



Dispute Resolution Services

Page: 1

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:

- a monetary order for unpaid utilities, 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
- 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; and,
- authorization to recover the filing fee for this application pursuant to section 72.

Articled student K.T. and lawyer H.S. attended on behalf of the tenants (hereinafter referred to as the "tenants"). Landlord M.Y. attended the hearing. Both parties had full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions. The tenants acknowledged receipt of the landlord'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

Is the landlord entitled to a monetary order for unpaid utilities, 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 in April 2016. The tenants paid a \$1,900.00 security deposit and a \$1,900.00 pet damage deposit which the landlord still holds. The tenants vacated the rental unit on April 4, 2019.

The parties both agree that the tenants owe \$576.75 for utility expenses.

The landlords testified that the tenants severely damaged the carpets and needed to be replaced entirely. The landlords provided photographs showing damage. The landlord testified that the carpet was installed seven years ago. The landlord produced an invoice for \$6,189.64 for carpet replacement. The landlord acknowledged \$1,000.00 which the tenants have already paid the landlords towards carpet repair. The tenants testified that the condition inspection report noted stains to the carpet throughout the house on move-in.

The landlord claimed \$3,622.50 for handyman repairs to the rental unit. The landlord produced an invoice dated May 20, 2019 which stated that it was based on a quote for April 17, 2019. The handyman invoice was generally for cleaning and painting. The condition inspection report on move-in noted paint damage at multiple locations in the rental unit. The condition inspection report on move-in also noted water damage to the cabinets.

The landlord presented a second claim for handyman repairs of \$5,248.64 based upon an invoice dated May 19, 2019. This invoice charged \$3,745.00 for labour and \$1,316.39 for materials for repair to balcony, painting and miscellaneous repairs. The balcony damage resulted from water draining onto the balcony. The landlord admitted that the tenants had advised him of this water damage issue during the tenancy.

The landlord claimed \$2,224.87 for the replacement of a refrigerator. The landlord provided a receipt for the replacement refrigerator. The landlord testified that the original refrigerator was acquired in May 2016. The landlord claimed that the refrigerator has damage to the bottom lining and it would cost more to repair it than to fix it. The tenants

admitted damaging the refrigerator but they argued that the damage was only cosmetic and the refrigerator did not need to be replaced.

The landlord claimed \$1,117.18 for replacement of the cooktop. The landlord claims that an internal mechanism failed in the cooktop and needed to be replaced. The landlord testified that the original cooktop was purchased in 2016.

The landlord also claimed \$41.90 for investigative services to locate the tenants.

The landlord claimed that the tenants agreed to repay the stated damages. The landlord produced an email and an email exchange between the parties as evidence of that agreement. The landlord sent an email on April 23, 2019 stating that the landlord has found additional damage at the rental unit. The tenants sent an email dated April 23, 2019 wherein the tenants stated "We came on Agreement with [name redacted] price so please don't add anything to that list." The landlord also provided an email dated April 17, 2019 wherein the tenants requested a discount on the damages as evidence of the agreement.

The tenants denied the existence of an agreement. They testified that there were negotiations but they eventually ceased negotiating with the landlord because the landlord kept adding more damage claims.

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 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.

The landlord argued that the parties had reached an agreement regarding the damages in this matter. I find that the landlord has not produced sufficient evidence to prove on the balance of probabilities the existence of such an agreement. I find that the email communications between the parties only evidences negotiations, not an agreement.

Although the tenant states that they had an agreement, the landlord attempted to add additional obligations which the tenants rejected. This communication exchange is not consistent with the meeting of the minds needed to form an agreement. Furthermore, the email wherein the tenants requested a discount is also evidence of negotiation, not an agreement.

I find that the landlord has not established the existence of a binding agreement to pay the landlord's claimed damages.

Each of the landlords' claims is addressed:

(i) *Utilities*

Since both parties agree that the tenants owe the landlord \$576.75 for utility expenses, I will grant the landlord's claim of \$576.75 for utilities.

(ii) *Carpet*

Based upon the photographs provided, the testimony of the landlord, and the acknowledgment of the tenants in email correspondences, I find that the carpet was damaged during the tenancy and needed to be replaced.

Residential Tenancy Policy Guideline No. 40 states that the useful life of carpet is 10 years. The landlord testified that the carpets were installed seven years ago. Based on the age of the carpet, I find that 70% of the useful life of the carpet had been used and the carpets had a remaining value of 30% of the value of new a carpet.

Accordingly, I find that the landlord is entitled to 30% of the replacement cost of the carpet, being \$1,856.89 (30% of \$6,189.64). In addition, the tenants are entitled to a credit of \$1,000.00 for the payments the creditors already made towards the carpet replacement. As such, I grant the landlord an award of \$856.89 for carpet damage.

(iii) *First handyman claim*

I find that the landlord has not provided sufficient evidence to establish his claim for \$3,622.50 for handyman repairs to the rental unit. The landlord provided several photographs indicating some paint damage to the walls, baseboards and cabinets. However, the photographs do not evidence the extent of the painting and repairs claimed on this invoice.

Furthermore, the condition inspection report on move-in noted pre-existing some paint damage to the walls, baseboards and cabinets. *Residential Tenancy Regulation* section 21 provides that “a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection.” As such, I find that the landlord has failed to prove that the claimed damages significantly exceed the pre-existing damage to the rental unit.

In addition, *Residential Tenancy Policy Guideline* No. 40 states that the useful life of interior paint is 4 years and the rental unit was last painted in 2016. Since 75% of the expected life of the interior paint has already been used and the paint had pre-existing blemishes, I find that the landlord has not provided sufficient evidence to prove the claims for painting and repairs set forth in the first handyman claim.

The landlord also claimed damages for cleaning the rental unit. The landlord provided multiple photographs that evidence some cleaning was required. However, I am not satisfied that the landlord has provided sufficient evidence to prove the actual monetary loss he has sustained regarding the cleaning of the rental unit. The invoice provided by the landlord did not itemize the cleaning portion of the repair cost. In the absence of satisfactory evidence of the repair costs, I will consider an award of nominal damages. *Residential Tenancy Policy Guideline* No. 16 defines nominal damages as:

“Nominal damages” are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

In this matter, an award of nominal damages is appropriate because the landlord has established that the rental unit needed some cleaning work but the landlord has failed to provide sufficient evidence of the amount of his monetary loss. In these circumstances, I award the landlord nominal damages of \$300.00 for cleaning the rental unit.

(iv) *Second handyman claim*

In his second handyman claim, the landlord seeks reimbursement for damage to the balcony relating to water damage. Section 32(3) of the *Act* states that the tenant “must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.” However, the landlord has not presented sufficient evidence to establish that the water damage was caused by the actions or the neglect of the tenant. The landlord has not produced sufficient evidence to establish that this water damage occurred as result of the negligent acts or omissions of the tenant. Furthermore, the landlord acknowledged that the tenants advised him of this water damage. As such, I find that the landlord has failed to provide sufficient evidence to prove that the tenants are responsible for the water damage.

The rest of the invoice documents miscellaneous repairs and patches to the rental unit without an itemization of the cost of each repair. In the absence of specific itemizations, I will award the landlord nominal damages for the repairs to the rental unit stated in the second handyman invoice which are not related to the water damage. In these circumstances, I award the landlord nominal damages of \$1,000.00 for this work.

(v) *Refrigerator*

I accept that the landlord has provided sufficient evidence showing that the refrigerator lining was damaged during the tenancy. However, I find that the landlord has not provided sufficient evidence to establish that the damage affected the useful life of the refrigerator unit. Therefore, I find that it is appropriate that I grant the landlord an amount representing a devaluation of the refrigerator. In this matter, I find this damage represents a 10% devaluation in the value of the refrigerator. Accordingly, I grant the landlord an award of \$222.49 (10% of \$2,224.87) for the devaluation of the refrigerator.

(vi) Cooktop

I find that the landlord has failed to provide sufficient evidence to establish that the cooktop was damaged by the actions or the neglect of the tenants. I am satisfied that the cooktop is not functioning, however the landlord has not provided sufficient evidence to establish that the tenants are responsible for breaking this appliance. As such, I dismiss the landlords claim for damage to the cooktop.

(vii) Investigative costs

I find that the landlord's investigative expenses to locate the tenants are are not recoverable claims in Residential Tenancy Branch hearings. Accordingly, I shall deny these claims.

(viii) Filing fee

Since the landlord has been partly successful this matter, I award the landlord \$100.00 for recovery of the filing fee.

(viii) Security deposit and pet damage deposit

I find that the landlord holds a security deposit of \$1,900.00 and a pet damage deposit of \$1,900.00. Furthermore, I find that the damages awarded to the landlord herein may be deducted from these deposits pursuant to section 72(2)(b) of the *Act*.

I find that the tenants are entitled to an award of \$1,600.76 as a partial return of their deposits as summarized below:

<u>Item</u>	<u>Amount</u>
Security deposit	\$1,900.00
Pet damage deposit	\$1,900.00
Less: utilities	-\$576.75
Less: first handyman claim	-\$300.00
Less: second handyman claim	-\$1,000.00

Less: refrigerator	-\$222.49
Less: filing fee	-\$100.00
Total	\$1,600.76

Conclusion

I find that the tenants are entitled to an award of \$1,600.76 as a partial return of their security deposit and their pet damage deposits. 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: September 4, 2019

Residential Tenancy Branch