



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding REMAX CHECK REALTY and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCL-S MNDL-S

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 unit pursuant to section 67; and
- 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.

The landlord's representatives, N.S and K.I. attended the hearing. The landlord's representatives had full opportunity to provide affirmed testimony, present evidence, and make submissions.

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

The landlord's representatives testified the tenant served the tenants with the Notice of Hearing and Application for Dispute Resolution by registered mail sent on March 7, 2019 which is deemed received by the tenants five days later, on March 12, 2019, under section 90 of the *Act*. The landlord's representatives provided the Canada Post tracking number in support of service referenced on the first page of the decision. Based on the undisputed testimony of the landlord's representatives, I find the landlord served the tenants with the documents pursuant to section 89 of the *Act*.

Preliminary Matter: Name Correction

The landlord's representatives testified that the application stated the wrong name for the landlord and the landlord's representatives requested that this be amended. I herein amend landlord's application to state to the correct name of the landlord, which is stated on first page of this decision, pursuant to section 64(3)(c) of the *Act*.

Issue(s) to be Decided

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

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

If the landlord is not entitled to retain the tenants' security deposit, are the tenants entitled to a refund of their security deposit pursuant to section 38?

Background and Evidence

The landlord's representatives testified that the tenancy started on February 1, 2017. The monthly rent was \$1,500.00 and the landlord holds a \$750.00 security deposit. The landlord's representatives testified that the parties performed a condition inspection report on move in.

The tenants vacated the rental unit on January 31, 2019. The parties performed a condition inspection report on move out. The landlord's representatives testified that the tenants provided their forwarding address by email on February 13, 2019. The landlord's testified that they filed this application for dispute resolution on February 28, 2019.

The landlord's claimed that the tenants left the rental unit in a dirty, damaged condition. The tenants claimed reimbursement for the following expenses:

- Materials cost for replacement sink: \$82.52;
- Materials cost for paint: \$57.11;
- Materials cost for spray texture: \$28.52;
- Materials cost for mold chemicals: \$22.37;
- Cleaning costs by contractor: \$1,235.00;

- Carpet cleaning by contractor: \$232.00; and,
- Unnecessary service call: \$171.15.

The landlord presented receipts for the claimed expenses.

The landlord testified that the sink needed replacement because it was cracked.

The tenant testified that the house needed extensive cleaning. In addition, the landlord's representatives testified that the carpets were dirty and needed to be cleaned. However, the photographs presented did not show extensive dirty conditions in the rental unit.

The invoice for the cleaning stated that the contractor charged for 37.5 hours of cleaning at \$30.00 per hour, plus \$90.00 for vacuum rental and \$20.00 for cleaning supplies.

The landlord testified that the service call fee is requested because the tenants made a service call request and the contractor that responded did not find a problem.

The landlord requested compensation for cleaning costs and repairs.

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.

Materials and Supplies

I am satisfied by the landlord's representatives' undisputed testimony that the rental unit was damaged and that it was not left in a reasonably clean condition. Based upon the landlord's representatives' undisputed testimony and the receipts provided, I find that landlord incurred materials costs of \$190.52 for the replacement sink and repair supplies. Furthermore, I find this is a reasonable cost of materials and supplies. Accordingly, I grant the landlord's request for reimbursement of \$190.52 for materials and supplies.

Cleaning Contractor

I find the expenses claimed for the cleaning contractor to be unreasonably high. The photographs provided by the landlord do not show the need for 37.5 hours of cleaning as claimed by the landlord's contractor. I find that a reasonable amount of cleaning services would be one day and a reasonable cleaning fee would be \$20.00 per hour. Accordingly, I grant the landlord \$180.00 (8 hours multiplied by \$20.00 per hour plus \$20.00 for cleaning supplies). I reject the cleaner's charge of \$90.00 for a vacuum rental because a vacuum is a standard tool which a professional cleaner should already have available. Accordingly, I grant the landlord \$180.00 for cleaning expenses.

Carpet Cleaning

I am satisfied by the landlord's representatives' undisputed testimony that the carpets needed to be cleaned and I find the claimed carpet cleaning fee of \$232.00 to be reasonable. Accordingly, I grant the landlord \$232.00 for carpet cleaning expenses.

Call out Fee

I find that the landlord has failed to provide sufficient evidence to establish that the tenants' are obligated under the tenancy agreement or the Act to pay for the landlord's

contractors call out fees for unsubstantiated service calls. Accordingly, I dismiss this request for compensation.

I find that the landlord holds a security deposit in the amount of \$750.00 and I find that the landlord's damages may be deducted from security deposit pursuant to 72(2)(b) of the *Act*.

The remaining balance of the security deposit, after deducting the landlord's damages herein, is \$147.48 as calculate below. I order that the landlords pay the sum of \$147.48 to the tenants.

<u>Item</u>	<u>Amount</u>
Security deposit	\$750.00
Materials and supplies	-\$190.52
Cleaning contractor	-\$180.00
Carpet cleaner	-\$232.00
Balance of deposit to tenants	\$147.48

Conclusion

I grant the tenants a monetary order in the amount of **\$147.48**. If the landlord fails to comply with this order, the tenants 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: June 21, 2019

Residential Tenancy Branch