



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDCL-S MNDL-S MNRL-S FFL**

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*;
- An order requiring the tenants to reimburse the landlord for the filing fee.

Both tenants and the landlord attended the hearing. Each party had the opportunity to call witnesses and present affirmed testimony and written evidence. The respondents acknowledged receipt of the applicant's Notice of Hearing and evidentiary materials. No issues of service were raised. I find the respondents were served in accordance with section 89 of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to:

- 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*;
- An order requiring the landlord to reimburse the tenant for the filing fee.

Background and Evidence

The parties agreed they entered into a tenancy beginning December 15, 2017. Initially, the tenancy was for a 6-month fixed term; it was then extended to another fixed term of 1-year with an anticipated end date of April 30, 2019. Rent was \$1,430.00 payable on the first of the month. At the beginning of the tenancy, the tenants provided a security deposit in the amount of \$700.00 and a pet deposit of \$100.00 for a total of \$800.00 ("the deposits"). The landlord submitted a copy of the residential tenancy agreement and addendum.

The landlord testified she issued a 10 Day Notice to End Tenancy for Unpaid Rent ("the Ten-Day Notice") dated August 9, 2018 for \$1,430.00 in unpaid rent which the landlord served on the tenants on August 9, 2018. The tenants did not dispute the Notice or pay the rent.

By the Direct Hearing Process, an adjudicator granted the landlord an order of possession and a monetary award on August 27, 2018 in the amount of the outstanding rent and the filing fee in the total amount of \$1,530.00. The orders were subsequently served on the tenants who vacated the unit before the end of August 2018. The parties agreed the monetary order is outstanding.

The landlord testified she believed that the monetary order authorized her to apply the deposits she held to the award and that no separate application was necessary specifically with respect to the deposits.

The landlord testified that she entered into a verbal agreement with the tenants at the time they vacated that the landlord would keep the deposits in satisfaction of outstanding rent and damage to the unit. The tenants denied there was any such verbal agreement. The parties agreed the tenants did not authorize the landlord in writing to retain the deposits. The tenants provided their forwarding address to the landlord at the time they vacated.

The parties agreed the tenants had two pet rabbits.

No condition inspection was conducted on moving in or out.

The landlord testified the unit was in good condition when the tenants moved in. The landlord testified the unit was damaged and filthy when the tenants vacated. The

landlord submitted photographs of the condition of the unit in support of her claim the unit required considerable cleaning. She submitted an invoice from a cleaning company in the amount of \$100.00 and requested reimbursement for this expense.

The tenants denied that the unit needed cleaning when they left. The female tenant acknowledged that the fridge "could have been wiped out" but it was "not as bad" as the landlord claimed. The tenants deny that they are responsible to reimburse the landlord for the cost of cleaning.

The landlord testified that the baseboards, weather stripping and flooring was in good condition when the tenants moved in. The landlord submitted a receipt in the amount of \$244.61 for purchase of the baseboards dated April 19, 2015 to establish that they had been newly installed before the tenants moved in.

The landlord testified that the baseboards, weather stripping and edges of the flooring had been extensively chewed by the rabbits and damaged. The landlord submitted photographs taken after the tenants vacated showing that these areas of the unit were substantially chewed and damaged. The landlord also submitted an estimate to repair the damaged items in the amount of \$722.50; the estimate states the trim must be removed and the cost of reinstalling may be greater if the walls behind the trim were damaged and required repairs or painting.

To show the damage caused by the rabbits, the landlord submitted a photograph of the tenant's own computer cables which had been chewed and seriously damaged by the rabbits. The tenants agreed their own cables had been chewed by the rabbits. However, they denied that their rabbits chewed any portion of the unit as claimed by the landlord or that the landlords were entitled to any reimbursement for damages caused by the rabbits. They said the landlord was trying "to pin the damage" on them unfairly.

After the tenants vacated, they subsequently wrote to the landlord and demanded the return of their deposits. At the hearing, the tenants acknowledged the landlord had obtained a monetary order in the amount of \$1,530.00 and that they had not reimbursed the landlord. They denied they had any obligation to do so.

The landlord brought this application on December 12, 2018 claiming authorization to apply the security deposit to the outstanding monetary order and an additional monetary award for damages to the premises caused by the tenants and their rabbits during the tenancy. In addition, the landlord requested reimbursement of the filing fee.

The landlord clarified her monetary claim for damages as follows:

ITEM	AMOUNT
Repair to baseboards, flooring and weather-stripping as per estimate	\$722.50
Cleaning receipt submitted	\$100.00
Filing fee	100.00
Total	\$922.50

The landlord's total claim, including the outstanding monetary order and application of the deposits is:

ITEM	AMOUNT
Repairs and cleaning (above)	\$922.50
Outstanding monetary order	\$1,530.00
Total	\$2,452.50

Analysis

The landlord submitted many photographs and substantial evidence. I will not refer to all the evidence in my Decision, but only to selected, relevant portions of the evidence and testimony of the parties.

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 person who incurred the damage or loss in the same position as if the damage or loss had not occurred. The person claiming compensation must establish **all** 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. Everything reasonable was done to reduce or minimize (mitigate) the amount of the loss or damage as required under section 7(2) of the *Act*.

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.

In this case, the onus is on the landlords to prove they are entitled a claim for a monetary award.

Reference to each of the landlords' claims follows.

Repair of portions of unit damaged by rabbits

The landlord submitted many photographs of damage to the baseboards, weather-stripping and flooring edges. I accept the landlord's testimony that these items were in good condition at the start of the tenancy as evidenced by the receipt for the purchase of the baseboards shortly before the tenancy started.

I also considered the photograph of the tenant's cables and that the tenants acknowledge their rabbits did the damage. The damage to the cables, acknowledged by the tenants to be caused by their rabbits, closely resembles the damage to the baseboards, weather-stripping and flooring edges. The nature of this damage apparent in the photographs appears consistent with damage caused by chewing. I find the tenant's rabbits were responsible for the damage to the baseboards, weather-stripping and flooring.

Having found these items were damaged during the tenancy by the tenants' rabbits and that the tenants were responsible, I accept the landlord's estimate of \$722.20 to repair the damage. I find the landlord has taken all steps necessary to reduce the amount of the loss or damage and find that the claim is not extravagant or unrealistic. In view of the damage evident in the photographs, I find the estimate to be reasonable. I accept the estimate as the amount for which the tenants must reimburse the landlord.

In summary, considering the evidence and the testimony, I find the landlord has met the burden of proof on a balance of probabilities that the tenants are responsible to compensate the landlord for this claim in the amount of \$722.20. I grant the landlord a monetary award in this amount.

Cleaning

Considering the photographs submitted by the landlord as evidence which clearly show dirty appliances and a generally unclean condition throughout the unit, I accept the landlord's claim for reimbursement of the cleaning fee of \$100.00. I find the tenants left the unit in a dirty condition. I find the landlord incurred this expense as evidenced by the

submission of the receipt. I find the amount of the expense to be reasonable given the dirty condition apparent in the photographs.

In summary, considering the evidence and the testimony, I find the landlord has met the burden of proof on a balance of probabilities that the tenants are responsible to compensate the landlord for this claim in the amount of \$100.00. I grant the landlord a monetary award in this amount.

Filing fee

I award the landlord reimbursement of the filing fee in the amount of \$100.00.

Summary of award to landlord

The award to the landlord is summarized as follows:

ITEM	AMOUNT
Repairs and cleaning (above)	\$822.50
Reimbursement of the filing fee	100.00
Total award to landlord	\$922.50

Deposits

The *Act* contains comprehensive provisions regarding security and pet damage deposits.

As stated in section 38 of the *Act*, the landlord is required to either return the tenants' deposits in full or file for dispute resolution for authorization to retain the deposits, 15 days after the later of the end of a tenancy and receipt of the tenants' forwarding address in writing.

Section 38 states as follows:

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of
(a) the date the tenancy ends, and
(b) the date the landlord receives the tenant's forwarding address in writing,
the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;*
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.*

If that does not occur, the landlord must pay a monetary award equivalent to double the value of the security deposit.

Section 38(6) states as follows:

- (6) If a landlord does not comply with subsection (1), the landlord*
 - (a) may not make a claim against the security deposit or any pet damage deposit, and*
 - (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable*

However, this provision does not apply if the landlord has obtained the tenants' *written* permission to keep all or a portion of the deposits pursuant to section 38(4)(a).

I find the landlord has not brought proceedings for compensation or an application for dispute resolution *claiming against the security deposit* for any outstanding rent or damage to the rental unit pursuant to section 38(1)(d) of the *Act*. I acknowledge the landlord obtained a monetary order dated August 27, 2018 that did not specifically address the issue of the deposits.

I find the tenants provided their forwarding address in writing pursuant to section 38(1)(b) on or about August 31, 2018 and did not provide written consent to the landlord to keep any portion of the deposits pursuant to section 38(4)(a).

Based on the above, the testimony and evidence, and on a balance of probabilities, I find the landlord is in breach of the *Act* by failing to return the deposits or applying for dispute resolution specifically claiming against the deposits as required.

I therefore find the tenants are entitled to a monetary award in the amount of \$1,600.00, being double the deposits of \$800.00.

Further to section 72, I authorize the landlord to offset the deposits against the monetary award herein and the outstanding monetary order.

In summary, I grant the landlord a monetary award of \$952.50 calculated as follows:

ITEM	AMOUNT
Award to landlord	\$922.50
Monetary order awarded to landlord August 27, 2018	\$1,530.00
(Less double the deposits)	(\$1,600.00)
Monetary award landlord	\$852.50

Conclusion

I order the tenants pay to the landlord the sum of **\$852.00** pursuant to the *Act*.

The tenants must be served with a copy of this order. Should the tenants fail to comply with this order, the 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: April 13, 2019

Residential Tenancy Branch