



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BIRDS NEST PROPERTIES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S, FFL

Introduction

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

- a monetary order for damage to the rental unit, pursuant to section 67;
- authorization to retain a portion of the tenant's security and pet damage deposits (collectively "deposits"), pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord's agent ("landlord") and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord had another agent present in the room with him during the hearing, but he did not testify. The landlord confirmed that he was the property manager and that he had permission to represent the landlord company named in this application as well as the owner of the rental unit. This hearing lasted approximately 27 minutes.

The tenant confirmed receipt of the landlord's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was duly served with the landlord's application.

Issues to be Decided

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

Is the landlord entitled to retain a portion of the tenant's deposits?

Is the landlord entitled to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on March 15, 2018 and ended on February 28, 2019. Monthly rent in the amount of \$1,250.00 was payable on the first day of each month. A security deposit of \$625.00 and a pet damage deposit of \$625.00 were paid by the tenant and the landlord continues to retain both deposits. A written tenancy agreement was signed by both parties. Move-in and move-out condition inspection reports were completed for this tenancy. A written forwarding address was provided by the tenant to the landlord but neither party could recall the date. The landlord did not have any written permission to keep any part of the tenant's deposits. The landlord filed this application to keep the deposits on March 15, 2019.

The landlord seeks a monetary order of \$835.60 plus the \$100.00 application filing fee. The landlord seeks to replace the blinds in the living room and bedroom at the rental unit. The landlord stated that tenant's cat damaged the top and bottom corners of the right side of the bedroom blinds. He said that he had to replace those blinds plus the ones in the living room so that both would match. He agreed that the tenant did not cause damage to the blinds in the living room but because both sets of blinds had to match, they had to be replaced. He maintained that the owner decided to upgrade the blinds from vinyl to wooden Venetian blinds after the tenant moved out, so the cost was higher. The landlord provided an invoice for the \$835.60 but not the receipt. He also provided a photograph of the bedroom blinds, which has the top right corner cut off and not visible in the photograph. He said that the bottom right corner was bent as shown in the photograph.

The tenant disputes the landlord's claim. He said that only four of the blinds were bent, not broken, in the bottom right corner of the bedroom blinds. He stated that there was no damage to the top right corner. He said that he found the same vinyl blinds set in the store for \$50.00, he offered to purchase it, and the landlord's agent said not to do so. He maintained that he only had vinyl blinds during his tenancy and that the landlord was charging him for wooden Venetian blinds, which were more expensive. He claimed that the living room blinds were not damaged by him, and that there was pre-existing

damage to them from the previous owner who had a dog, as noted in the move-in condition inspection report.

Analysis

Section 67 of the *Act* requires a party making a claim for damage or loss to prove the claim, on a balance of probabilities. In this case, to prove a loss, the landlord must satisfy the following four elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the tenant in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the landlord followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

I award the landlord \$50.00 of the \$835.60 sought for the damaged blinds in the bedroom. The tenant agreed that four of the blinds were bent in the bottom right corner but not in the top right corner. The photograph of the blinds provided by the landlord has the top right corner cut off from the photograph so I cannot see if there is any damage. I informed the landlord about this during the hearing and he acknowledged the photograph had that area cut off from visibility. I accept the tenant's evidence that he found comparable vinyl blinds for \$50.00 and he was willing to replace it for this cost but the landlord's agent refused.

I do not find that the landlord is entitled to an upgrade to wooden Venetian blinds when the tenant did not have this type of blinds in his unit and only the vinyl blinds were damaged. The landlord's cost of upgrading the blinds after the tenant vacated, should not be borne by the tenant. I also find that the tenant is only responsible for damage to the blinds in the bedroom, not the living room, as the landlord agreed that the tenant did not cause the damage in the living room, he just wanted the cost back for the matching blinds in the living room.

As the landlord was mainly unsuccessful in this application, I find that the landlord is not entitled to recover the \$100.00 filing fee from the tenant.

The landlord continues to hold the tenants' security and pet damage deposits totaling \$1,250.00. I find that the tenant is not entitled to double the value of his deposits

because the landlord applied to retain them on March 15, 2019, within 15 days of the end of the tenancy on February 28, 2019. Neither party knew the date that the tenant provided his forwarding address in writing, so I have calculated the 15 days from the end of the tenancy date, not the forwarding address date.

Over the period of this tenancy, no interest is payable on the deposits. I order the landlord to retain \$50.00 from the tenant's pet damage deposit and to return the remainder from both deposits of \$1,200.00 to the tenant within 15 days of receipt of this decision. The tenant is provided with a monetary order in the amount of \$1,200.00 against the landlord.

Conclusion

I order the landlord to retain \$50.00 from the tenant's pet damage deposit in full satisfaction of the monetary award.

I issue a monetary order in the tenant's favour in the amount of \$1,200.00 against the landlord. The landlord must be served with this Order as soon as possible. Should the landlord 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: July 05, 2019

Residential Tenancy Branch