



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL

Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution ("application") seeking remedy under the *Residential Tenancy Act* ("Act") for a monetary order for damages to the unit, site or property, to retain the tenant's security deposit, and to recover the cost of the filing fee.

The landlord attended the teleconference hearing and gave affirmed testimony. During the hearing the landlord was given the opportunity to provide their evidence orally. A summary of the evidence is provided below and includes only that which is relevant to the hearing.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Proceeding ("Notice of Hearing"), application and documentary evidence were considered. The landlord testified that the Notice of Hearing and application were served on the tenant by registered mail on January 22, 2019, and that the mail was addressed to the tenant at the tenant's written forwarding address dated July 19, 2018 from the tenant, which the landlord submitted in evidence. The registered mail tracking number has been included on the cover page of this decision for ease of reference.

According to the online registered mail tracking website the registered mail package was signed for and accepted on February 4, 2019. Based on the undisputed testimony before me and the registered mail tracking number provided which was confirmed by way of the online registered mail website information, I find the tenant was served with the Notice of Hearing, application and documentary evidence on February 4, 2019, which is the date the registered mail package was signed for and accepted. Therefore, the hearing continued without the tenant present and as such, I consider this application to be unopposed by the tenant.

Preliminary and Procedural Matters

The landlord confirmed their email address at the outset of the hearing. Accordingly, the decision will be emailed to the landlord and sent by regular mail to the tenant who did not attend the hearing to provide their email address.

The landlord's Monetary Order Worksheet lists after the deduction of the tenant's \$500.00 security deposit, a total claim of \$5,957.87, which I find is \$652.40 more than what the landlord applied for in their initial application served on the tenant which indicated \$5,305.47. The landlord could not explain the difference in the amount claimed. Therefore, I find the landlord made an adding error. As the landlord did not formally amend their application and re-serve the tenant with an amended application for a higher monetary amount. In accordance with the principles of natural justice, I find it would be prejudicial to the tenant for me to consider a higher monetary claim at the hearing, when the tenant was only served notice of a monetary claim of \$5,305.47. Therefore, I find the landlord is limited to the total monetary claim after the deduction of a \$500.00 security deposit, in the amount of \$5,305.47.

The tenant confirmed that the reduction of \$652.40 would be deducted from item #2 below, damaged carpet. Accordingly I have reflected the reduction of item #2 below by \$652.40.

Issues to be Decided

- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenant's security deposit under the *Act*?
- Is the landlord entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A month to month tenancy began on July 1, 2015. The landlord stated that the tenant vacated the rental unit on August 31, 2018. During the tenancy monthly rent was \$2,774.00 per month. The tenant paid a security deposit of \$500.00, which the landlord continues to hold and has accrued no interest to date.

The landlord's monetary claim of \$5,305.47 is comprised as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Damaged blinds	\$280.00
2. Damaged carpet	\$2,174.55, less \$652.40 as indicated above= \$1,522.15
3. Tray service	\$80.00
4. Flood in suite	\$3,893.32
5. Unreturned swipe card and keys	\$30.00
Subtotal	\$6,457.87
<i>Less security deposit claimed of \$500.00</i>	<i>-(\$500.00)</i>
TOTAL	\$5,305.47

Regarding item 1, the landlord has claimed \$280.00 to repair what the landlord testified was blinds damaged by the tenant. The landlord referred to the Condition Inspection Report ("CIR") submitted in evidence, many colour photos which showed damage to blinds, and stated that it cost the landlord \$280.00 to repair the damaged blinds. On the incoming CIR the window coverings are listed as "good" condition. The landlord testified that the bent blinds in the photo evidence were all caused by the tenant or guests of the tenant and had to be repaired as a result.

Regarding item 2, the landlord has claimed \$1,522.15 for damaged carpets. Although the landlord referred to an invoice submitted in evidence, the landlord confirmed that it was not related to the new flooring installed, it was the original carpet invoice from April 2014, which I note was an amount that was slightly less than the initial amount claimed by the landlord for this portion of their claim. Given the date of the original receipt and taking into account the tenant vacated the rental unit on August 31, 2018, the carpets were just over four years old at the end of the tenancy.

The landlord did not complete an outgoing CIR and referred instead to two photos submitted in evidence. The two photos are not dated. The two photos show two areas that appear dirty and in need of cleaning. The landlord wrote on one of the photos, "looks like a burn mark". A close-up photo of the alleged burn mark was not submitted in evidence.

Regarding item 3, the landlord has claimed \$80.00 for tray service. The landlord confirmed that the tray service was not included as a term of the tenancy agreement.

Regarding item 4, the landlord has claimed \$3,893.32 for flood related expenses, which the landlord stated were caused by the tenant's negligence. In support of this portion of the landlord's claim, the landlord referred to a journal entry dated March 11, 2018, which indicates that the tenant reported to the landlord at 9:00 p.m. that she had left the kitchen tap running when she left the apartment and when she returned the kitchen floor was flooded. The journal entry also indicates that a restoration company was called as a result. The invoice total for the restoration work due to the flood was \$3,893.32 and was submitted in evidence.

The landlord stated that an insurance claim was not filed as the building insurance deductible was \$5,000.00, and as a result the landlord is seeking compensation from the tenant for the entire amount. The landlord testified that leaving the kitchen tap on and leaving the rental unit is negligence and that the tenant is responsible for the resulting damage.

Regarding item 5, the landlord has claimed \$30.00 for a swipe card and keys that were not returned. The landlord confirmed during the hearing that neither the swipe card nor keys were indicated on the tenancy agreement.

Analysis

Based on the undisputed documentary evidence and undisputed testimony of the landlord provided during the hearing, and on the balance of probabilities, I find the following.

As I have accepted that the tenant was served with the Notice of Hearing, application and documentary evidence and did not attend the hearing, and as noted above, I consider this matter to be unopposed by the tenant.

The landlord must still meet the burden of proof with a monetary claim. Therefore, the test for damages or loss is described below.

Test for damages or loss

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 in sections 7 and 67 of the *Act*. Accordingly, 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 instance, the burden of proof is on the landlord to prove the existence of the damage/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 is reasonable to minimize the damage or losses that were incurred.

Item 1 - The landlord has claimed \$280.00 to repair what the landlord testified was blinds damaged by the tenant. Based on the incoming CIR, which indicated the blinds were in good condition, the many colour photos, which I find showed damage to blinds, and the landlord's undisputed testimony that \$280.00 was spent to repair the damaged blinds, I find the landlord has met the burden of proof for this item. Therefore, I grant the landlord **\$280.00** as claimed for item 1. I have not applied the useful life to the blinds as I find the damage is negligence and not normal wear and tear.

Item 2 - The landlord has claimed \$1,522.15 for damaged carpets. I have considered the photo evidence and find that the soiling shown on the carpet would justify cleaning but on the balance of probabilities does not justify the replacement of carpets that were only four years old by the end of the tenancy. Residential Tenancy Branch ("RTB") Policy Guideline 40 – Useful Life of Building Elements, indicates that carpets have a useful life of 10 years. I find the one photo, which the landlord claims showed a burn mark to be insufficient to support as a close-up of the alleged burn mark was not submitted in evidence. I do not see significant wear marks, tears or other evidence that would support the replacement of the entire carpeting in the rental unit. Given the above, I find the landlord has not met the burden of proof of this item and as a result, I dismiss this portion of the landlord's claim without leave to reapply.

Item 3 - The landlord has claimed \$80.00 for tray service. As the landlord confirmed that the tray service was not included as a term of the tenancy agreement, I find the landlord

failed to meet part one of the four-part test for damages or loss described above. Therefore, I find the landlord has not met the burden of proof for this portion of their claim. Item 3 is thereby dismissed without leave to reapply, due to insufficient evidence.

Item 4 - The landlord has claimed \$3,893.32 for flood related expenses, which the landlord stated were caused by the tenant's negligence. I agree with the landlord based on the undisputed evidence before me that the tenant was negligent by turning on the kitchen tap and leaving the rental unit, only to return to find the rental unit flooded. I have also considered the invoice in the amount claimed from the restoration company and the journal entry from the landlord. Therefore, I find the tenant breached section 37(2) of the *Act* which states:

Leaving the rental unit at the end of a tenancy

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(2) When a tenant vacates a rental unit, the tenant must

(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and

(b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

[Emphasis added]

I accept that the landlord complied with section 7 of the *Act*, which requires the applicant to do what is reasonable to minimize the damage or loss as I accept that it was less expensive to pay a restoration company \$3,893.32 versus paying a \$5,000.00 building insurance deductible. Based on the above, I find the landlord has met the burden of proof and I grant the landlord **\$3,893.32** as claimed for item 4.

Item 5 - The landlord has claimed \$30.00 for a swipe card and keys that were not returned. The landlord confirmed during the hearing that neither the swipe card nor keys were indicated on the tenancy agreement. As the landlord confirmed that the swipe cards and keys were not included as a term of the tenancy agreement, I find the landlord failed to meet part one of the four-part test for damages or loss described above. Therefore, I find the landlord has not met the burden of proof for this portion of

their claim. Item 5 is thereby dismissed without leave to reapply, due to insufficient evidence.

As the landlord's claim was partially successful, I find the landlord is entitled to the recovery of the cost of the filing fee of **\$100.00** pursuant to section 72 of the *Act*. Based on the above, I find the landlord has established a total monetary claim of **\$4,273.32** comprised of \$280.00 for item 1, \$3,893.32 for item 4, plus the \$100.00 recovery of the cost of the filing fee.

As the landlord continues to hold the tenant's \$500.00 security deposit and pursuant to sections 38 and 72 of the *Act*, I authorize the landlord to retain the tenant's full security deposit of \$500.00 which has accrued \$0.00 in interest, in partial satisfaction of the landlord's monetary claim. I grant the landlord a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenant to the landlord in the amount of **\$3,773.32**.

I caution the tenant to comply with section 37 of the *Act* in the future.

Conclusion

The landlord's application is mostly successful.

The landlord has established a monetary claim of \$4,273.32 and has been authorized to retain the tenant's full security deposit of \$500.00 including \$0.00 in interest, in partial satisfaction of the landlord's monetary claim.

The landlord has been granted a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenant to the landlord in the amount of \$3,773.32. The landlord may enforce the monetary order in the Provincial Court (Small Claims Division).

The decision will be emailed to the landlord and sent by regular mail to the tenant. The monetary order will be emailed to the landlord for service on the tenant.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: May 24, 2019

Residential Tenancy Branch