



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD FFT (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;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

This hearing also dealt with an application by the landlord under 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 recover the filing fee for this pursuant to section 72.

The landlords, spouses, attended ("the landlord"). AM attended as advocate for the tenant who did not attend ("the tenant"). Both parties acknowledged receipt of the other party's materials. I find each party was served in accordance with the *Act*.

The hearing process was explained, and parties were given an opportunity to ask questions. Each party had the opportunity to call witnesses and present affirmed testimony and written evidence.

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 double the security deposit pursuant to section 38;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

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 recover the filing fee for this pursuant to section 72.

Background and Evidence

The parties agreed that the tenancy began on February 1, 2019 and ended on July 31, 2019 although the tenant vacated earlier. Monthly rent of \$2,300.00 was payable on the first of the month. At the beginning of the tenancy, the tenant provided a security deposit of \$1,150.00 which the landlord holds. The landlord submitted a copy of the tenancy agreement.

The landlord testified as follows:

- Many times during the tenancy, the tenant smashed "hundreds" of glass wine bottles inside the unit and on the unit's patio thereby causing damage for which the landlord seeks compensation; the tenant's actions led to the police being called to the unit on more than one occasion and neighbours making complaints to the landlord.
- During early July 2019, the last month of the tenancy, the tenant's parents flew in from their home in another country to have a meeting with the landlord to discuss compensation for the damage to the unit caused by their daughter, the tenant.
- The tenant (and her parents) agreed to compensate the landlord for any damages and agreed the landlord could apply the security deposit to the

damages; the parties expected that the damages would far exceed the security deposit.

- During the meeting, the parties also agreed that the landlord would submit receipts to the tenant as the repairs were carried out and the tenant would reimburse the landlord.
- The tenant “apologized” to the landlord and expressed regret for her actions which included smashing glass bottles on the floors in the unit.
- At that time, it was agreed that the condition inspection would not be conducted at the end of the tenancy; the parties believed that it was necessary to have all the receipts for repairs in hand before the report could be completed and signed.
- The tenant moved out during July 2019 although the landlord was not certain of the date; the tenant provided her forwarding address to the landlord before the end of July 2019.
- No condition inspection report on moving out was completed.
- The landlord repaired the kitchen floor of the unit at a cost of \$1,996.06 as the floor had been damaged by the tenant; the landlord submitted a receipt to the tenant and the tenant reimbursed the landlord in full.
- The landlord repaired the walls and painting on July 21, 2019 at a cost of \$1,263.00 for which the landlord has not been reimbursed.
- Unexpectedly, the landlord received a letter from a lawyer dated July 15, 2019 (after the meeting with the tenant and her parents) demanding the return of the security deposit.
- The landlord did not respond to the letter, explaining they had “a good relationship with the tenant” who had “admitted that she was responsible for her actions and was remorseful” and would pay them for their expenses; accordingly, the landlord believed that the tenant would reimburse the landlord for the expenses as she had previously done and continued to send receipts directly to the tenant for reimbursement.
- The landlord sent correspondence to the tenant on July 24, 2019, a copy of which was submitted, saying the landlord had the cleaning and hydro bills and asking if the tenant wanted the landlord to send copies to the tenant or to the lawyer; the tenant replied that either way was fine.
- The landlord received another letter dated July 24, 2019 from the law firm on behalf of the tenant repeating the demand for the return of the security deposit.
- The landlord expressed surprise and bewilderment at the involvement of a lawyer for the tenant as the landlord believed all issues had been settled except for the remaining amount of damages..
- The tenant brought an application for the return of the security deposit on August

8, 2019.

- The landlord brought an application on October 24, 2019 for damages.

The landlord claimed reimbursement of damages as follows:

Item #	Item	Amount
1.	Repair Walls and painting	\$1,263.00
2.	Hardwood floors	\$1,000.00
3.	Concrete patio	\$864.50
4.	Dumping fee	\$50.00
5.	Fridge door	\$361.92
6.	Cleaning	\$150.00
7.	Gardening fee	\$100.00
	Total Claimed by Landlord	\$3,789.42

The landlord testified that the unit was in excellent condition at the beginning of the tenancy. The landlord testified that the unit had been professionally painted prior to the tenant moving in and had been renovated “down to the studs” in mid-2018. All areas damaged by the tenant were like-new when she moved in. The only exceptions were the hardwood floor and the concrete patio which were of unknown age but in excellent condition.

The landlord submitted the following: supporting photographs, receipts for all claimed expenses (except for one receipt discussed below), and correspondence between the parties discussing the damage and repairs.

The landlord’s comments are summarized as follows for each item claimed:

Walls and Painting

The landlord testified the tenant used adhesive products on the walls “all over” the unit. When removed, the drywall was peeled away or damaged. This necessitated repairs to the drywall and repainting in the amount of \$1,263.00.

Hardwood floors

The landlord testified the tenant smashed glass bottles on the hardwood floors causing

damage particularly on that part of the flooring adjacent to the kitchen. While of uncertain age, the landlord testified that the flooring was in excellent condition when the tenant moved in. The landlord received an estimate of \$1,000.00 to repair the flooring. The landlord testified to their intentions to have the floor repaired.

Concrete patio

The landlord testified the tenant smashed glass bottles on the concrete patio causing damage including pitting to the surface. While of an indeterminate age as it was “poured a long time ago”, the landlord testified the patio was in excellent, undamaged condition at the beginning of the tenancy. The landlord received an estimate of \$864.50 to repair the damage. The landlord testified to their intentions to have the patio floor repaired.

Dumping fee

The landlord testified the tenant left items and debris requiring transport to the dump. The landlord did this themselves and requested reimbursement of \$50.00 to cover the use of their vehicle and tipping fees. No third party receipt was submitted.

Fridge door

The landlord testified that the tenant damaged the fridge door necessitating its replacement at a cost of \$361.92; the item is on order.

Cleaning

The landlord testified that a cleaning fee of \$150.00 was incurred.

Gardening fee

The tenant agreed to pay \$100.00 a month as a gardening fee and did so, except for the last month of the tenancy. The landlord claimed reimbursement of \$100.00.

Tenant's position

As the tenant appeared by her advocate, the advocate did not provide any testimony contradicting the landlord's evidence. The tenant's advocate had “no comments and no objection” with respect to any of the damages claimed or the testimony and evidence

provided.

The tenant submitted no testimony or documentary evidence contradicting the landlord's testimony except to say that the tenant did not authorize the landlord to retain the security deposit as testified by the landlord.

The tenant requested return of double the security deposit because of the landlord's failure to complete the condition inspection on moving out and failure to return the security deposit within 15 days.

Analysis

While I have turned my mind to the documentary evidence and the testimony of the landlord, not all details of the parties' submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

Tenant's Claim

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing.

If that does not occur, the landlord must pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit.

However, this provision does not apply if the landlord has obtained the tenant's written permission to keep all or a portion of the security deposit pursuant to section 38(4)(a). In this case, I find the landlord has met the burden of proof on a balance of probabilities that the tenant provided written authorization to the landlord to retain the security deposit and apply it to the cost of repairs.

In reaching this decision, I found the landlord to be believable and convincing. I found their testimony plausible as it was supported by documentary evidence, including photographs, receipts and correspondence.

On the other hand, the tenant herself did not attend the hearing. I prefer the landlord's

evidence as the tenant was not called personally to give evidence. I give more weight to the landlord's evidence as they were present at the final meeting with the tenant and her parents at which it was discussed how to proceed to repair the damage caused by the tenant.

I accept the landlord's evidence that the parties met during July 2019; I accept that the tenant's parents were there, the participants discussed the damage to the unit caused by the tenant, the tenant agreed that the landlord would retain the security deposit and submit receipts as the repairs were carried out which the tenant would pay. I find the correspondence between the parties supports this interpretation.

The advocate did not disagree with any of the landlord's evidence except to deny that the tenant agreed that the security deposit could be retained by the landlord. I find this denial to be inconsistent with the evidence and to defy a common-sense interpretation of what took place between the parties.

While initially the authorization to retain the security deposit was verbal, I find that this authorization was implied in subsequent written communication between the parties before July 24, 2019. The parties wrote to each other in a way that convinced me the tenant had agreed that the landlord could retain the security deposit.

I therefore find that the tenant provided written authorization to the landlord to retain the security deposit.

The tenant also argues that the landlord, by failing to participate in a scheduled inspection, extinguished the right to retain the security deposit.

I find the landlord has cast significant doubt on the tenant's claim that she was willing to participate in an inspection and the failure of the inspection to take place was caused by the landlord. I accept the landlord's evidence for the reasons set out that there was no scheduled inspection and that the parties agreed to conduct an inspection of the unit when all the repair work was done at some undetermined time in the future. I therefore reject the tenant's claim that the landlord's right to the return of the security deposit was extinguished under section 38.

As I have concluded that the tenant authorized the landlord to retain the security deposit and the tenant's claim is rejected that the landlord's right to the security deposit was extinguished, I dismiss the tenant's claim for the return of the security deposit without

leave to reapply.

Landlord's claims

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 I have considered all the landlord's evidence and testimony. I find the landlord has met the burden of proof on a balance of probabilities that the landlord has incurred all of the damages claimed. I find the tenant is responsible for the damage claimed by the landlord and I find the tenant acknowledged responsibility. I find the landlord has established the monetary value of each of the items of damage claimed. I find the landlord has taken all reasonable steps to minimize losses.

Accordingly, I allow all the landlord's claims including the request for reimbursement of the filing fee as follows:

ITEM #	ITEM	AMOUNT
1.	Repair Walls and painting	\$1,263.00
2.	Hardwood floors	\$1,000.00
3.	Concrete patio	\$864.50

4.	Dumping fee	\$50.00
5.	Fridge door	\$361.92
6.	Cleaning	\$150.00
7.	Gardening fee	\$100.00
8.	Filing fee	\$100.00
	Total Monetary Award	\$3,889.42

I allow the landlord to apply the security deposit to the monetary award as follows:

ITEM	AMOUNT
Award	\$3,889.42
(Less security deposit)	(\$1,150.00)
Monetary Order Granted to Landlord	\$2,739.42

I grant the landlord a monetary order in the amount of \$2,739.42.

Conclusion

I grant the landlord a monetary order in the amount of \$2,739.42. This order must be served on the tenant. If the tenant fails to comply with this order the landlord 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: December 2, 2019

Residential Tenancy Branch