



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL MNDL-S FFT MNSD

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.

This hearing also dealt with the tenant's application pursuant to the *Act* for:

- for return of the security deposit pursuant to section 38;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67; and,
- reimbursement of the filing fee 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 parties both acknowledged receipt of the other parties' 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*.

Preliminary Matter: Service of Landlord's Evidence

The landlord filed a copy of a previous Residential Tenancy Branch decision the day before the hearing. The landlord testified that they did not serve this document on the tenants. The *Residential Tenancy Branch Rules of Procedure*, Rule No. 3.15 establishes that the respondent's evidence intended to be relied on at the hearing must be received by the applicant not less than 7 days before the hearing.

I am not satisfied that the landlord served their evidence in accordance with the *Residential Tenancy Branch Rules of Procedure* stated above.

Residential Tenancy Branch Rules of Procedure, Rule No. 3.12 states that evidence that was not served properly may be excluded if the acceptance of the evidence would prejudice the other party or result in a breach of the principles of natural justice. In this matter, I find that the acceptance of the respondent's evidence without being served on the applicant would prejudice the tenants and breach the principles of natural justice.

Accordingly, I exclude the prior Residential Tenancy Branch decision submitted by the landlord. This document will not be considered in my rendering of this decision.

Issue(s) to be Decided

Is the landlord 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?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38?

Is the landlord entitled to recover the filing fee for this application pursuant to section 72?

Are the tenants entitled to a return of the security deposit pursuant to section 38?

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

Are the tenants entitled to reimbursement of the filing fee pursuant to section 72?

Background and Evidence

The landlord testified that the tenancy started in October 2015 and the tenants moved out on August 29, 2019. The landlord testified that the tenants paid a \$900.00 security deposit which the landlord still retains. The tenants testified that the monthly rent was \$900.00.

The landlord testified that he tried to arrange a move-out inspection after the tenants moved out but the tenants refused to participate. The tenants testified that the landlord did not request a move-out inspection until after they vacated the rental unit and moved out of the area.

The landlord claimed that the tenants caused the following damage to the rental unit:

The landlord claimed that the tenants damaged a cabinet. The landlord claimed \$157.50 to replace the cabinet door. The landlord provided photographs showing damage to the cabinet door. The landlord provided a quote to replace the cabinet door.

The tenants that the cabinet was damaged by heat from the stove. As such, they claimed the damage was reasonable wear and tear. The tenant claimed the hinge was not damaged. Rather, they claimed it was just detached.

The landlord testified that the carpets were dirty and stained and needed to be cleaned. The landlord claimed \$189.00 for carpet cleaning. The landlord provided photographs of discolorations on the carpet. The landlord provided an invoice for the carpet cleaning costs. The landlord provided an invoice for the cleaning services.

The tenants claimed that the carpets were left in a clean condition. The tenants provided a video showing the rental unit on move out which appeared to show the carpets in a clean condition.

The landlord claimed that tenants left the rental unit in an unclean condition. The landlord claimed \$262.50 for cleaning costs. The landlord provided photographs showing some dirty condition in the rental unit.

The tenant testified that they left rental unit in a clean condition. The tenants provided a video showing the rental unit on move out which appeared to rental unit in a clean condition.

The landlord claimed that the tenants damaged the finish of the bathtub. The landlord claimed \$525.00 to resurface the bathtub. The landlord provided a photograph showing discoloration in the bathtub. The landlord provided an invoice for bathtub resurfacing. b

The tenants testified that the damage to the bathtub surface was caused by hard water in the rental unit. As such, the tenants claim the damage was reasonable wear and tear.

The landlord claimed that the tenants caused extensive damage to the paint. The landlord claimed \$2,352.00 to repaint the rental unit. The landlord provided photographs showing discolorations on the wall of the rental unit. The landlord provided a quote to repaint the rental unit.

The tenants claimed that they filled and sanded the holes on the walls in the rental unit. The tenants provided a video showing the fill on multiple places on the walls.

The tenants also claimed compensation from the landlord for ending the tenancy improperly. The tenants claimed that the landlord verbally asked them to move out so a relative could move into the rental unit. The tenants testified that the landlord did not deliver a written notice to end tenancy. The tenants testified that a relative of the landlord did not move into the rental unit. Rather, a new tenant moved in.

Analysis

Both the landlord and the tenants have made claims for compensation in this matter. I will analyze each of their claims separately.

i. Landlord's claim for compensation

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 landlord 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:

Cabinet

The landlord has not provided sufficient evidence to establish that the burn damage to the cabinet was the fault of the tenants. 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 tenants' actions or neglect and I find that tenants' explanation that the damage was caused by the oven to be plausible. Further, I find that the landlord has not provided sufficient evidence to establish that the cabinet hinge was damaged rather than just detached as claimed by the tenants. As such, I do not find that the landlord has established their claim against the tenants for damage to the cabinet and this claim is dismissed.

Carpet cleaning

I find that, based on the photographs provided, the landlord has provided sufficient evidence to establish that the carpets were left in a dirty condition. Although the tenants provided a video which did not show discoloration on the carpet, I did not find the video persuasive as it panned over the flooring too quickly to see details in all areas of the flooring. I find the claim of \$189.00 for carpet cleaning to be reasonable. Accordingly, I grant the landlord reimbursement of \$189.00 for carpet cleaning.

Cleaning

I am not satisfied that the landlord has sustained any damages for cleaning expenses. I find that the video submitted by the tenants does not show a need for significant cleaning services. The tenants are only required to leave the rental unit reasonably clean at the end of the tenancy pursuant to section 37(2)(a) of the *Act* which I find that the tenants have done. Accordingly, the landlord's claim for cleaning expenses is denied.

Bathtub

I find that the landlord has not provided sufficient evidence to establish that the damage to the bathtub was the fault of the tenants. 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 tenants' actions or neglect and I find that tenants' explanation that the damage was caused hard water to be plausible. As such, I do not find that the landlord has established their claim against the tenants for damage to the bathtub and this claim is dismissed.

Painting

The tenants testified that they filled the holes in the walls but they did not paint it. Further, the video provided by the tenants and the photographs provided by the landlord show discolorations on the walls. As such, I find that the landlord is entitled to compensation for this loss. However, I am not satisfied that the landlord has provided sufficient evidence to prove the actual monetary loss he has sustained. I find the estimate provided by the landlord for a repaint to be excessive and I am not satisfied that the landlord could not touch up the blemishes at a reduced cost. However, the landlord did not provide an estimate for touch paint work. 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 the holes in the walls has caused damages 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 \$200.00 to touch up the paint in the walls.

Accordingly, I find that the landlord is entitled to retain \$389.00 (\$189.00 for carpet cleaning and \$200.00 for painting) from the security deposit. The tenant is entitled to a refund of the balance of the security deposit pursuant to section 38 of the *Act*.

ii. Tenants' claim for compensation

The tenants have claimed compensation based on a contention that the landlord ended the tenancy improperly. The landlord has named H.K. and S.K. as landlords. However, the tenancy agreement only names H.K. as a landlord and the tenants did not present any evidence to establish that S.K. has any contractual obligation to the tenants. Accordingly, I dismiss any claims against respondent, S.K. herein. The remaining analysis will assess the tenants' claims against respondent, H.K. only.

Section 51 of the *Act* states that a tenant is entitled to compensation if a landlord issued a notice to end tenancy pursuant to section 49 and the landlord does not fulfill the stated intention on the notice to end tenancy. Section 52 of the *Act* states that a notice to end tenancy by a landlord must be in writing and be in the proper form. In this matter, the tenants testified that the landlord did not issue a written notice to end tenancy. As such, I find that landlord did not issue a notice to end tenancy pursuant to section 49 of the *Act*. As such, I find that the tenants have not provided sufficient evidence to establish their claim for compensation pursuant to section 51 of the *Act*.

Since both parties were partially successful in their claims, I dismiss both claims for reimbursement of the filing fees pursuant to section 72 of the *Act*.

Based on the forging, I grant the tenants a monetary order of **\$511.00** against respondent H.K., as calculated below.

<u>Item</u>	<u>Amount</u>
Security deposit	\$900.00
Less: Carpet cleaning	\$189.00
Less: Painting	\$200.00
Total	\$511.00

Conclusion

I grant the tenants a monetary order in the amount of **\$511.00** against respondent, H.K. If respondent, H.K. fails to comply with this order, the tenants 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 30, 2019

Residential Tenancy Branch