



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes FFL MNDL-S MNRL-S

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order 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.

Both parties attended the hearing and had full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions.

The landlord filed an application for to retain the deposits and obtain an order for monetary compensation on August 13, 2019. The landlords testified that an error was made on the application and they were advised to file another application by the Residential Tenancy Branch. The landlord filed a second application on September 24, 2019. The landlords testified that they did not serve their first application for dispute resolution but they testified that they served their second application. The tenant acknowledged service of the second application. Both applications were scheduled for hearing herein.

I find the parties were served with the second application in accordance with the *Act*. The landlord's first application for dispute resolution is dismissed pursuant to rules of procedure 3.1 and 3.12 for lack of service.

### Issue(s) to be Decided

Are the landlords entitled to a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67?

Are the landlords entitled to 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?

Are the landlords entitled to recover the filing fee for this application pursuant to section 72?

### Background and Evidence

The landlord testified that the monthly rent was \$1,000.00 and the tenant paid a \$500.00 security deposit and a \$250.00 pet damage deposit.

The landlord testified that the tenant moved out on July 31, 2019. The tenant testified that she provided her forwarding address on June 30, 2019. The landlord testified that the parties performed a condition inspection report on August 1, 2019.

The landlord testified that the tenant caused extensive damage to the rental unit. The landlord testified that everything in the rental unit was new on 2014

The landlord claimed that the carpet was damaged with stains, ammonia and pet stains in multiple places. The condition inspection report indicated damage to the carpets. The landlord provided photographs showing discolorations on carpet. The landlord provided an estimate of \$1,744.82 to replace the carpets.

The landlord testified that the tenant damaged the surface of the oven. The landlord provided photographs showing scratches to the surface of the oven. The landlord presented a listing showing a replacement oven costs \$1,113.28.

The landlord claimed \$252.00 for painting. The landlord provided photographs showing marks on the walls. The landlord provided an estimate of \$252.00 for painting.

The landlord claimed the rental unit was not left in a clean condition. The landlord provided photographs of the rental unit which showed some minimal unclean areas. The landlord claimed \$200.00 for cleaning. The landlord did not provide a receipt or estimate for the cleaning costs.

The landlord claimed \$820.00 for replacement of a granite countertop. The landlord did not provide photographs of the damage or repair estimates.

The landlord claimed \$320.00 for replacement of damaged floor tiles. The landlord provided photographs of a cracked tile. The landlord did not provide estimates for the repair of the tiles.

The tenant testified that the rental unit was left in a reasonable condition and any damage was reasonable wear and tear.

### 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 landlords' claims is addressed:

#### *Carpet*

I find that the landlord has failed to provide sufficient evidence to establish that the stains to the carpet could not have been mitigated by having the carpets cleaned. Section 7(2) of the *Act* requires the landlord to have done what is reasonable to mitigate or minimize the amount of the loss or damage claimed. Even if the tenant damaged the carpet, the landlords still mitigate their loss. Residential Tenancy Branch Policy Guideline No. 5 states:

Where the landlord or tenant breaches a term of the tenancy agreement or the Residential Tenancy Act ..., the party claiming damages has a legal obligation to do whatever is reasonable to minimize the damage or loss. This duty is commonly known in the law as the duty to mitigate. This means that the victim of the breach must take reasonable steps to keep the loss as low as reasonably possible. The applicant will not be entitled to recover compensation for loss that could reasonably have been avoided.

In this matter, the landlords have not produced adequate evidence to establish on the balance of probabilities that they adequately mitigated their losses by trying to clean the discolorations on the carpets. As such, I find the landlords' claim for the cost of the replacement of the carpets to be excessive. I find that a reasonable amount of compensation for the cleaning of the carpets to be \$200.00 and I award the landlord a monetary order for this amount.

#### *Oven*

The landlords have not provided sufficient evidence the damage to the oven was the fault of the tenant. Section 32(1) of the *Act* provides that the tenant "...must repair damage to the rental unit or common areas caused by the actions or neglect of the tenant." However, in this matter there is no evidence that the damage was caused by the tenant's actions or neglect rather than normal wear and tear. As such, I do not find that the landlords have established their claim against the tenant for regarding the oven.

### *Painting*

The photographs show damage to walls in multiple locations and I find the landlord's painting estimate to be reasonable. Accordingly, I grant the landlords' application for compensation in the amount of \$252.00 for painting costs.

### *Cleaning*

Section 37(2)(a) of the *Act* stipulates that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. I find that the photographs provided by the landlord only show the need for minimal cleaning services. As such, I find that a reasonable amount of compensation for cleaning to be \$100.00

### *Granite countertop*

I find that the landlord has not provided sufficient evidence that the granite countertop was damaged or the amount the repairs would cost. In the absence of sufficient evidence, I dismiss the landlord's claim for compensation related to the counter.

### *Tiles*

The landlord has provided photographs showing damage to the floor tiles but the landlord did not provide an estimate or quote to prove the amount of damages. I am satisfied that the floor tiles have been damaged but I am not satisfied that the landlords have provided sufficient evidence to prove the actual monetary loss they have sustained. The landlord did not provide estimates for this repair or testimony detailing the cost of the repairs. In the absence of satisfactory evidence of the repair costs, I will consider an award of nominal damages. *Residential Tenancy Policy Guideline* No. 16 defines nominal damages as:

"Nominal damages" are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

In this matter, an award of nominal damages is appropriate because the landlord has established that there is damage to the tiles but the landlord has failed to provide sufficient evidence of the amount of his monetary loss. In these circumstances, I award the landlord nominal damages of \$150.00 to repair the crack in the tiles.

### *Deposits*

Section 38 of the *Act* requires the landlords to return the deposits or file an application for dispute within 15 days of the tenants vacating the rental unit and providing the forwarding address. If the landlord fail to comply with this provision, the landlords are liable to pay the tenant an amount equal to double the

deposit. The landlords filed their first application within the 15 day deadline but their second application was filed after the expiration of the 15 day deadline.

I find that the second application was essentially an attempt to amend the first application which the landlords testified was done on the instruction of Residential Tenancy Branch staff. In these circumstances, I find this to be an exceptional circumstance and, as such, I exercise my discretion to extend the landlords' deadline to file an application to dispute the return of the deposit pursuant to section 38.

Accordingly, I do not find the landlords owe the tenant an amount equal to double the security deposit for violating section 38.

As the landlords have generally prevailed in their claim, I grant the landlords an award of \$100.00 for reimbursement of their filing fee pursuant to section 72 of the *Act*.

Based on the forgoing, I find that the landlords are entitled to a monetary order in the of **\$52.00**, as calculated below.

Item	Amount
Damages for carpets	\$200.00
Damages for painting	\$252.00
Damages for cleaning	\$100.00
Damages for tiles	\$150.00
Less: Security deposit	-\$500.00
Less: Pet damage deposit	-\$250.00
Reimbursement of filing fee	\$100.00
Total	<b>\$52.00</b>

#### Conclusion

I grant the landlords a monetary order in the amount of **\$52.00**. If the tenant fails to comply with this order, the landlord 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: December 16, 2019

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Residential Tenancy Branch