



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 order for unpaid rent, for damage to the rental unit, and 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 respondent acknowledged receipt of the applicant's Notice of Hearing and Application for Dispute Resolution. Neither party raised issues of service. I find the parties were served in accordance with the *Act*.

Issue(s) to be Decided

Are the landlords entitled to a monetary order for unpaid rent, for damage to the rental unit, and 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 retain all or a portion of the tenant's security deposit and/or pet damage deposit in partial satisfaction of the monetary order requested pursuant to section 38?

Is the tenant entitled to a return of all or a portion of the security deposit and/or pet damage 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 parties agreed that the tenant moved into the rental unit on March 17, 2010 and she moved out on May 29, 2019. The tenant paid a \$550.00 security deposit and a \$200.00 pet damage deposit. The landlord still retains both deposits. The parties completed a condition inspection report on move-in and move-out.

The landlord claims that the rental unit was not left in a clean condition, the carpet was damaged, a curtain rod in the kitchen was missing and a garbage container was missing.

The condition inspection report on move-out indicates the rental unit was not left in a clean condition. The landlord claimed that it took 19.25 hours of labour to clean the rental unit. She calculated her labour at the rate of \$25.00 per hour, for a total of \$481.25 for cleaning. The landlord also produced a quote for cleaning of \$360.00, calculated on the basis of 12 hours of cleaning at \$30.00 per hour.

The tenant denied the landlord's allegation that the rental unit was left unclean. The tenant testified that the entire rental unit was cleaned except for the oven which she forgot to clean.

The landlord claimed the carpet in the bedroom was badly scratched by a pet and the carpet in the hallway had stains. The condition inspection report on move-out did not indicate any damage to the carpets. The landlord provided an estimate of \$799.94 for carpet repairs. The tenant denied the carpet damage.

The landlord claimed a garbage can was missing. The tenant acknowledged this and argued that it was not her responsibility because it was stolen. The landlord produced a listing for a replacement garbage can costing \$54.99.

The landlord also claimed a window curtain rod was damaged. The landlord produced a listing for a replacement curtain for \$29.97. The tenant denied this allegation. The tenant testified that the rental unit did not come with a curtain rod. The condition inspection report on move-out did not indicate any damage to curtain rods.

Analysis

Section 38 of the *Act* states that a landlord must return the deposits or file an application to dispute the return of the deposits within 15 days if the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing. In this matter, the parties agreed that the tenancy ended on May 29, 2019. Furthermore, in the previous Residential Tenancy Branch hearing, the tenant was deemed to have served her forwarding address on October 8,

2019. The landlord accordingly had 15 days, until October 23, 2019 to return the entire deposits or file an application to dispute the return of the deposits. I find that the landlord timely filed this application to dispute the return of the deposits by filing this application on October 23, 2019.

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:

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. The Condition Inspection Report for move-out indicates that rental unit was not left in a clean condition. *Residential Tenancy Branch Regulation* section 21 provides that "a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection." I therefore find that the property needed to be cleaned.

However, I do not believe the landlord's claim of 19.25 hours of cleaning to be reasonable mitigation of the landlords' damages. Furthermore, I find the claimed cleaning rate of \$25.00 per hour to be excessive. The cleaning estimate provided by the landlord only estimated 12 hours of cleaning. I find that an appropriate amount for the cleaning services required here would be 12 hours of cleaning at the rate of \$20.00 per hour. Accordingly, I will allow the landlords \$240.00 for cleaning costs.

Flooring

The Condition Inspection Report for move-out does not indicate any damage to the flooring. *Residential Tenancy Branch Regulation* section 21 provides that “a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection.” I therefore find that the landlord has not provided sufficient evidence to establish the tenant damaged the flooring and this claim is denied.

Garbage can

The parties both agreed that a garbage can was missing from the tenancy. The tenant testified that the garbage can was stolen and that was not her responsibility. The landlord did not provide any evidence to refute this testimony.

Section 32(3) of the Act states that:

A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

In this matter, I find that the landlord has not provided sufficient evidence to establish that the theft of the garbage can occurred as a result of the actions or neglect of the tenant. Accordingly, this claim is dismissed.

Curtain rod

Since the condition inspection report does not indicate a damaged curtain rod, I dismiss the landlord’s claim for the replacement of the curtain rod.

Since the landlord has been partially successful this matter, I award the landlord one-half of the filing fee, being \$50.00, pursuant to section 72.

Based on the above, I find that the tenant is entitled to a return of the deposits in the amount of **\$460.00**, as calculated below:

<u>Item</u>	<u>Amount</u>
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Security deposit held by landlord	\$550.00
Pet damage deposit held by landlord	\$200.00
Cleaning costs	-\$240.00
Filing fee	-\$50.00
Total	\$460.00

Conclusion

I grant the tenant a monetary order in the amount of **\$460.00**. If the landlords fail to comply with this order, the tenant 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 14, 2019

Residential Tenancy Branch