



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 money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The tenant confirmed receipt of the landlord's dispute resolution application ('Application') and evidence, which was served to the tenant by way of registered mail on December 18, 2019. In accordance with sections 88, 89, and 90 of the *Act*, I find that the tenant was deemed served with the Application and evidence on December 23, 2019, 5 days after mailing. The tenant did not submit any written evidence for this hearing.

Issue(s) to be Decided

Is the landlord entitled to a Monetary Order for damage to the unit, site, or property, money owed or compensation for loss under the *Act*, regulation or tenancy agreement?

Is the landlord entitled to recover the cost of the filing fee for this application?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This month-to-month tenancy began on June 1, 2007, and ended on August 10, 2019. Monthly rent at the end of the tenancy was set at \$3,427.19 due on the first day of each month. The tenant paid a security deposit in the amount of \$1,300.00 which remains in the possession of the landlord. A hearing was held on September 6, 2019 to deal with unpaid rent for the months of June and July 2019. The landlord was granted a monetary order for unpaid rent and recovery of the filing fee in the decision dated September 6, 2019. The landlord's application to retain the security deposit and for monetary losses was dismissed with leave to reapply, and the landlord filed a new application on September 16, 2019 for the following losses:

The landlord provided the following list of damages for her monetary claim:

Item	Amount
Carpet Replacement	\$3,381.98
Refrigerator Door	850.81
Installation of new refrigerator door	195.00
Bathtub	498.75
Cleaning services	1,008.00
Repair & Painting	6,483.76
Paint	641.66
Upstairs Flooring Replacement	8,810.00
Filing Fee	100.00
Total Monetary Order Requested	\$21,969.96

The landlord testified that a move-in inspection was not completed with the tenant for this tenancy as she was unaware of her obligation to do so. The landlord testified that a move-out inspection was done, but that the tenant refused to sign off on the move-out inspection report. The tenant testified that a move-in inspection and a report was completed. Neither party submitted a copy of a move-in inspection report. The tenant testified that the landlord did not submit a copy in order to conceal the true condition of the home at the beginning of the tenancy. The landlord submitted photos in support of

her claim. The landlord submitted over 100 photos of the rental unit, which the landlord testified depicts the state of the rental unit at the beginning and end of the tenancy, and the tenant's failure to leave the rental unit in reasonably clean and undamaged condition.

The landlord testified that the tenant had allowed a dog to reside at the home without her permission. The landlord testified that she had trusted the tenant, but discovered extensive damage after the tenant had moved out. The landlord testified that the carpet was damaged by the dog and required replacement. The landlord testified that the carpet was brand new at the beginning of the tenancy, which the tenant disputes. The landlord submitted a receipt for the cost of replacing the carpet.

The landlord also had to replace the refrigerator door due to a hole in the door. The landlord provided a receipt for the cost of the door as well as the labour for replacing the door for the refrigerator, which the landlord testified was replaced during the tenancy.

The landlord also submitted a monetary claim for the bathtub, cleaning services, repairs and painting, paint, and replacement of the upstairs laminate flooring, which was installed approximately 2 years before the tenant moved in, and was in "perfect condition".

The tenant disputes the landlord's entire claim. The tenant testified that he had lived in the rental unit for 12 years, and any damage was actually wear and tear. The tenant does not dispute that there was a dent in the refrigerator door, but that it was normal wear and tear. The tenant feels that the landlord had renovated the home, and expected the tenant to compensate the landlord for these renovations rather than repairs. The tenant testified that he had a cleaner clean every Wednesday at 11:00 am. The tenant did not submit any receipts or invoices for these cleanings.

The landlord responded that the damage was too substantial to be wear and tear. The landlord also argued that the home was not left in clean condition, as depicted in the photos.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove

the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove, on a balance of probabilities, that the tenant had caused damage or losses in the amounts claimed by the landlord.

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 condition except for reasonable wear and tear. The landlord testified that although a move-in inspection was not completed, a move-out inspection was done. The conflicting testimony of the tenant was that the landlord did perform a move-in inspection, but did not provide a copy of the report in an effort to provide a misleading representation of the state of the home. I note that neither party provide a copy of the move-in inspection report, and the landlord's own evidence is that none was done. Sections 23 of the *Act* requires the landlord to perform a move-in inspection, and fill out a condition inspection report. In the absence of a move-in inspection report, I have no way of ascertaining what damages occurred during this tenancy unless the item was brand new at the beginning of the tenancy, or unless agreed to by the tenant. The tenant disputes the landlord's entire claim citing normal wear and tear during this 12 year tenancy.

The landlord testified that the carpet was brand new at the beginning of the tenancy, which is disputed by the tenant. Section 40 of the *Residential Tenancy Policy Guideline* speaks to the useful life of an item. As per this policy, the useful life of carpet is ten years. As per the landlord's testimony, the carpet was brand new at the beginning of the tenancy. The carpet was therefore at least 12 years old at the end of the tenancy, and therefore had exceeded its useful life of 10 years. Accordingly, I find that the landlord is not entitled to any compensation for losses associated with this damage as the carpet has exceeded its useful life. The landlord's monetary claim for damage to the carpet is also dismissed without leave to reapply.

In consideration of the evidence before me, I find that the refrigerator was replaced during this tenancy, and therefore any damage was caused by the tenant. The tenant does not dispute that there was a dent on the door, but attributed the dent to wear and tear. I find that the landlord's photos do sufficiently support that damage was caused to the refrigerator door beyond what is considered normal wear and tear. I allow the landlord's monetary claim for the replacement of the refrigerator door.

The landlord testified that the tenant failed to leave the home in reasonably clean condition, which is supported by her photos. The tenant testified that had a regular cleaning service attend every week, but did not provide any receipts or invoices, or witness testimony to confirm this. I find the landlord provided detailed photos to support her claim that the tenant did not leave the home in reasonably clean condition. On this basis, I allow the landlord's monetary claim for cleaning.

In consideration of the other damages claimed by the landlord, in the absence of a move-in inspection report, I am not satisfied that the landlord had provided sufficient evidence to support that the tenant had caused the damage claimed by the landlord. Although the landlord submitted photos to support her claim, and although the landlord testified that she was unaware of her obligations, photographs in lieu of an inspection report do not allow the tenant the opportunity to agree or disagree to the representation of the condition at the time, and sign off stating that they do so or not. On this basis, I am not satisfied that the landlord has provided sufficient evidence to support the remaining damages claim, and I dismiss these claims without leave to reapply.

The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. As the landlord was only partially successful with her claim, I find that the landlord is entitled to recover half of the \$100.00 filing fee paid for this application.

The landlord continues to hold the tenant's security deposit of \$1,300. In accordance with the offsetting provisions of section 72 of the Act, I order the landlord to retain the tenant's security deposit in partial satisfaction of the monetary claim.

Conclusion

I issue a \$803.81 Monetary Order in favour of the landlord under the following terms:

Item	Amount
Refrigerator Door	850.81
Installation of new refrigerator door	195.00
Cleaning services	1,008.00
Filing Fee	50.00
Less Security Deposit	-\$1,300.00
Total Monetary Order	\$803.81

The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The remainder of the landlord's monetary claim is dismissed without leave to reapply.

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 24, 2020

Residential Tenancy Branch