



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL MNDCL-S MNDL-S

Introduction

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

- monetary order for damage to the unit pursuant to section 67;
- authority to retain all or a portion of the tenant's deposits 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.

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

- an order for the return of all or a portion of the tenant's deposits pursuant to section 38;
- an order for compensation in the amount of double the deposits 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. The tenant testified that he received the landlord's Application for Dispute Resolution but he did not receive the Notice of Hearing.

The landlord testified that she sent her Application for Dispute Resolution to the tenant on May 18, 2019 by registered mail. The landlord provided the tracking number which is referenced on the first page of this decision.

The tenant testified that became aware of this hearing after he received an email from the Residential Tenancy Branch. Since both parties attended the hearing and submitted evidence for the hearing, I find that the parties were both sufficiently served pursuant to section 71(2)(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 tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38?

Is the landlord authorized to recover the filing fee for her application pursuant to section 72?

Is the tenant entitled to an order for the return of all or a portion of the tenant's security deposit pursuant to section 38?

Is the tenant entitled to an order for compensation in the amount of double the security deposit pursuant to section 38?

Is the tenant entitled to recover the filing fee for his application pursuant to section 72?

Background and Evidence

The tenancy started on May 1, 2013. The rent was initially \$800.00 and the tenant paid a \$400.00 security deposit. The tenant later paid an additional \$400.00 pet damage deposit after the tenant brought a dog into the rental unit.

The parties agreed that the tenancy would end on April 30, 2015. The last time the landlord saw the tenant was on April 10, 2019. The landlord testified that the tenant told her on May 14, 2019 that he had already left the rental unit and he was not returning.

The landlord completed a condition inspection report on moveout without the tenant on April 30, 2019. She testified that she completed the report without the tenant because he had already vacated the rental unit.

The landlord testified that the tenant did not leave the keys for the rental unit. The tenant testified that he left the keys inside the rental unit. The landlord testified that it cost \$150.00 to rekey the rental unit and Canada Post will charge \$50.00 for a new mail box key.

The landlord claimed reimbursement of utility fees of \$346.99 for the period of February 2019 to April 2019. The tenant acknowledged that he owed utility fees for February 2019. However, he testified that he was not in the rental unit in March 2019 or April 2019 so he did not incur any utility expenses. The landlord did not provide a utility statement.

The parties agreed that the tenant's dog made a large tear in the living room carpet. The landlord testified that the carpet was installed in 2010. The landlord testified that replacement flooring cost \$851.00 for supplies and \$150.00 for installation for a total of \$1,001.00. The tenant admitted that his dog did damage the carpet but he argued that the carpet was old already and that he should not be responsible for the entire cost of replacement flooring.

The landlord claimed that substantial cleaning was required on move out. The landlord claimed that she paid \$200.00 to have the windows cleaned. She testified that the window cleaners charged \$30.00 per hour for 6 hours of service and they charged \$20.00 for cleaning supplies. The landlord also testified that she spent \$100.00 having the bedroom carpet cleaned. The landlord did not provide any quotes or invoices for the cleaning services.

The tenant testified that he cleaned the rental unit before he left. He testified that he vacuumed the rental unit and he cleaned the inside of the windows. The tenant claims the rental unit was left in a clean condition.

The landlord testified that the window sill in the bedroom was damaged by the tenant's dog. The landlord provided a photograph of the damaged window sill. The landlord claimed \$50.00 for the repair of the window sill. The landlord did not provide any quotes or invoices for the window sill repair.

The tenant testified that his dog did not damage the window sill. Rather, he claimed the damaged to paint was caused by sunlight and cracks in the window sill.

The landlord testified that the refrigerator needed to be replaced because there was rust at the bottom doorframe. The refrigerator was purchased in 2010. The landlord did not try to repair the refrigerator. The landlord testified that she purchased a replacement refrigerator for \$838.00. The landlord did not provide a receipt.

The landlord claimed that the kitchen cabinets needed to be replaced because of water and mold damage. The landlord claims that the cabinets were damaged by water leaking from the tenant's portable dishwasher which he used without authorization in the rental unit. The landlord testified that the cabinets were installed in 2006. The landlord claims \$2,000.00 for replacement of the cabinets. The landlord did not provide any quotes or invoices for the cabinet replacement.

The tenant testified that he did not cause the water damage. He testified that the portable dishwasher connected to the sink faucet and there was no water leak relating to the portable dishwasher. The tenant testified that the water leak was caused by the leaking kitchen faucet which he reported to the landlord in July 2017. The tenant testified that the leak was not repaired by the landlord until 2018. The tenant argued that the landlord is responsible for water damage.

The landlord also claimed that the tenant damaged the hearth around the fireplace. The landlord testified that almost all of the stone from the hearth are loose and have been dislodged. The landlord claimed \$250.00 for the repair of the hearth. The landlord did not provide any quotes or invoices for the hearth repair. The tenant testified that the hearth came apart because it was improperly installed on carpet and the rental unit has a significant slope. The tenant claimed that he was not responsible for the hearth damage.

The landlord is claiming compensation for damages to the rental unit in the amount of \$5,186.87. The tenant is claiming recovery of double the deposits for not timely filing the application for dispute resolution. The Residential Tenancy Branch records show that the landlord's application was filed on May 15, 2019. Both parties are requesting reimbursement of their filing fees.

I will address each parties' applications separately.

A. Landlord's Application

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 landlord 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. Keys

Section 37(2)(b) of the *Act* states that a tenant must give the landlord the rental unit keys. Based on the testimony of both parties, I find that the tenant did not deliver the rental unit keys and the mailbox key the landlord. Although the tenant testified that he left the keys for the landlord, I find that the tenant did not deliver the keys to the landlord since the keys were not found be the landlord where the tenant said he left them. I find that the tenant breached his obligation to return the keys to the landlord. Furthermore, I find the fees claimed of \$150.00 to obtain new keys for the rental unit and \$50 for replacement mailbox keys to be reasonable. I grant the landlord's claim for \$200.00 for replacement of the keys.

ii. Utilities

Based on the mutual testimony of both parties, I find that the parties had an agreement that the tenant would reimburse the landlord for utility expenses. The landlord testified that utility charges of \$346.99 were related to the tenant's rental unit from February, 2019 to April 2019. The landlord testified that the electric usage to the rental unit was metered and she charged the tenant for the amount of kilowatt hours of electricity consumed by the rental unit at the billing rate on her utility statements. The tenant claimed that he was not responsible for utility charges in March and April since he was not at the rental unit at those times.

I find that the tenant is responsible for the utilities consumed by the rental unit until the tenancy ended on April 30, 2019. Accordingly, I grant the landlord's claim for \$346.99 for utility expenses.

iii. Carpet

The tenant has acknowledged damaging the carpet in the living room. However, the carpet was not. *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 carpet is 10 years. The landlord testified that the carpet was installed in 2010. Accordingly, I find that carpet was 9 years old. Based on the age of the carpet, I find that 90% of the useful life of the carpet had been used and the carpets had a remaining value of 10% of the value of new a carpet. Accordingly, I will award the landlord 10% of the replacement cost of the carpet, being \$100.10 (10% of \$1,001.00).

iv. Cleaning

I find that the landlord did not provide sufficient evidence to establish the rental unit needed cleaning after the tenant vacated the rental unit. The landlord did not provide sufficient photographs to show that the rental unit needed to be cleaned and the landlord did not provide any cleaning receipts invoices or quotes. The landlord has the burden of proving their claim. In the absence of sufficient evidence, I deny the tenant's claim for cleaning costs.

v. Window sill

I find that the landlord has failed to provide sufficient evidence that the window sill damage was caused by the tenant. Although the landlord claims that the tenant's dog damaged the window sill. I find the tenant's explanation that the window sill was damaged by exposure to be equally as likely. As such, I find the landlord has failed to satisfy her burden of proof and I dismiss the landlord's application for damage to the window sill.

vi. Refrigerator

I find that the landlord has failed to provide sufficient evidence to establish that the rust damage was caused by the tenant. The tenant testified that the rust damage was caused by water leaking on the refrigerator condenser and the tenant claims that he is not responsible for the waster leak. I find this explanation to be plausible. As such, I find the landlord has failed to satisfy her burden of proof and I dismiss the landlord's application for damage to the refrigerator.

vii. Cabinets

I find that the landlord has failed to provide sufficient evidence to establish that the water damage to the cabinets was caused by the tenant. The tenant testified that the faucet was leaking for a prolonged time before the landlord repaired the faucet. I find this to be plausible for the water damage. The landlord, on the other hand, did not present any evidence to establish that the leak was the tenant's fault other than to state that a nonidentified contractor told her so. I do not find that testimony to be persuasive. As such, I find the landlord has failed to satisfy her burden of proof and I dismiss the landlord's application for damage from the water leak.

viii. Hearth

I find that the landlord has failed to provide sufficient evidence that the hearth damage was caused by the tenant. The tenant testified that the hearth damage was caused because the hearth was improperly installed on carpet the rental unit was sloped. The landlord, on the other hand, did not present any evidence to establish that the tenant caused the hearth damage. As such, I find the landlord has failed to satisfy her burden of proof and I dismiss the landlord's application for damage to the hearth.

ix. Filing fee

Since the landlord has been successful in part in her application, I grant the landlord an order for reimbursement of her filing fee.

B. Tenant's Application

The tenant has requested an order for a return of the deposits, an award in the amount of double the deposits pursuant to section 38 and reimbursement of his filing fee.

i. Return of deposits

The tenant is entitled to the return of his deposits after deducting the landlord's damages set forth above pursuant to section 72.

ii. Double deposits

I find the landlord is not entitled to an award of double the deposits pursuant to section 38(6). The landlord was required to return the deposits or file an application to dispute the return of the security deposit within 15 days of the end of the tenancy. I find that the tenancy ended on April 30, 2019 and the landlord timely filed her application for dispute resolution within 15 days by filing her application on May 15, 2019. Accordingly, I dismiss the tenant's application for an award in the amount of double the deposits.

iii. Filing fee

Since the landlord has been successful in part in his application, I grant the landlord an order for reimbursement of his filing fee.

C. Net Award

I find that the landlord holds deposits in the amount of \$800.00 and I find that the landlord's damages may be deducted from the deposits pursuant to 72(2)(b) of the *Act*.

The remaining balance of the security deposit, after deducting the landlord's damages herein, is \$152.91 as calculate below. I order that the landlord pay the sum of \$152.91 to the tenant.

<u>Item</u>	<u>Amount</u>
Deposits	\$800.00
Keys	-\$200.00
Utilities	-\$346.99
Carpet replacement	-\$100.10
Total	\$152.91

Conclusion

I grant the tenant a monetary order in the amount of **\$152.91**. If the landlord fails to comply with this order, the tenant 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 28, 2019

Residential Tenancy Branch