



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNDL-S, FFT, MNSD

Introduction

This hearing dealt with the landlord's 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;
- 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.

This hearing also dealt with the tenant's application pursuant to the *Act* for:

- return to the security deposit pursuant to section 38 of the *Act*; 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. Each party acknowledged receipt of the other party'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 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?

Is the tenant entitled to a return to the security deposit pursuant to section 38 of the *Act*?

Is the tenant authorized to recover the filing fee for this application pursuant to section 72?

Background and Evidence

The tenants paid a \$1,100.00 security deposit. The tenancy agreement had a provision prohibiting pets.

The tenants vacated the rental unit on May 31, 2019. The parties did not perform a condition inspection report on move-out. The tenants provided the landlord with their forwarding addresses in writing on May 31, 2019.

The landlord provided a partial refund of the security deposit in the amount of \$400.00 on June 8, 2019.

The landlord claims that the rental unit was left in an unclean condition. The landlord provided a photograph showing the refrigerator was not completely cleaned. The landlord also provided photographs showing several small items left on the balcony. The landlord claims that there were dog hairs left throughout the rental unit that needed to be cleaned. The landlord presented an invoice for \$315.00 for professional cleaning services.

The landlord also claimed damage to wood trim. The landlord presented photographs showing this damage. The landlord testified that the rental unit was new in 2012.

The landlord also claimed a \$70.00 fee for the tenants having a pet in the rental unit without the landlord's permission.

The tenants testified that they left the rental unit in a reasonably clean condition and they were not aware of whether the wood trim damage was pre-existing.

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 landlord's claims is addressed:

i. Cleaning

The tenants were required to leave the rental unit reasonably clean at the end of the tenancy pursuant to section 37(2)(a) of the *Act*. In this matter, I find that the landlord provided some evidence that the rental unit was not left in a reasonably clean condition. The landlord provided photographs showing the rental unit was slightly unclean.

However, I find that the landlord has not provided sufficient evidence to establish that cleaning expenses of \$315.00 were necessitated. I find that, based on the photographs provided, that a reasonable amount of cleaning services would have been eight hours of cleaning at \$20.00 per hour. Accordingly, I grant the landlord an award in the amount of \$160.00 for cleaning.

ii. Damaged wood trim

I find that the landlord has provided sufficient evidence to establish that the wood trim was damaged by the tenants. However, the wood trim was not new. The landlord testified that the rental unit was built in 2012, making the wood trim approximately seven years old. *Residential Tenancy Policy Guideline* No. 40 states that the useful life of wood products is 10 years. Based on the age of the wood trim, I find that 70% of the useful life of the wood trim had been used and the wood trim had a remaining value of 30% of the value of new trim. Accordingly, I will award the landlord 30% of the repair cost of the wood trim, being \$94.50 (30% of \$315.00)

iii. Pet Fee

The landlord claimed a \$70.00 fee for having a pet in contravention of the tenancy agreement. A party is not entitled to an award pursuant to a tenancy agreement for a penalty for breaching the tenancy agreement as penalties are not recoverable under the *Act*. The landlord can only assert a claim for the damage the pets caused. However, I find that such a claim is duplicative of the landlord's claims for damage to the rental unit which was already been addressed herein. Accordingly, the landlord's claim for the pet fee is dismissed.

iv. Security Deposit

I find that the landlord holds a \$700.00 security deposit after making a partial return of the security deposit, in the amount \$400.00 prior to the hearing. I find that the amount of damages owed by the tenants to the landlord may be deducted from the security deposit pursuant to section 72(2)(b) of the *Act*.

v. Filing Fees

Since both parties have been partially successful in their applications, I dismiss both application for recovery of the filing fees pursuant to section 72(1).

Accordingly, I find that the tenants are entitled to an award of \$445.50 from the landlord as summarized below:

<u>Item</u>	<u>Amount</u>
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Security deposit paid	\$1,100.00
Less: Partial return of security deposit	-\$400.00
Less: Cleaning expense	-\$160.00
Less: Wood trim repair	-\$94.50
Amount owed to tenants	\$445.50

Conclusion

I grant the tenants a monetary order in the amount of **\$445.50**. 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 20, 2019

Residential Tenancy Branch