



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNDCL, MNDL

Introduction

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

- a monetary order for unpaid rent, 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;
- 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 the filing fee for this application pursuant to section 72.

The landlords attended the hearing. The landlords had full opportunity to provide affirmed testimony, present evidence, and make submissions.

The tenant did not attend the hearing. I kept the teleconference line open for the duration of the hearing to allow the tenant the opportunity to call. The teleconference system indicated only the landlord and I had called into the hearing. I confirmed the correct participant code was provided to the tenant.

The landlords testified that they served the tenant with the Notice of Hearing and Application for Dispute Resolution and the landlord's evidence by registered mail sent to the tenant's residence. The landlords testified that the tenant did not provide a forwarding address. However, the landlords testified that they knew the tenant lived there because a witness saw the tenant regularly go to and from the residence. Based on the undisputed testimony of the landlord, I find the tenant served the landlord with the documents pursuant to section 89 of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent, 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?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38?

Is the landlord entitled to recover the filing fee for this application pursuant to section 72?

Background and Evidence

The tenancy started on October 14, 2017. The tenancy was a fixed-term two-year tenancy agreement with a scheduled termination date of October 15, 2019. The monthly rent was \$2,400.00 per month with a security deposit of \$1,000.00.

A previous Residential Tenancy Branch application and cross-application were heard together regarding a notice to end tenancy for unpaid rent. The hearing number for the previous applications are referenced on the first page of this decision. In the previous matter, the landlord was granted an order of possession for unpaid rent and the landlord was granted permission to retain the \$1,000.00 security deposit.

The landlord testified that the tenant moved out the rental unit on approximately April 1, 2019. The landlord claimed monetary compensation for damage to the rental unit and loss of rent from the rental unit.

Specifically, the landlords made the followings claims for compensation:

Photos

The landlords claimed \$54.05 for the cost of printing photographs to use as evidence. The landlords provided a receipt for this expense.

Cleaning supplies

The landlords claimed \$65.86 for cleaning supplies to clean the rental unit. The landlords provided a receipt for this expense.

Locksmiths

The landlords claimed \$156.02 to rekey the locks because the tenant did not return the keys for the rental unit. The landlords provided invoices for this expense.

Trash removal

The landlords claimed \$1,048.95 for trash removal expenses. The landlords testified that the tenant left large amounts of junk in the rental unit and professional trash removers had to haul away two van loads of trash. The landlords provided photographs of the trash and an invoice for \$1,048.95 from the trash removal business.

Glass replacement

The landlords claimed \$258.71 for the replacement of a basement window which the landlords claim the tenant broke. The landlords provided a photograph of the broken window and an estimate for \$258.71 from a window business.

Flooring

The landlords testified that hardwood flooring, linoleum flooring, carpeting and baseboards were severely damaged by the tenant's pets. The landlords provided multiple photographs showing damage to the flooring.

The landlords claimed \$126.00 to have a flooring contractor provide a flooring repair analysis. The landlords provided an invoice from a flooring contractor for \$126.00 for the analysis.

The landlords provided an invoice for \$13,691.53 for replacement of the flooring. The landlords also provided a quote of \$11,754.25 from another flooring contractor.

The landlords also provided an invoice for \$252.00 for an environmental assessment which the landlords said they were required to do to change the flooring.

Accordingly, the total amount claimed by the landlords for flooring repairs was \$14,069.53 (\$126.00 for the flooring analysis plus \$13,691.53 for the repairs plus \$252.00 for the environmental assessment)

Cleaning

The landlords testified that the rental unit had to be cleaned. The landlords claimed \$420.00 for cleaning costs. The landlords provided multiple photographs showing messy conditions in the rental unit damage to the flooring. The landlords provided an invoice for \$420.00 for cleaning services. The invoice charged for 14 hours of cleaning services at the rate of \$30.00 per hour.

Loss of rent

The landlords also claimed for loss of rent because they have been unable to rent the property to other tenants because the tenant left the rental unit in a damaged condition. The landlords testified that the repairs have still been completed and they have not yet tried to market the rental unit to new tenants. The landlords testified that they needed to complete the repairs first. In addition, the landlords testified that other renovations to the property are also in progress.

The landlords presented an inspection report prepared before the tenancy began. The landlord pointed out that the report stated that the floors were reported as being in “acceptable condition” before the tenancy began. The report stated that the rental unit was approximately 40 years old. The landlord did not know whether the flooring or the window damaged by the tenant was original construction.

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 landlords 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.

I will address each of the landlord's claims separately.

Photos

I find that the landlord's photo costs for hearing preparation are not a recoverable claim in Residential Tenancy Branch hearings. Accordingly, I shall deny this claim.

Cleaning supplies

Based on the undisputed testimony of the landlords, the photographs, and the cleaning supplies invoice, I am satisfied that the landlords have provided sufficient evidence to establish that the landlord needed to incur the cost of \$65.68 for cleaning supplies because the tenant left the rental unit in an unclean condition. Furthermore, I find the amount claimed herein is reasonable. Accordingly, I grant the landlord's claim for \$65.68 for cleaning supplies.

Locksmith

Based on the undisputed testimony of the landlords and the locksmith invoice, I am satisfied that the landlords have provided sufficient evidence to establish that the landlord needed to incur the cost of \$156.02 to rekey the locks because the tenant did not return the keys. Furthermore, I find the amount claimed herein is reasonable. Accordingly, I grant the landlord's claim for \$156.02 for locksmith expenses.

Trash removal

Based on the undisputed testimony of the landlords, the photographs and the trash removal invoice, I am satisfied that the landlords have provided sufficient evidence to establish that the landlord needed to incur the cost of \$1,048.95 for trash removal because the tenant left large amounts of trash and junk in the rental unit. Furthermore, I find the amount claimed herein is reasonable since the trash removal business needed to remove two vans full of junk. Accordingly, I grant the landlord's claim for \$1,048.95 for trash removal expenses.

Glass replacement

Based on landlord's undisputed testimony and the provided photographs, I am satisfied that the tenant has damaged the basement window. I am also satisfied that the landlord has provided sufficient evidence of the amount of this damage by providing an estimate showing that the replacement cost of the window is \$258.71.

However, the kitchen window was not a new window. *Residential Tenancy Policy Guideline* No. 40 states that the useful life of building elements can be considered when assessing damages. Specifically, *Residential Tenancy Policy Guideline* No. 40 state:

...the arbitrator may consider the useful life of a building element and the age of the item. Landlords should provide evidence showing the age of the item at the time of replacement and the cost of the replacement building item. That evidence may be in the form of work orders, invoices or other documentary evidence. If the arbitrator finds that a landlord makes repairs to a rental unit due to damage caused by the tenant, the arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant's responsibility for the cost or replacement.

Residential Tenancy Policy Guideline No. 40 states that the useful life of windows is 15 years. The property inspection provided by the landlord stated that the property was 40 years old. Since landlord did not know whether or not the window was original construction, the only evidence before me regarding the age of the window is that of 40 years. Accordingly, I find that the basement window was 40 years old and it had already exceeded its useful life. However, although window has exceeded its useful life, the window could have continued to function for some future period if had not been damaged by the tenants. Based on the age of the windows, I find that the window had a remaining value of 10% of the value of new windows. Accordingly, I will award the landlord 10% of the replacement cost of the window, being \$25.87 (25% of \$258.71).

Flooring

Based on landlord's undisputed testimony and the provided photographs, I am satisfied that the tenant has damaged the landlord's hardwood flooring, linoleum flooring, carpeting and baseboards. I am also satisfied that the landlord has provided sufficient evidence of the amount of the damage to the flooring by providing invoice showing that the replacement cost of the flooring and baseboards, including the flooring analysis and the environmental assessment, to be \$14,069.53.

However, as stated above, the property was 40 years old, and in the absence of any evidence to contrary provided, I find that the flooring in the home was also 40 years old.

Residential Tenancy Policy Guideline No. 40 states that the useful life of for hardwood floors is 20 years and the useful life of carpeting is 10 years. Accordingly, I find that the all of the flooring had already exceeded its useful life. However, although the flooring has exceeded its useful life, the flooring could have continued to function for some future period if had not been damaged by the tenants. Based on the age of the flooring, I find that the flooring had a remaining value of 10% of the value of new flooring. Accordingly, I will award the landlord 10% of the replacement cost of the flooring, being \$1,406.95 (10% of \$14,069.53)

Cleaning

Based on the undisputed testimony of the landlords, the photographs and the cleaning invoice, I am satisfied that the landlords have provided sufficient evidence to establish that the landlord needed to incur the cost of \$420.00 to clean the rental unit because the tenant left the rental unit in a dirty condition. Furthermore, I find the amount claimed herein is reasonable. Accordingly, I grant the landlord's claim for \$420.00 for cleaning expenses.

Loss of Rent

Based upon the landlord's undisputed testimony and photographs provided, I find that the that the landlords have lost rent from being unable to rent the property to other tenants while repairs were being made as a result of the tenant's damage. However, even if the landlords' rental unit was damaged, they must still mitigate their loss. Residential Tenancy Branch Policy Guideline No. 5 states:

Where the landlord or tenant breaches a term of the tenancy agreement or the Residential Tenancy Act ..., the party claiming damages has a legal obligation to do whatever is reasonable to minimize the damage or loss. This duty is commonly known in the law as the duty to mitigate. This means that the victim of the breach must take reasonable steps to keep the loss as low as reasonably possible. The applicant will not be entitled to recover compensation for loss that could reasonably have been avoided.

In this matter, the landlords have not produced sufficient evidence to establish on the balance of probabilities that they adequately mitigated their losses by diligently attempting to complete the repairs in a timely fashion. Based upon the scope of the damage claimed by the landlords, I find that a reasonable amount of time to complete the repairs would be one-half of a month. Accordingly, I grant the landlord the amount of \$1,200.00 (one-half of \$2,400.00) for loss of rent.

Since the landlord has prevailed in this matter, I grant the landlord recovery of the \$100.00 filing fee pursuant to section 72.

Accordingly, I grant the landlord a monetary order for **\$4,656.31**, calculated as follows.

<u>Item</u>	<u>Amount</u>
Cleaning supplies	\$65.68
Locksmith expense	\$156.02
Trash removal	\$1,048.95
Glass replacement	\$258.71
Flooring	\$1,406.95
Cleaning	\$420.00
Loss of rent	\$1,200.00
Filing fee	\$100.00
Total	\$4,656.31

Conclusion

I grant the landlords a monetary order in the amount of **\$4,656.31**. If the tenant fails to comply with this order, the landlord 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: July 31, 2019

Residential Tenancy Branch