



Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL MNDL-S

Introduction

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

- a monetary order for damage to the rental unit pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing with the landlords being represented by M.D. (the "landlord"). All parties present were given a full opportunity to present their testimony, explain their evidence and cross-examine one another.

The tenant confirmed receipt of the landlords' application for dispute and evidentiary package, while the landlord confirmed receipt of the tenant's evidentiary package. All parties are found to have been duly served in accordance with sections 88 & 89 of the *Act*.

Issue(s) to be Decided

Are the landlords entitled to a monetary award for damage to the rental unit?

Are the landlords entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The tenancy began on May 1, 2016 with a monthly rent of \$900.00 payable on the first day of each month. The tenancy ended on April 30, 2018. The tenant paid a security deposit of \$450.00 at the start of the tenancy. In a decision dated July 20, 2018 the landlord was ordered to return the security deposit including double the amount to the tenant.

The landlord sought a monetary award of \$2,000.00 representing expenses related to damage to the rental unit, cleaning which was purportedly required following the tenant's departure and a return of some funds related to the depreciation of the property's value prior to its sale. The landlord said that in April 2019 he completed a sale of the property for \$2,000.00 less than what had been previously offered by the

buyer due to damage in the property following the conclusion of the tenancy. The landlord explained the buyer expressed concerns related to damage purportedly done to the property by the tenant, specifically the flooring and walls. Through his evidentiary package and testimony, the landlord explained the tenant had removed a medicine cabinet from the rental unit which required replacing and had left spots of nail polish on the flooring. The landlord said that in addition to the above described damage, the tenant had failed to adequately clean the rental unit following the conclusion of the tenancy.

The tenant disputed the landlords' application in its entirety. The tenant argued that she had been informed by the tenant who previously occupied the rental unit that the medicine cabinet, towel rack, shelf and toilet paper holder were her property to take following the conclusion of the tenancy. The tenant highlighted the fact that the tenancy agreement was silent on matters related to the bathroom furniture and the tenant said she had little reason to believe the items were not hers to take. The tenant acknowledged some nail polish was present on "two floor boards" but said she had never been informed that it was her duty to clean it and she stated it had been her intention to do so. The tenant questioned the loss of value as it related to the sale and depreciation of the property, noting the figure cited by the landlord to be in excess of any cleaning which may have been required. Finally, the tenant argued the property had been left clean and stated only some sweeping and vacuuming was left to be performed on the property.

Analysis

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. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlords to prove their entitlement to a claim for a monetary award.

The landlords have applied for a monetary award of \$2,000.00 representing expenses related to cleaning of the property, depreciation in value of the property related and for replacement of a medicine cabinet.

After having considered the testimony of both parties and following a review of the evidence submitted by the landlords and tenant, I find the landlords have sufficiently demonstrated their loss. The tenant acknowledged at the hearing that she removed the medicine cabinet following the conclusion of the tenancy. Her reasoning for doing so was that she had been informed by the previous tenant she could remove the items and she highlighted the fact the tenancy agreement was silent on the issue. I find this reasoning difficult to reconcile. It would be illogical to remove a refrigerator or other large item from a rental property on the premise that a previous tenant had informed the party that it was appropriate to do so. I accept the landlord's submissions that the cabinet made up a portion of the rental property and was not to be removed following the conclusion of the tenancy. Furthermore, the tenant provided no evidence to corroborate her argument that the items were removed from the property were hers for the taking. For these reasons I award the landlord the entire amount sought for loss of the cabinet.

The landlords also sought compensation for additional cleaning and the depreciation of the property related to its sale.

Residential Tenancy Policy Guideline #1 notes, "The tenant must maintain "reasonable health, cleanliness and sanitary standards" throughout the rental unit...the tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy agreement in a condition that does not comply with that standard. The tenant is also generally required to pay for repairs where damages are caused either deliberately or as a result of neglect by the tenant or their guest." I find the presence of nail polish on the floor to be within the realm of damages caused by neglect and to fall beyond the scope of "reasonable wear and tear." The tenant acknowledged the presence of the nail polish and argued it was unreasonable to have been charged an associated cleaning fee. While the volume of nail polish may have been minimal, I find the landlord did suffer a loss related to cleaning as a result of the tenant's neglect. Furthermore, the tenant failed to produce any evidence to rebut the landlords' photographic evidence displaying holes in the wall which required repair. For these reasons, I allow the landlord to recover the entire amount sought for cleaning.

As noted above, a person may apply for a monetary award when they can demonstrate damage or loss under the *Act*, prove the existence of the damage/loss, and that this loss stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. I find the landlord has provided a reasonable explanation as to why the purchaser of the property requested a reduction in the sale price; however, I have difficulty accepting that

the purchase price was reduced by \$2,000.00 as a result of a minor damage to the flooring and a loss of a bathroom cabinet. Many other factors could have influenced a reduction of the sale price and very little evidence was presented by the landlord in support of his argument that the price was reduced because of the issues identified in his testimony.

I allow the landlords to recover a portion of the funds associated with the reduction in sale price and will grant them an award of nominal damages associated with this loss. The landlords are entitled to recover \$1,000.00 from the reduction in sale price.

The landlords were successful in their application. Pursuant to section 72 of the *Act* the landlords may recover the \$100.00 filing fee.

Conclusion

Pursuant to section 67 of the *Act*, I grant the landlords a Monetary Order of \$1,474.14 as follows:

ITEM	AMOUNT
Replacement of Bathroom cabinet	\$123.19
Cleaning	250.95
Reduction in sale price due to damage	1,000.00
Recover of Filing Fee	100.00
TOTAL =	\$1,474.14

Should the tenant 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: February 20, 2019

Residential Tenancy Branch