



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFT MNSD tenant; MNDCT-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 *Residential Tenancy Act* (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 retain all or a portion of the tenant’s security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*;
- Authorization to recover the filing fee for this application pursuant to section 72.

The hearing was conducted by teleconference. Both parties attended the hearing and provided affirmed testimony. The tenant was accompanied by her advocate TL “(the tenant)”. The hearing process was explained, and both parties had the opportunity to ask questions. Each party had the opportunity to make submissions, present documentary evidence, call witnesses and cross examine the other party.

Each party acknowledged receipt of the other party’s Notice of Hearing and Application for Dispute Resolution. Neither party raised issues of service. I find each party served the other in accordance with section 89 of the *Act*.

Issue(s) to be Decided

Is the tenant entitled to:

- 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.

Is the landlord entitled to:

- 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 retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*;
- Authorization to recover the filing fee for this application pursuant to section 72.

Background and Evidence

The tenancy began in 2016 for monthly rent of \$950.00 payable on the first of the month. At the beginning of the tenancy the tenant paid a security deposit and pet deposit of \$950.00 (together referred to as "security deposit") which the landlord holds. A copy of the tenancy agreement was submitted.

The parties conducted a condition inspection on both moving in and moving out. A copy of the report was submitted as evidence. In relevant respects, the unit was noted to be in good condition on moving in. On moving out, numerous items are noted to be "dirty", "scratched", "damaged", and so on. With respect to carpet in the master bedroom, the moving-out notes stated "shit on floor/pee on floor". With respect to the living room flooring, "water damage" is noted which the landlord clarified related to damage from animal urine. The words "need time to estimate" appear in section Z(2) above the signatures which the landlord stated he wrote in before the parties signed. The report is signed by both parties on moving in and moving out.

The tenant claimed that the landlord agreed during the inspection on moving out that he would return all the tenant's security deposit. The tenant claimed that every item was

noted by the landlord to be satisfactory on moving out and she alleged that the landlord added the above comments afterward.

The landlord vehemently disagreed and stated the unit reeked of urine and the flooring was ruined. He stated that when he signed the report on moving out, every negative comment was already written on the report; he denied he made any changes before sending a copy to the tenant.

The landlord submitted a monetary order worksheet. During the hearing, the landlord modified his claim and clarified his request for compensation as follows:

ITEM	AMOUNT
Rent for one month	\$950.00
Replacement of flooring for the house (20% x one-half the cost of replacement of all flooring)	\$898.00
Cleaning	\$400.00
Replacement fire alarm	\$39.00
Repair doors	\$408.00
Filing fee	\$100.00
TOTAL CLAIM	\$2,795.00

In correspondence of September 6, 2019, a copy of which was submitted, the landlord offered to accept \$898.80 in satisfaction of his damage claim and return to the tenant \$54.20. The tenant testified she believed she was entitled to full return of her deposit and accordingly she refused the offer.

Rent for one month

The landlord claimed the tenant did not provide one month's notice of her intention to vacate. The landlord submitted no documentation in support of this claim, such as correspondence with the tenant advising her of her obligation to provide notice. The landlord acknowledged that he demanded the payment of rent after the offer of September 6, 2019 was rejected.

Carpet

The landlord testified that the flooring, on good condition when the tenant moved in, was destroyed by the smell of animal urine. He provided an estimate of \$8,980.00 for all the

flooring. During the hearing, the landlord acknowledged that half the flooring was over ten years old and accordingly the landlord withdrew his claim for this part of the flooring.

During the hearing, the landlord acknowledged the remaining half of the flooring was 8 years old and he clarified his claim as 20% of the remainder, being \$898.00.

The landlord said the “work is ongoing” and submitted no receipt for the completed replacement of flooring. The landlord submitted photographs of the water damaged laminate flooring, the stained and dirty carpet, and the frayed carpet which appeared to have been clawed by animals.

The tenant acknowledged she had three cats and a puppy and that the carpet may have needed cleaning when she left although she rented a steam cleaner; no receipt was submitted. However, she said the landlord told her not to worry about it as he intended to replace it. The tenant stated she hired a steam cleaner but submitted no receipt.

Replacement fire alarm

The tenant agreed to this claim in the amount of \$39.00.

Repair doors

The landlord submitted photographs of doors which were deeply scratched and opined that the damage was from animal claws. The landlord submitted an estimate for the cost of the repair of the doors of \$408.00. The landlord stated the work is underway and he does not have a receipt for the final cost of the repairs.

The tenant denied the landlord’s claim.

Cleaning

The landlord submitted no receipts for cleaning. He did not do the cleaning himself. He testified cleaning was “ongoing” and four days would be needed. The tenant denied the landlord’s claim and said she hired professional cleaners; the tenant did not submit a receipt.

Security Deposit

The tenant requested return of the security deposit which she stated, without any documentary evidence to support her testimony, that the landlord had agreed to do. The parties agreed the tenant provided her forwarding address on the last day of the tenancy.

The landlord requested that the security deposit be applied to any monetary award.

Analysis

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

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 monetary award.

With respect to the claim for rent for one month's notice, the landlord has provided no documentary evidence in support of his claim. I find the landlord only decided to claim

for rent when the tenant refused his offer to keep most of the security deposit for damages. Accordingly, I do not give much weight to the landlord's testimony that he did not received one month's notice; I prefer the tenant's testimony that she verbally informed the landlord over a month in advance that she was leaving.

The landlord must establish that the unit was damaged. I find the landlord has established this and the tenant is responsible for the damage. However, I find the landlord has not met the burden of proof with respect to the amount for which he is entitled to compensation. The landlord has submitted photographs showing a dirty, damaged unit. However, the landlord has only submitted estimates of the repair costs. He acknowledged that the suppliers of the estimates had never seen the unit and the work had not been completed but was "undergoing". Accordingly, I give some, but limited weight, to the estimates and the landlord's testimony.

The parties disagree on whether the unit was damaged to the extent claimed by the landlord at the hearing. The tenant pointed to the offer of September 6, 2019 to settle his damage claim for \$895.80 and return \$54.20 to the tenant and dismissed his claim at the hearing as exaggerated.

In the absence of any reliable, credible documentary evidence to support the landlord's claim, such as receipts, I find that the landlord is guessing what the repairs will cost. I find that the best assessment of his damages is contained in the landlord's offer to the tenant to settle all claims for \$895.80.

I accordingly grant the landlord a monetary award in this amount. As the landlord has been somewhat successful in the landlord's claim, I grant him reimbursement of the filing fee in the amount of \$54.20.

In conclusion, the landlord is entitled to retain the security deposit in full satisfaction of his claims, as follows:

ITEM	AMOUNT
Landlord's claim (total of \$2,795.00)	\$895.80
Reimbursement filing fee	\$54.20
Less security deposit	(\$950.00)
TOTAL ORDER	\$0.00

Conclusion

The landlord is entitled to retain the security deposit in full satisfaction of the landlord's claims. No monetary order is granted.

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: January 09, 2020

Residential Tenancy Branch