landlord explained that he did not write the description of the unit's condition in the inspection report because it was so

extensive, he was upset, and he did not understand the significance of a condition inspection report on moving out.

Each of the landlord's claim for damages will be examined in turn.

Landlord's claim – damage to drywall and trim

The landlord claimed \$1,713.14 for the cost of repairs to the drywall and trim damaged by the tenants. He submitted supporting invoices in this amount.

The landlord testified that the drywall and trim were installed when the building was constructed approximately 30 years ago. He stated they were in good condition at the beginning of the tenancy as indicated in the inspection report on moving in. The tenants agreed that the drywall and trim were in good condition when they moved in.

The landlord submitted many pictures showing damage to the unit when the tenants vacated. The damage includes holes, indentations, drag marks and tearing to the drywall in and around the stairwell. The tenants acknowledged the pictures were an accurate reflection of the damage for which they are responsible. They explained they caused the damage by moving furniture.

The landlord also submitted pictures of drywall holes in the bathroom caused by a towel rod being pulled off the wall. The tenants acknowledged responsibility.

The landlord's photos also show damage to some of the unit's trim around doors which he believed were caused by a dog's chewing. The tenants stated they are not responsible for one broken piece of trim and claim the landlord broke it during the meeting on moving out when he was angry; the landlord denied the allegation. The tenants also claim that the damage to the trim around doors, which they acknowledged was primarily caused by them, is in the nature of "reasonable wear and tear" for which they have no responsibility.

The tenants objected to the landlord's claim for repairs. They claimed that the landlord's costs were too high and were unreasonable in the circumstances. They suspected the landlord was adding repairs to an unfinished basement. In response, the landlord testified that the only repairs which took place and for which he is claiming compensation related to damage caused by the tenants in the unit.

The tenants did not submit an estimate of the cost of repairs or any photographs.

Landlord's claim – cleaning expenses

The landlord submitted many photographs in support of his application for cleaning costs after the tenants vacated. The pictures indicate the condition of the stove, window sills, floor and so on. The photos indicate dirt and accumulated dust throughout the unit.

The tenants acknowledged the pictures are an accurate reflection of the condition of the unit. However, they deny they are responsible for any cleaning costs. They testified they told the landlord during the final meeting that if he was not happy with the cleaning that they “had a [sweeper] in the car”. The landlord stated he had no confidence in the tenants’ ability to clean after he saw the condition of the unit; he acted reasonably in denying their suggestion and retaining professional cleaners.

The landlord submitted an invoice for cleaning in the amount of \$250.00.

The tenants did not submit an estimate of cleaning costs or any photographs.

Landlord's claim for expenses for “time and gas”

The landlord submitted a list of dates, time and activities related to the repairs and cleaning in the amount of \$475.66 for “time and gas” at an hourly rate of \$26.42; he used his own vehicle. He testified he had to attend the unit many times to let workers and cleaners in and out. He had to source, pick up and transport supplies for the repairs. He moved garbage and debris left by the tenants. He purchased and installed a new towel rod. He testified the lawn was dead and trees damaged from lack of watering by the tenants as required under the tenancy agreement; as a result, he carried out yard work and maintenance.

The tenants did not question the landlord incurred this time and expense claimed. However, they objected to paying any part of the landlord’s expenses in this regard. They stated that the landlord lived a long way from the unit and he was unfairly charging travel costs. As well, the tenants claimed they should not be responsible for the landlord’s cost of doing business. In other words, it is a landlord’s job to conduct repairs to the unit and they should not be required to compensate him for this time and expense even though they themselves caused the damage.

In response, the landlord stated he only lived 20 minutes from the unit. By doing as much as he could, the landlord testified he reduced his claim for compensation. He

testified he made best efforts to reduce the time and expenses of the people doing the repairs and cleaning.

In summary, the landlord's claim is as follows:

ITEM	AMOUNT
Repairs to drywall and trim	\$1,713.14
Cleaning cost	\$250.00
Reimbursement of landlord's "time and gas"	\$475.66
Total =	\$2,438.80

The tenants claim a return of double the security deposit (\$800.00) in the amount of \$1,600.00 as the landlord failed to return the deposit in fifteen days after the end of the tenancy as required under the *Act*.

Each party claimed reimbursement of the filing fee.

Analysis

Section 38(4) of the *Act* provides as follows:

A landlord may retain an amount from a security deposit or a pet damage deposit if,

- (a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant,
- (b) ...

The tenants' claim is analogous to the claim of "duress" regarding their signed authorization for the landlord to withhold the security deposit.

In considering the tenants' claim of duress, I have considered that they were accompanied by two friends during the meeting with the landlord for support and advice. I find the tenants were not threatened in any way. I have considered whether the tenants protested about signing the authorization; they did not. I have considered whether they had legal and other remedies, such as applying immediately to set aside the agreement, or obtaining independent appraisals of the repairs and cleaning; they did not avail themselves of any remedies. Instead, the tenants applied for the return of the deposit on January 16, 2019, shortly before the hearing, and well after the date of the landlord's application on October 5, 2018.

Considering the evidence of the parties and the documentary submissions, I find the tenants have failed to establish any reasonable possibility that there were threats, coercion or duress compelling them to sign the authorization that the landlord could retain the deposit. I find the tenants' claim in this regard fails.

I find the tenants freely agreed in writing that the landlord could retain the security deposit. I find the landlord was entitled to retain the security deposit pursuant to the tenants' signed authorization.

I therefore dismiss the tenants' claim for a return of the security deposit and for reimbursement of the filing fee.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy agreement or the *Act*, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

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 onus is on the landlord to prove entitlement to a claim for a monetary award. The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

I will consider each of the landlord's claims in turn.

Landlord's claim – damage to drywall and trim

I have considered the failure of the landlord to describe the damage to the unit in the inspection report on moving out or deliver a copy of the report to the tenants.

The landlord submitted several documents and many clear photographs. In consideration of the evidence submitted and testimony given, I find that the landlord has met the burden of proof of a balance of probabilities with respect to this aspect of the claim. I accept the landlord's claim the tenants caused all the damage claimed and that he has incurred the expenses for which reimbursement is sought. I do not accept the tenants' claim that any of the damage is "reasonable wear and tear" and find the tenants have not met the burden of proof in this regard.

Under this heading, I therefore grant the landlord a monetary award in the amount claimed of \$1,713.14.

Landlord's claim - cleaning

The landlord submitted clear photographs of the unit's need for cleaning at the time the tenants vacated as well as a cleaning invoice. In consideration of the evidence submitted and testimony given, I find that the landlord has met the burden of proof of a balance of probabilities with respect to this aspect of the claim. I accept the landlord's claim that the tenants did not leave the unit reasonably clean and that he incurred reasonable cleaning expenses of \$250.00.

Under this heading, I therefore grant the landlord a monetary award in the amount claimed of \$250.00.

Landlord's claim for expenses for "time and gas"

In consideration of the evidence submitted and testimony given, I find that the landlord has met the burden of proof of a balance of probabilities with respect to this aspect of the claim. I find the landlord properly incurred the cost claimed to mitigate his expenses for repairs and cleaning for which the tenants were responsible. I find the landlord acted prudently and responsibly.

Under this heading, I therefore grant the landlord a monetary award in the amount claimed of \$475.66.

Filing fee

As the landlord has been successful in his application, I grant the landlord a monetary award in the amount of \$100.00 for reimbursement of the filing fee.

Summary of Award

I grant the landlord a monetary order in the amount of **\$2,538.80**. I summarize my award to the landlord as follows:

ITEM	AMOUNT
Repairs to drywall and trim	\$1,713.14
Cleaning cost	\$250.00
Reimbursement of landlord's "time and gas"	\$475.66
Reimbursement of filing fee	\$100.00
Total =	\$2,538.80

The landlord retained the security deposit of \$800.00 as per the written authorization. Accordingly, the final award is **\$1,738.80** calculated as follows:

ITEM	AMOUNT
Award (above)	\$2,538.80
(Less security deposit)	(\$800.00)
Total =	\$1,738.80

Conclusion

The landlord is entitled to a monetary order in the amount of **\$1,738.80**. This order must be served on the tenants. If the tenants fail to comply with this order, the landlord may file the order in the Provincial Court (Small Claims) to be 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: February 6, 2019

Residential Tenancy Branch