



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFT MNDCT MNSD (TENANT); FFL MNDL-S (LANDLORD)**

Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- An order for the landlord to return the security deposit pursuant to section 38;
- A monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* (“*Regulation*”) or tenancy agreement pursuant to sections 51 and 67 of the *Act*;

This hearing also dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* (“*Regulation*”) or tenancy agreement pursuant to section 67 of the *Act*;
- Authorization to retain all or a portion of the tenant’s security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*;
- Authorization to recover the filing fee for this application pursuant to section 72.

The landlord attended with his spouse NN (“the landlord”). The tenant attended with his spouse JJ (“the tenant”). The hearing process was explained, and an opportunity was given to ask questions about the hearing process. Each party acknowledged receipt of the other party's evidence; each party had the opportunity to call witnesses and present affirmed testimony and written evidence. No issues of service were raised. I find each party served the other in accordance with the *Act*.

I informed the parties of the provisions of section 38 of the *Act* which require that the security deposit is doubled if the landlord does not return the security deposit to the tenant within 15 days of the later of the end of the tenancy or the provision of the tenant's forwarding address in writing.

Issue(s) to be Decided

Is the tenant entitled to the following:

- An order for the landlord to return the security deposit pursuant to section 38;
- A monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to sections 51 and 67 of the *Act*;

Is the landlord entitled to the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- Authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*;
- Authorization to recover the filing fee for this application pursuant to section 72.

Background and Evidence

The parties agreed upon the following:

- The landlord and the tenant entered into a residential tenancy agreement which began February 1, 2014 and ended when the tenant vacated on April 31, 2019. A copy of the agreement was submitted as evidence.
- The landlord served the tenant with a Four Month Notice to End Tenancy ("Four Month Notice") on March 1, 2019.
- The Four Month Notice stated that the landlord was ending the tenancy to "perform renovations or repairs that are so extensive that the rental unit must be vacant" and that no permit was necessary.
- A copy of the Notice was submitted as evidence; the section, "The work I am planning to do is detailed in the table below", is not filled in.
- Rent was \$1,500.00 monthly payable on the first of the month.

- The tenant lived in the unit with his family, a dog and two ferrets.
- After the tenant vacated, the landlord replaced the flooring in the unit at a cost of \$5,000.00 for which the landlord provided a supporting invoice; the landlord did other repair work to the unit and painted it in its entirety; all work was completed within 4-6 weeks of the tenant vacating the unit.
- Shortly after the tenant vacated, the landlord advertised the unit on a website as being available for rent on June 1, 2019; the ad stated the unit was under renovation.
- The unit was rented July 1, 2019 to a new occupant for rent of \$2,000.00.
- No condition inspection was conducted on moving in or moving out.
- No photographs were submitted of the condition of the unit at the time of moving in.
- The tenant submitted photographs of the unit on moving out.
- The landlord did not submit a receipt establishing the age or cost of the flooring that was in the unit at the time the tenancy started.

With respect to the security deposit, the parties agreed as follows:

- The tenant provided a security deposit and pet deposit (together referred to as “the security deposit”) of \$1,025.00.
- The tenant provided a forwarding address to the landlord on April 31, 2019.
- Outside the 15-day period, the landlord returned a portion of the security deposit in the amount of \$560.00 leaving a balance owing of \$465.00; the landlord submitted a copy of the cheque dated May 20, 2019.
- The tenant did not provide authorization to the landlord to retain any of the security deposit.
- The landlord did not apply to retain the security deposit within 15 days as required under the Act.

In the tenant’s application, the tenant claimed as follows:

- Reimbursement of double the security deposit, and
- 12 months rent as compensation as the landlord carried out cosmetic repairs only, did not do extensive renovations or repairs, and it was not necessary for the tenant to vacate the unit.

Reimbursement of double the security deposit

The tenant claimed as follows:

ITEM	AMOUNT
Return of security deposit	\$1,025.00
Return of double the security deposit	\$1,025.00
Less partial payment received	(\$560.00)
Claim by tenant	\$1,490.00

The landlord acknowledged the landlord did not apply to retain the security deposit within 15 days of the end of the tenancy and receipt of the forwarding address. However, the landlord stated the landlord withheld part of the security deposit to partially compensate the landlord for the costs and time in cleaning the unit. The landlord's claim is addressed below.

Compensation claim under section 51

In the Four Month Notice, the parties agreed the landlord did not provide details of the renovations or repairs, except that they were "so extensive that the rental unit must be vacant".

The tenant stated he had been informed by the landlord that the landlord intended significant repairs to the unit including replacement of doors and windows. The tenant said the unit was old and in need of substantial repairs. The landlord denied providing such specifics of the planned renovations to the tenant. The tenant submitted no documentary evidence in support of this assertion.

The tenant claimed that, as acknowledged by the landlord, advertising the unit for new tenants shortly after the tenant left was compelling evidence that the landlord had ulterior motives in evicting the tenant, that is, to increase the rent. The landlord denied any such intention. They claimed they planned the renovations and scheduled the contractors to carry out the work immediately after the tenant left; they therefore anticipated being able to obtain new tenants as quickly as possible once the repairs were completed. The landlord pointed out that the ad indicated the unit was under renovation.

The tenant further acknowledged that the tenant did not apply to dispute the Four Month Notice and at the time of service, the tenant believed the landlord was evicting him in good faith. However, now the tenant believes the landlord did not issue the Notice in good faith and deliberately deceived the tenant about their repair/renovation plans. The tenant stated that if he had known the landlord intended to only replace the flooring, the

tenant would not have vacated the unit. The tenant claimed that it was not necessary for the tenant to vacate the unit if the only work planned was to replace the flooring. The tenant claimed no substantial repairs or renovations were carried out.

The landlord disagreed with the tenant. The landlord claimed the landlord issued the Notice in good faith and did not have an ulterior motive of evicting the tenant merely to increase the rent.

The landlord testified that, in the circumstances, the unit *had* to be vacated for the flooring to be replaced. The landlord stated that the flooring was saturated with animal urine; the flooring was not only be replaced, but the underlay and portions of the subfloor. Only after deep cleaning could the new flooring be laid.

In support of the landlord's assertion in this regard, the landlord submitted a copy of a signed letter from BC; the landlord explained BC was the person who lived in the unit below the tenant's unit. The letter is dated July 29, 2019 and stated, in part (as written):

As their pets like dog and ferret that were kept inside the property. This was concerning for me because it was very poorly maintained and created unpleasant living conditions through unpleasant odour. Since it was very poorly maintained the owner had to do large renovations to the unit. The rug was extensively damaged and their probably further issues because of the pets being inside all the time and the bad smell.

... With there eviction the owner brought in various contractors to renovate the unit on a daily basis. I saw some contractors come with heavy machinery, large paint guns, a removal team to clean the unit professionally and fix the damages. There were many contractors that were involved in fixing the property.... The unit was completely redone and has a new look to it. The property had to be emptied for this work to have taken place.

In addition, the landlord submitted a letter dated July 18, 2019 from a flooring company, which stated in part as follows (as written):

We attended the above residence to assess the condition of the flooring. The premises was dirty throughout and smelt of animal excrement. It was obvious that it had penetrated the carpet and underlay. We suggested that it would not be rentable in that condition. Even having them professional y cleaned would not have improved the condition. As agreed we replaced all flooring at considerable

cost to [landlord].

The tenant denied that the above letters accurately reflect the condition of the flooring when he vacated. The tenant acknowledged that he had a dog and two ferrets, but stated the flooring was not urine soaked as claimed. The tenant stated the flooring was in bad condition when he moved in; it was worn, dirty and damaged. The landlord acknowledged that the flooring was at least 8 years old but stated it was in good condition when the tenancy began.

The tenant also claimed that the landlord did not take steps to accomplish the stated purpose of the Notice, that is, perform extensive repairs and renovations, as required under section 51(2), within a reasonable period after the effective date of the notice or within 6 months.

The landlord claimed:

- Reimbursement for the cost of cleaning the unit after the tenant left in the amount of \$560.00
- Reimbursement for the cost of the replacing the carpet in the unit in the amount of \$5,000.00.

Landlord's claim for compensation for cleaning

The landlord acknowledged not returning the security deposit in full within 15 days as required under the Act and not applying for authorization to retain the security deposit until filing this application on August 28, 2019.

Nevertheless, the landlord claimed the landlord was entitled to the portion of the security deposit retained because of time spent cleaning of the unit.

No receipt or condition inspection on moving in or moving out was submitted.

The tenant acknowledged that the carpet needed cleaning. However, the tenant testified that the landlord told him he did not have to clean the carpet as the landlord intended to replace the flooring.

The tenant denied that the unit needed any other repairs or cleaning when he vacated which were outside normal wear and tear. He submitted photographs of the unit after vacating which indicated the unit appeared clean.

Landlord's claim for reimbursement for carpet replacement cost

The parties agreed the landlord incurred an expense of \$5,000.00 to replace the carpet in the unit after the tenant vacated. While the landlord acknowledged the original flooring was at least 8 years old, the tenant testified that the carpet was much older and in poor condition when the tenant moved in.

The landlord submitted no condition inspection reports, photographs of the carpet at the beginning of the tenancy, or invoice attesting to the age.

The tenant denied any responsibility to reimburse the landlord for the cost of replacing the carpet.

Analysis

I have reviewed all evidence and testimony before me meeting the requirements of the rules of procedure. However, I refer to only the relevant facts and issues in this decision.

Each of the issues will be referenced in turn.

Tenant's claim for return of the security deposit

The *Act* contains comprehensive provisions regarding security and pet damage deposits in section 38 and the *Residential Tenancy Policy Guideline 17 – Security Deposit and Set Off*.

The landlord has 15 days, from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing, to do one of the following:

- return the security deposit to the tenant,
- reach written agreement with the tenant to keep some or all of the security deposit, or
- make an application for dispute resolution claiming against the deposit.

Section 38 states as follows:

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the

later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing, the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

If that does not occur, the landlord must pay a monetary award equivalent **to double the value of the security deposit**. Section 38(6) states as follows:

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable

However, this provision does *not* apply if the landlord has obtained a tenant's written permission to keep all or a portion of the security deposit pursuant to section 38(4)(a).

I find the tenant provided the tenant's forwarding address in writing pursuant to section 38(1)(b) on April 31, 2019 as acknowledged by the landlord.

I also find the tenant had not provided consent to the landlord to keep any portion of the security deposit pursuant to section 38(4)(a)., as acknowledged by the tenant.

In situations such as this, section 38(1)(c) requires the landlord to either file a claim against the security deposit within 15 days of the receipt of the tenant's forwarding address or return the security deposit.

I find the landlord has not filed an application against the security deposit within 15 days of receipt of the tenant's forwarding address.

As the landlord has neither returned the security deposit in full nor filed a claim within 15 days, the doubling provisions apply. That is, section 38(6)(b) applies:

(6) If a landlord does not comply with subsection (1), [repaying the security deposit or filing an application within 15 days] the landlord

...

(b) **must pay the tenant double the amount of the security deposit,** ...

Based on the above, the testimony and evidence, and on a balance of probabilities, I find the landlord is in breach of the Act by failing to return the full security deposit or apply for dispute resolution as required.

I find the tenant is entitled to double the amount of the security deposit less the partial refund paid by the landlord calculated as follows:

ITEM	AMOUNT
Return of security deposit	\$1,025.00
Return of double the security deposit	\$1,025.00
Less partial payment received	(\$560.00)
Monetary Award to tenant	\$1,490.00

Tenant's claim for 12 months compensation

The Act requires a landlord to give four months' notice to end a tenancy under section 49(6) (demolition, renovation or repair, conversion).

Section 49(6) states as follows (in part, emphasis added):

(6) A landlord may end a tenancy in respect of a rental unit if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to do any of the following:

(a) demolish the rental unit;

*(b) **renovate or repair the rental unit in a manner that requires the rental unit to be vacant;***

(c) ...

If the landlord does not comply with sections 49(6), the tenant may apply under section 51(2) for compensation equivalent of 12 times the monthly rent payable under the tenancy agreement.

Section 51(2) stated as follows:

(2) Subject to subsection (3), the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant, in addition to the

amount payable under subsection (1), an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if

(a) steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or

(b) the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

I refer to *Policy Guideline 2B: Ending a Tenancy to Demolish, Renovate, or Convert a Rental Unit to a Permitted Use*, which states in part:

Section 50. A landlord cannot end a tenancy for renovations or repairs and then perform cosmetic repairs, or other minor repairs that could have been completed during the tenancy. This is because section 49 clearly establishes that a tenancy can only be ended for renovations or repairs that are:

- so extensive that the rental unit must be vacant in order for them to be carried out, and*
- the only manner to achieve that vacancy is by ending the tenancy.*

If the landlord performs cosmetic repairs, the landlord has not accomplished the purpose for ending the tenancy.

The landlord's Notice merely states that renovations or repairs are so extensive that the rental unit must be vacant. No other details of the planned work are provided.

I must first consider if, indeed, the landlord's renovations or repairs were so extensive that a vacant unit was necessary. I find that the landlord has met the burden of proof in this regard. In reaching this conclusion, I acknowledge that the tenant denied that animal urine significantly damaged the carpet.

However, I prefer the landlord's evidence to the tenant's evidence. I find the landlord's oral evidence forthright and believable to the effect that the carpet was extremely stained and saturated with animal urine which required the entire unit to be vacant, so the floor could be properly repaired, cleaned and renovated; the documentary evidence from another occupant of the building and from a flooring company add weight to the landlord's testimony.

I find the landlord has met the burden of proof on a balance of probabilities that the landlord extensively renovated or repaired the rental unit in a manner that required the rental unit to be vacant.

I find the landlord complied with section 51(2) as the landlord took steps within a reasonable period of time after the effective date of the notice, to accomplish the stated purpose for ending the tenancy. I accept the landlord's evidence that the planned repairs/renovations took place swiftly upon the unit being vacant, that is, within 4-6 weeks.

Finally, I find the Notice complied with section 52.

As a result, I find the tenant has failed to meet the burden of proof on a balance of probabilities with respect to this aspect of the tenant's claim

I therefore dismiss the tenant's claim under this heading without leave to reapply.

Landlord's claims

Cleaning Costs

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the *Act*, regulations or a tenancy agreement.

Section 7(1) of the *Act* provided that if a landlord or tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

To claim for damage or loss, the claiming party bears the burden of proof on a balance of probabilities; that is, something is more likely than not to be true. The claimant must establish four elements.

The claimant must prove the existence of the damage or loss. Secondly, the claiming party must that the damage or loss stemmed directly from a violation of the agreement or a contravention on the part of the other party.

Once those elements have been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally, the claimant has a duty to take reasonable steps to reduce, or mitigate, their loss.

In this case, the onus is on the landlord to prove the landlord is entitled a claim for a monetary award.

The landlord submitted no documentary evidence, such as a receipt from a cleaning company or condition inspection report, in support of the landlord's oral claim that the landlord is entitled to damages or compensation for cleaning in the amount of \$465.00. The tenant submitted oral evidence that the tenant left the unit clean supported by

photographs of the unit taken when the family vacated.

I therefore find the landlord has failed to establish on a balance of probabilities to meet the burden of proof that the landlord is entitled to this aspect of the landlord's claim which I dismiss without leave to reapply.

Reimbursement for cost of repair and replacement of flooring

In determining damages related to repair and replacement costs for building elements, my assessments are determined in accordance with *Residential Tenancy Policy Guideline 40. Useful Life of Building Elements*. This Guideline notes:

Useful life is the expected lifetime, or acceptable period of use, of an item under normal circumstances...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.

Based on the Guideline, the useful life of carpet is ten years.

The Guideline states that "landlords should provide evidence showing the age of the item at the time of replacement and the cost of the replacement item". The landlord testified the flooring was eight years old at the end of the tenancy. The tenant disagreed and testified that the flooring was already old and worn out when the tenancy started.

Without any supporting evidence of the age of the carpet, I find the landlord has failed to establish this aspect of the landlord's claim on a balance of probabilities; it is therefore dismissed without leave to reapply.

Filing fee

As the tenant is successful in part of the tenant's application, I order that the landlord reimburse the tenant for half the filing fee in the amount of \$50.00.

Summary

The tenant is entitled to a monetary award of **\$1,540.00** calculated as follows:

ITEM	AMOUNT
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Reimbursement of half filing fee	\$50.00
Return of security deposit	\$1,025.00
Return of double the security deposit	\$1,025.00
Less partial payment received	(\$560.00)
Monetary Award to tenant	\$1,540.00

Conclusion

The tenant is entitled to a monetary order in the amount of **\$1,540.00**. This order must be served on the landlord. If the landlord fails to comply with this order the tenant may file the order in the Provincial Court (Small Claims) 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: October 08, 2019

Residential Tenancy Branch