



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:

- Authorization to recover the filing fees from the tenant pursuant to section 72;
- A monetary order for damages or compensation and authorization to retain a security deposit pursuant to sections 38 and 67; and
- A monetary order for damages to the rental unit and authorization to retain a security deposit pursuant to sections 67 and 38.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 1:42 P.M. to enable the tenant to call into this teleconference hearing scheduled for 1:30 P.M. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord testified that the tenant was served the Notice of Hearing package via registered mail on August 17, 2019. The landlord provided a tracking number, recorded on the cover page of this decision. The package was sent to the forwarding address provided by the tenant to the landlord's property manager by email on July 20, 2019.

I find that the tenant has been deemed served with the Notice of Hearing package five days later, on August 22, 2019 in accordance with sections 89 and 90 of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to compensation, as sought?
Can the landlord retain the security deposit?
Is the landlord authorized to recover the filing fee?

Background and Evidence

The landlord provided the following **undisputed** testimony. The rental unit is a condominium purchased brand new by the landlord who moved into it in July of 2015. She lived there until October 2017 and it remained vacant until the tenant moved into it on June 15, 2018.

The tenancy agreement was provided as evidence. This one year fixed term tenancy began on June 15, 2018 with rent set at \$1,950.00 per month. A security deposit and pet damage deposit equalling one month's rent of \$1,950.00 was collected by the landlord which is still being held. A condition inspection report was conducted with the tenant and it was provided as evidence by the landlord.

ON March 21, 2019, property manager, MR took over management of the rental unit. The tenant gave the property manager notice that he would be vacating the rental unit at the end of June, 2019. On June 21st, the property manager spoke to the tenant to arrange a date for a move-out condition inspection report. She sent an email to him on June 26th seeking a date but it was ignored. The tenant responded on June 27th indicating he had already moved out, but he would send an agent to do it and provided her phone number.

The condition inspection report was scheduled for June 28, 2019 with the agent of the tenant, the landlord and the property manager. On the condition inspection report provided as evidence, there are multiple notations of damage done. The tenant's agent wouldn't sign the condition inspection report.

The landlord gave the following undisputed testimony regarding the damage to the rental unit. Each allegation of damage was corroborated by photographs.

1. Above the gas range, there appeared to have been a fire. The edge banding on the laminate cabinets has shrunk and warped. The cabinet doors could not be repaired because the damage is too extensive and must be replaced. The landlord obtained an estimate for replacing 2 doors at a cost of \$504.00.
2. The tenant moved out of the rental unit, located in a strata titled apartment building without booking the move-out 7 days in advance of the move out. Another properly booked move out was occurring while this tenant conducted his

move out. The strata has levied a fine against the owner of the unit, the landlord, in the amount of \$600.00. The letter dated July 5, 2019 from the strata corporation was provided as evidence.

3. The property manager hired a professional cleaner to clean the rental unit that was left in a “disgusting” condition after the tenant vacated it. There was dog hair stuck to the walls and the landlord witnessed the cleaner on his hands and knees scrubbing the floors which remained “filthy” after 3 attempts. The cleaner charged the landlord \$280.00 to clean the apartment.
4. The floors were in perfect condition when the tenant moved in. When he moved out, there were gouges in the floor which could not be easily repaired. The landlord testified that the plank floors are impossible to match and she will have to replace them. She is seeking \$600.00 from the tenant for the labour to repair the floors as best as possible and provided an estimate from a flooring company into evidence.
5. The walls were left with deep gouges and scratches requiring drywall repair, mudding, sanding and painting. Further, the tenant had taken a knife to the walls to score them to make it easier to hang artwork. The landlord had the repairs done and was charged \$175.00 for the work. The finisher’s invoice was submitted.
6. The tenant’s dog’s nose and mouth left slobber marks on the blinds and there are greasy prints on them as well. The blinds cannot be removed to be cleaned as her current tenants will have no privacy during the cleaning, so a mobile blind cleaner will do the work for \$175.00. An estimate from the mobile blind cleaner was provided as evidence.

The landlord provided multiple photographs of the damaged items in the rental unit as evidence. The landlord also provided several photographs of the rental unit before the tenant moved in, to show the state of decoration and repair.

Analysis

Section 7 of the *Act* states: If a landlord or tenant does not comply with this *Act*, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

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.

Rule 6.6 of the Residential Tenancy Rules of Procedure indicate the onus to prove their case is on the person making the claim. The standard of proof is on a balance of

probabilities. If the applicant is successful in proving it is more likely than not the facts occurred as claimed, the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; and
4. Steps taken, if any, to mitigate the damage or loss.

The tenant did not attend the hearing to dispute any of the landlord's testimony or refute any of the landlord's documentary evidence. Based on the landlord's undisputed evidence, I find the landlord has proven on a balance of probabilities that she suffered a damage or loss from the tenancy with this tenant. Each of the items in the landlord's monetary order worksheet was corroborated with either invoices or estimates to show the value of the damage or loss. Photographs depicting the rental unit before the tenant moved in are markedly different from the photos of the rental unit afterwards. I do not find the landlord attempted to exaggerate the extent of the damages to the rental unit or claim for any items that were not in need of repair or replacement. I award the landlord the following amounts:

Item	Amount
Replacement of cupboard doors	\$504.00
Cleaning services	\$280.00
Flooring – labour only	\$600.00
Drywall repair and painting	\$175.00
Blind cleaning	\$175.00
Total	\$1,734.00

The landlord has also proven that the tenant's failure to properly book a move out and was charged a fine of \$600.00 for the infraction caused by the tenant. I also award the landlord an additional \$600.00 to compensate her for the fine.

The landlord is entitled to a monetary order in the amount of **\$2,334.00**. The landlord continues to hold the tenant's security and pet damage deposits totaling **\$1,950.00**. In accordance with the offsetting provisions of section 72 of the *Act*, I authorize the landlord to retain the sum of \$1,950.00 in partial satisfaction of the monetary order.

Conclusion

I issue a monetary order in the landlord's favour in the amount of **\$384.00**.

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: November 28, 2019

Residential Tenancy Branch