



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, 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 rental unit pursuant to section 67;
- authorization to retain all or a portion of the tenants' pet damage 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.

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

Issue(s) to be Decided

Are the landlords entitled to a monetary order for damage to the rental unit pursuant to section 67?

Are the landlords entitled to retain all or a portion of the tenants' pet damage deposit in partial satisfaction of the monetary order requested pursuant to section 38?

Are the landlords entitled to recover the filing fee for this application pursuant to section 72?

Background and Evidence

The tenancy started on April 1, 2018. The monthly rent was \$2,350.00 The tenants paid a \$1,175.00 security deposit and a \$1,175.00 pet damage deposit. The parties completed a condition inspection report on move in.

The tenants moved out of the rental unit on April 30. The landlords testified that the tenants provided their forwarding address on May 11, 2019. The tenants testified that they provided their forwarding address two days after they moved out. The landlords returned the tenants' entire security deposit but the landlords are still holding the tenants' \$1,175.00 pet damage deposit.

The landlords testified that the parties performed a condition inspection on move out but they did not sign a condition inspection report because the parties disagreed with the inspection. The tenants testified that they made a verbal agreed with the landlords wherein the landlord would deduct the cost of replacing screens and blinds and send the balance of the deposit to the landlords. The landlords testified that did not agree to limit their claim to screens and blinds.

The landlords claimed \$493.04 for plumbing services. The landlords testified that the cleaning lady discovered that the bathtub would not drain. The landlords provided a receipt for plumbing services. The landlord testified that they had to pay a higher rate for emergency plumbing services. The tenants testified that the bathtub was draining properly when they left.

The landlords claimed \$175.00 for cleaning costs. The landlord presented a cleaning invoice for \$175.00 which described the services rendered as "- Clogged Bathtub; - Bathroom door broken; and - Loose faucet." The landlords testified that the rental unit was left in unclean condition and debris was left in the carport.

The tenants agreed that the carport was not cleaned but they testified that the rest of the rental unit was satisfactorily cleaned. In addition, the tenants testified that they did not finish cleaning the rental unit on move out because the they said the landlords told them not to worry about cleaning because they were going to have the rental nit professionally cleaned.

The landlords testified that tenants dog caused extensive damage to the baseboards, trim and deck. The landlords testified that house had been renovated about 15 years

ago so the wood finishings were about 15 years old. The landlord presented a quote for \$3,152.56 to replace the damage wood.

The tenants claimed that rental unit already had pet damage when they moved in. In addition, the tenants claimed the deck was “old and rotten.”

The landlords also claimed compensation for the replacement of trees which they claim the tenants’ dog killed by chewing them. The landlords provided a quote for \$403.20 for the purchase of replacement trees. The tenants testified that the trees were already when the moved in.

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.

Each of the landlords’ claims is addressed:

i. Plumbing

Section 32 of the Act states that landlords must maintain the rental in a state of repair that "...complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant." I find that plumbing repairs are the responsibility of the landlord pursuant to section 32. Furthermore, the landlords did not present any evidence to show that a delay in reporting the plumbing condition aggravated the damages. The landlords did claim that they requested emergency plumbing to resolve the situation but they presented no evidence to establish that this was a plumbing emergency. For the foregoing reasons, I find that the landlords have failed to provide sufficient evidence to establish that the tenants should be responsible for the plumbing expense and I dismiss this claim.

ii. Cleaning

Section 37(2)(a) of the *Act* stipulates that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. The landlords claim that the rental unit was left in an unclean condition but the condition inspection report was not completed on move out and the photographs provided by the landlords on move out did not show evidence of significant messiness. However, the parties both agreed that the carport was not left in a clean condition.

Based on the testimony of the parties, I find that the rental unit was not left in a reasonably clean condition and cleaning services were required. I award the landlords for \$175.00 cleaning services.

iii. Woodwork

Based upon the landlord's testimony and the photographs provided, I find that the tenants did damage the wood finishings in the rental unit. However, based upon the landlords' undisputed testimony, I find that the wood finishings were about 15 years old. The *Residential Tenancy Policy Guideline* No. 40 states that the useful life for wood products is 15 years. As such, the wood finishings have already exceeded its useful life. However, I find that wood finishings would have likely still been functional if the tenants had damaged so I will award the landlord 25% of the replacement costs, being \$788.12 (25% of \$3,152.46)

iv. Trees

Based upon the landlords' and the tenants' testimony and the photographs provided, I find that the tenants did damage trees on the property. However, I find that the photograph provided the landlord is not sufficient evidence to establish that these trees needed to be completely replaced. The photograph only shows one broken branch and some bark damage to one tree. As I am not satisfied that replacement of the trees are necessary, I award the landlord 50% of replacement cost being \$201.60 (50% of \$403.20)

v. Pet Damage Deposit

Based on the agreed the parties, I find that the landlords hold a pet damage deposit of \$1,175.00 which may be deducted from the damages owed by the tenants pursuant to section 72(2)(b) of the *Act*.

vi. Filing fee

Since the landlord has been successful this matter, I award the landlords \$100.00 for recovery of the filing fee which may also be deducted from the pet damage deposit pursuant to section 72(2)(b) of the *Act*.

Accordingly, I find that the landlords are entitled retain the entire pet damage deposit and they are entitled to a monetary order of \$89.72, calculated as follows.

<u>Item</u>	<u>Amount</u>
Cleaning	\$175.00
Wood finishing damages	\$788.12
Trees	\$201.60
Less security deposit	(\$-1,175.00)
Filing fee	\$100.00
Total	\$89.72

Conclusion

The landlords are authorized to retain the entire pet damage deposit.

I grant the landlords a monetary order in the amount of **\$89.72**. If the tenants fail 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: August 25, 2019

Residential Tenancy Branch