



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL MNDCL-S MNDL-S FFT MNSD

Introduction

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

- a monetary order for damage to the rental unit pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

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

- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38; and,
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and had full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions. The tenant acknowledged receipt of the landlord's Notice of Hearing and Application for Dispute Resolution and the landlord's evidence. The landlord acknowledged receipt of the tenant's Notice of Hearing and Application for Dispute Resolution and the tenant's evidence. Neither party raised issues of service. I find the parties were served in accordance with the *Act*.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for damage to the rental unit pursuant to section 67?

Is the landlord entitled to retain all or a portion of the tenant's security deposit pursuant to section 38?

Is the tenant entitled to the return of all or a portion of the security deposit pursuant to section 38?

Is the landlord and/or the tenant entitled to reimbursement of their filing fees for their applications pursuant to section 72?

Background and Evidence

The tenancy started in September 2015 with a monthly rent of \$1,000.00. The rent later increased to \$1,120.00 per month. The tenant paid a security deposit of \$1,000.00 and no pet damage deposit.

The tenant moved out of the rental unit on January 1, 2019. The tenant testified that he provided the landlord with his forwarding address by email on December 31, 2018.

The parties did not sign a condition inspection report on move out. The landlord testified that the tenant refused to sign the condition inspection report. The tenant testified that neither the landlord nor he understood that they needed to sign the condition inspection report when they performed the walkthrough. The tenant testified that he learned that they were supposed to sign the condition inspection report a few days after the inspection. The tenant testified that he sent the landlord an email a few days later advising him that they need to sign the condition inspection report. However, the tenant testified that the landlord did not respond. The landlord testified that he did not notice this email until later because the email was relegated to his spam email folder.

The landlord seeks a monetary order for damage to the rental unit. Specifically, the landlord claimed that the rental unit needed to be painted, cleaned, and a light switch and the garage door opener remote/key fob needed to be replaced.

The landlord provided photographs showing multiple, small marks on the walls. The landlord testified that the paint was in new condition when the tenant moved in. The landlord also provided a photograph showing hair attached to the drain in a bathtub.

The landlord provided a receipt of \$600.00 for cleaning and painting. The landlord testified that this consisted of \$400.00 for painting and \$200.00 for cleaning. However, there no itemization of these charges on the receipt.

The landlord claimed that the garage door opener and the dimmer switch each cost \$50.00. The landlord asked to retain \$700.00 from the security deposit for damages and reimbursement of his filing fee.

The tenant testified that he left the property in good condition and that any deficiencies were reasonable wear and tear. The tenant provided multiple photographs showing the property was left in a clean condition.

The tenant admitted that the dimming feature of the dimmer switch was broken during the tenancy. However, he argued that the switch was still functional because the switch was still able to turn the lights on and off. The tenant sought the return of the entire security deposit and reimbursement of his filing fee.

Analysis

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.

Each of the landlord's claims is addressed:

Painting

The photographs presented by the landlord indicated multiple marks on the walls of the rental unit. However, I am not satisfied that the landlord has provided sufficient evidence to prove the actual monetary loss he has sustained. The landlord did not provide estimates for this repair or adequate testimony detailing the cost of the repairs. The only evidence the landlord provided was a receipt for the payment of \$600.00 for painting and cleaning. There was no itemization indicating the time spent painting, the rate charge for painting services or the cost of the painting materials. In the absence of satisfactory evidence of the repair costs, I will consider an award of nominal damages.

Residential Tenancy Policy Guideline No. 16 defines nominal damages as:

“Nominal damages” are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

In this matter, an award of nominal damages is appropriate because the landlord has established that there is some damage to the paint on the walls but the landlord has failed to provide sufficient evidence of the amount of his monetary loss. In these circumstances, I award the landlord nominal damages of \$100.00 to repair the paint on the walls.

Cleaning

I am not satisfied that the landlord has sustained any damages for cleaning expenses. I find that the photographs submitted by the landlord and the tenant do not show a need for significant cleaning services. The tenant is only required to leave the rental unit reasonably clean at the end of the tenancy pursuant to section 37(2)(a) of the *Act*. I am satisfied that the tenant has done. Accordingly, I deny the landlord's claim for compensation relating to cleaning.

Dimmer Switch

The tenant admitted that the dimmer switch was damaged during the tenancy but he argued that the switch was still functional for turning lights on and off even though the lights could no longer be dimmed. I find that the loss of the dimming function does constitute damage which the tenant should compensate the landlord for. However, the landlord did not provide specific evidence to establish the amount of his loss other. In the absence of satisfactory evidence of the cost of replacing the dimmer switch, I award the landlord nominal damages of \$25.00 to replace the dimmer switch.

Garage Door Opener/Key Fob

I am unable to determine whether the garage door opener needed to be repaired or replaced as both parties presented conflicting testimony regarding this issue and both parties' testimony were equally plausible. Accordingly, since the landlord has the burden of proof to establish his claim, I dismiss the landlord's application for compensation relating to the garage door opener.

Based on the undisputed testimony of the landlord and the tenancy agreement, I find that the landlord holds a security deposit of \$1,000.00 which may be applied to the damages owed by the tenant pursuant to section 72(2)(b) of the *Act*. The balance of the security deposit must be returned to the tenant pursuant to section 38 of the *Act*.

Since both the landlord and the tenant were partially successful in this matter, I find that both parties are entitled to an award of their respective filing fees. However, since these awards offset each other, both parties' claims for filing fees are dismissed.

The net award to tenant is accordingly \$875.00 as set forth below:

<u>Item</u>	<u>Amount</u>
Security deposit	\$1,000.00
Painting cost	-\$100.00
Dimmer switch replacement cost	-\$25.00
Total	\$875.00

Conclusion

I grant the tenant a monetary order in the amount of **\$875.00**. If the landlord fails to comply with this order, the tenant may file the order in the Provincial Court 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: May 6, 2019

Residential Tenancy Branch