



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND-S, MNDC-S, FF

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, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement 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;
- authorization to recover her filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing via conference call and provided testimony. Both parties confirmed the landlord served the tenant with the notice of hearing package in person on February 28, 2019 with the submitted documentary evidence and a copy of the amendment to the application for dispute increasing the monetary claim to \$2,865.16. The tenant submitted late evidence on the date of the hearing without providing a copy of a 6 page statement to the landlord. The statement is a detailed accounting of the tenant's social worker when she was present during the interactions with the landlord. The landlord objects to accepting the late evidence as she has no idea what it speaks to. The tenant's advocate stated that the statement was submitted late as it was just received 1 day prior to the scheduled hearing as the social worker is no longer employed as such. In review of the material, I find that the late evidence can be accepted for the purposes of the landlord's monetary claim. Both parties were notified that if the tenant references the 6 page statement, the landlord would be given an opportunity to respond to the statement as well as given time to address it should it be necessary.

The late evidence may be included for this hearing.

I accept the undisputed evidence of both parties regarding the notice of hearing package and the landlord's submission of documentary evidence as being sufficiently served as per section 90 of the Act.

I note for the record that at the conclusion of the hearing, the tenant had failed to refer or make any submissions on the tenant's 6 page statement of late evidence.

At the outset, the landlord clarified her monetary claim and cancelled items #11 and #12 as listed on the monetary worksheet as she does not know how to calculate depreciated value on these items and has not provided any details for them. As such, the hearing shall deal with the remaining monetary claims listed.

The landlord also clarified that her monetary claim had been amended two days after the original application increasing the monetary amount from \$1,615.16 to \$2,865.16. Both parties confirmed that this amendment was served and received. Neither party raised any service issues.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for damage, for money owed or compensation for damage or loss and recovery of the filing fee?

Is the landlord entitled to retain all or part of the security and/or pet damage deposits?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on March 1, 2018 on a month-to-month basis as per the submitted copy of the signed tenancy agreement dated February 21, 2018. Both parties confirmed the tenancy ended on February 1, 2019. The monthly rent was \$1,500.00 payable on the 1st day of each month. A security deposit of \$750.00 and a pet damage deposit of \$500.00 were paid on February 8, 2018.

The landlord seeks a clarified amended monetary claim of \$2,865.16 which consists of:

\$321.00	Cleaning
\$68.25	Carpet Shampoo
\$200.00	Curtain cleaning and nail polish removal from floors
\$44.94	Dry Cleaning, 4 curtain panels
\$164.31	Replace Broken items
\$85.32	Replace Damaged Screens on Door and Window
\$64.93	Paint Damaged Trim and window sill
\$61.41	Repair Damaged laminate floor
\$150.00	Repair Damaged Walls
\$125.00	Exterior Cleaning
\$80.00	Locksmith, key not returned
\$1,500.00	Loss of Rental Income, February 2019

The landlord claims that the tenant vacated the rental unit leaving it dirty requiring cleaning and damaged requiring repairs. The landlord has documented the above noted claims with 107 pages of documentary evidence which includes 99 photographs of the rental unit at the end of tenancy. The landlord has provided invoice(s) and receipts for each of the claims. The landlord relies upon a copy of a completed condition inspection report for the move-in in comparison with the submissions and photographs of the condition of the rental property at the end of tenancy.

The landlord seeks \$321.00 for cleaning costs noting in photographs 1-58, animal feces, a dead mouse, lots of grease on the drawers and the microwave and signs of damage from a water leak that was never reported by the tenant. The tenant disputed this claim stating that the unit was left mostly clean and that the tenant has photographs that were not submitted.

The landlord seeks \$68.25 for carpet shampooing, \$200.00 for laundering 14 dirty curtains and removal of nail polish from flooring (as seen in photographs 59-65 and 98 and 99), \$44.94 for dry cleaning 4 silk curtain panels that were stained (as seen in photographs 64,65), \$164.31 for replacement of damaged hooks, floor vent, a floor mat (photographs 66, 67, 68), \$85.32 based upon estimate, but that \$110.00 was paid to re-screen a door and window (photographs 69, 70, 71), the cost of paint for \$64.93 (photographs 72-76), \$61.41 for repair of damaged laminate flooring (based upon photographs 86-94), estimated personal labour time for repair to damage(s) \$150.00 and to clean the exterior of the rental property of \$125.00 and \$1,500.00 for the loss of rental income for February 2019. The landlord claims that because of all of the repairs,

the landlord was not able to re-rent the unit in a habitable condition and that no notice was given by the tenant in vacating the rental unit.

The tenant has disputed only that the unit was left ½ clean with some damage to the screen door and window caused by her pet. The tenant argued that there was no smoking in the rental, but that there may have been a stain on the curtains and cat urine on the carpet. The tenant argued that all of the keys were returned by the tenant to the landlord. The tenant made no comments on the remaining claims made by the landlord.

The landlord confirmed that the tenant was issued 2 keys at the start of the tenancy and that 2 keys were returned. The landlord “believes” that the tenant had more keys, but is unsure. The landlord as a result has cancelled the request for the cost of a locksmith.

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 landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

I find on a balance of probabilities that the landlord has provided sufficient evidence that the tenant vacated the rental unit leaving it dirty and damaged requiring extensive cleaning, repairs and replacement of some items. The landlord has been successful in the below claimed items.

\$321.00	Cleaning
\$68.25	Carpet Shampoo
\$200.00	Curtain cleaning and nail polish removal from floors
\$44.94	Dry Cleaning, 4 curtain panels
\$164.31	Replace Broken items
\$85.32	Replace Damaged Screens on Door and Window
\$64.93	Paint Damaged Trim and window sill

\$61.41	Repair Damaged laminate floor
\$150.00	Repair Damaged Walls
\$125.00	Exterior Cleaning
\$1,500.00	Loss of Rental Income, February 2019

The successfully claimed items total, \$2,785.16. The landlord provided evidence in the form of a completed condition inspection report for the move-in and the submitted photographs taken at the end of tenancy to establish the differences. The landlord also provided copies of invoices/ receipts and estimates to show the actual costs of items sought.

The landlord having been successful is also entitled to recovery of the \$100.00 filing fee. I authorize the landlord to retain the \$750.00 security deposit in partial satisfaction of the claim.

Conclusion

The landlord is granted a monetary order for \$2,135.16.

This order must be served upon the tenant. Should the tenant fail to comply with the 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: June 13, 2019

Residential Tenancy Branch