



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 award for damages and loss pursuant to section 67;
- Authorization to retain the security deposit for this tenancy pursuant to section 38; and
- Authorization to recover the filing fee from the tenants pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The co-tenant DS (the "tenant") primarily spoke for both co-tenants.

As both parties were present service was confirmed. The tenant confirmed that they had been served with the landlord's application and evidence and they had not submitted any evidence of their own. Based on the evidence I find that the tenant was served with the landlord's materials in accordance with sections 88 and 89 of the *Act*.

Residential Tenancy Policy Rule of Procedure 3.7 provides that evidence submitted by a party must be organized, clear and legible. I find that the landlord's evidence has been submitted in a haphazard and poorly organized manner. The landlord has uploaded numerous pieces of individual image files instead of consolidating them into a single file with numbered pages. The file names are inconsistent and the files have been uploaded with no line breaks, making it confounding for the reader. Files have been uploaded non-sequentially with no discernable order so that locating individual pieces of evidence is difficult and time consuming. While I have not specifically excluded any of the documentary evidence for their poor organization, I find that the

presentation detrimentally affects the strength of submissions and parties are advised to submit all evidence in a single pdf file with numbered pages containing only relevant materials.

Issue(s) to be Decided

Are the landlords entitled to a monetary award as claimed?

Are the landlords entitled to retain the security deposit for this tenancy?

Are the landlords entitled to recover the filing fee from the tenants?

Background and Evidence

This periodic tenancy originally began in January 2012 and ended June 30, 2019. A security deposit of \$747.50 and a pet damage deposit \$747.50 were paid at the start of the tenancy and is still held by the landlord.

The parties prepared and signed a condition inspection at the start and end of the tenancy. The tenant submits that while they signed that they agree with the assessment of the condition of the rental unit at the end of the tenancy they did not authorize the landlord to retain any portion of the deposits. A copy of the condition inspection report was submitted into evidence.

The tenant provided their forwarding address to the landlord on July 13, 2019. The landlord applied for authorization to retain the deposits on July 27, 2019.

The landlord submits that the rental unit required considerable repairs, cleaning and work to restore it to the pre-tenancy condition. The landlord claims a monetary award in the amount of \$2,796.98 for the following items:

ITEM	AMOUNT
Wall Damage Parts and Labour	\$121.32
Sliding Door Repair	\$38.67
Kitchen Cabinets	\$1,215.56
Dishwasher	\$25.00
Painting	\$399.17
Plug Plates	\$43.93
Fireplace Trim	\$25.00
Carpet Cleaning	\$175.35

Deck Cleaning	\$100.00
Hardwood Floors Repair	\$108.57
FOB replacement	\$50.00
Cleaning	\$494.41
TOTAL	\$2,796.98

The landlord submitted some photographs and receipts in support of their claim.

The tenant testified that they agree with deductions for the plug plates in the amount of \$43.93, the fireplace trim for \$25.00, carpet cleaning for \$175.35 and FOB replacement of \$50.00. The tenant said they believe some cleaning was required but dispute that amount claimed by the landlord. The tenant disputed the other items claimed by the landlord in their entirety.

Analysis

Section 38 of the *Act* requires the landlord to either return all of a tenant's security and pet damage deposit or file for dispute resolution for authorization to retain the deposits within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing.

In the present case the parties gave evidence that the tenants provided a forwarding address on July 13, 2019 and the landlord filed their application on July 27, 2019. As such, I find that the landlords filed their application within the timeline provided under the *Act*.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

As the tenant has given evidence that they agree with some of the items claimed by the landlord I find the landlord is entitled to \$294.28, the portions of their application agreed upon by the tenants.

The repairs for the sliding door is noted in the condition inspection report where a broken handle is recorded. The dishwasher is noted as having trouble draining in the report. I accept the evidence by way of the condition inspection report that these issues were not present prior to the tenancy. I find that the landlord has shown on a balance that these issues arose as a result of the tenancy and are attributable to the tenants. I find that the landlord has provided sufficient evidence of the cost for repairs and accept that the cost incurred by the landlords for these items was \$63.67. As such, I find it appropriate to issue a monetary award in that amount in the landlords' favour.

I accept the evidence that the floor had some pre-existing scratches but there were additional damage noted in the move out inspection. I accept the landlord's submission that these additional scratches and damage were caused by the tenant and that the cost of remediation for those specific scratches resulting from the tenancy is \$108.57. I issue a monetary award in that amount accordingly.

I find the landlord's claim for cleaning of the rental unit and the exterior deck to be reasonable and supported in the evidence. I find the costs claimed by the landlord to be reasonable under the circumstances. As such I issue a monetary award in the amount of \$594.41 for the cleaning completed by the landlord.

I find there is insufficient evidence in support of the other items claimed by the landlord. The condition inspection report notes some stains on the wall and scratches but I find the damage noted on the report are cosmetic and do not require the level of repairs and remediation claimed by the landlord. Similarly, I find that there is no indication that the kitchen cabinetry requires replacement as the damage noted on the reports pertain simply to scratches and being dirty. The move-in condition inspection report notes pre-existing dents and scratches to the cabinetry. I find the tenants are solely responsible for restoring the rental unit to its pre-tenancy condition and not for the costs of purchasing and installing new fixtures. As such, I dismiss these items claimed by the landlord.

Residential Tenancy Policy Guideline 40 provides the expected useful life of building elements and provides that for the painting on interior walls the expected useful life is 4 years. Accordingly, I find that in this tenancy which spanned a period of 7 years, it is reasonably expected that the landlord would have been required to repaint the walls as their expected useful life had expired. As such, I find that the cost of painting is not a loss incurred by the landlord due to the tenants but simply the cost of maintaining property over a period of time. Therefore, I dismiss this portion of the landlord's application.

As the landlords were successful in their application they may recover the filing fee.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlords to retain \$1,160.93 from the tenants' security and pet damage deposit in full satisfaction of the monetary award issued in the landlord's favour.

The landlord is entitled to retain the amount of \$1,160.93 from the deposits for this tenancy. The balance of \$334.07 is to be returned to the tenants.

ITEM	AMOUNT
Sliding Door Repair	\$38.67
Dishwasher	\$25.00
Plug Plates	\$43.93
Fireplace Trim	\$25.00
Carpet Cleaning	\$175.35
Deck Cleaning	\$100.00
Hardwood Floors Repair	\$108.57
FOB replacement	\$50.00
Cleaning	\$494.41
Filing Fee	\$100.00
Less Security & Pet Deposit	-\$1,495.00
TOTAL	-\$334.07

Conclusion

The landlords are authorized to retain \$1,160.93 of the \$1,495.00 security and pet damage deposit for this tenancy. The deposit is reduced by that amount to \$334.07.

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 18, 2019

Residential Tenancy Branch