



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNDL-S, MNDCL-S

Introduction

This hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- a monetary order for damage or compensation pursuant to section 67 of the *Act*;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 67 of the *Act*;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72 of the *Act*.

The landlord appeared at the hearing and was given the opportunity to make submissions as well as present affirmed testimony and written evidence.

The landlord testified that the tenant was served with the Application for Dispute Resolution by registered mail sent on October 26, 2019. Registered mailing is deemed received by the tenant on October 31, 2019 in accordance with section 89 and 90 of the *Act*. The landlord provided the Canada Post tracking number referenced on the cover page of the decision.

The tenant did not appear at the hearing. I kept the teleconference line open from the time the hearing was scheduled for an additional 15 minutes to allow the tenant the opportunity to call. The teleconference system indicated only the landlord and I had called into the hearing. I confirmed the correct participant code for the tenant had been provided.

Residential Tenancy Policy Rules of Procedure 7.3 states:

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

I find that the tenant was served with the landlord's application and evidentiary documents. I proceeded with this hearing as per Rule of Procedure 7.3

Issue(s) to be Decided

Is the landlord entitled to a monetary order pursuant to section 67 of the *Act*?

Is the landlord entitled to retain the security deposit pursuant to sections 38 and 67 of the *Act*?

Is the landlord entitled to reimbursement of the filing fee pursuant to section 72(1) of the *Act*?

Background and Evidence

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

The landlord testified the one-year fixed term tenancy began on September 1, 2019. The rent was \$1,300.00 monthly payable on the first of the month. A copy of the tenancy agreement was submitted in evidence.

At the outset of the tenancy, the tenant provided a security deposit in the amount of \$650.00 which is held in Trust by the landlord. The tenancy agreement included an addendum with 25 additional terms, including that the tenant was prohibited from smoking inside and outside of the rental unit.

The landlord testified that after the tenant vacated the unit on October 2, 2019, a move-out inspection was conducted. The landlord testified that the tenant was sent two emails to attend the moveout inspection, but the tenant failed to do so. The move out inspection report was conducted on the same day. The landlord submitted a copy of the Condition Inspection report of the rental unit in evidence.

The landlord testified that at the outset of the tenancy, the tenant was told that there was no smoking in the rental unit and the no smoking terms were incorporated into the tenancy agreement. The landlord testified that when the tenant vacated the rental unit, the unit smelled of smoke. The landlord testified that the smoke had entered all the rooms via the vents and the ducts required cleaning.

The landlord testified that the tenant was required to vacate the rental unit on September 30, 2019 by 1:00 p.m. The landlord testified that the tenant did not vacate the unit until October 2, 2019 and that she had not given additional time to the tenant to remain. The landlord charged the tenant for the two days (rent) for the delay in moving.

The landlord therefore requested a monetary order list of claimed expenses. The landlord submitted estimates from other cleaning companies. I have considered the landlord's testimony and invoices provided as below:

ITEM	AMOUNT
Moving out late fee x 2 days	\$ 84.00
BB invoice - Cleaning	\$125.40
MP Cleaning Invoice (ducts)	\$439.95
TOTAL	\$649.35

The landlord requested authorization to apply the deposit in the amount of \$650.00 to offset against the damage and replacement costs incurred in the rental unit.

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 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.

Overholding

Section 57 of the *Act* defines an “overholding tenant” as a tenant who continues to occupy a rental unit after the tenancy has ended. The section states a landlord may claim compensation from an overholding tenant for any period that the overholding tenant occupies the rental unit after the tenancy is ended.

Residential Policy *Guideline #3* states that a tenant is not liable to pay after a tenancy agreement has ended pursuant to section 44 of the *Act*, however if a tenant remains in possession of the premises, the tenant will be liable to pay occupation rent on a per diem basis until the landlord recovers possession of the premises.

As the tenants remained in the rental unit for 2 days, (\$1300.00 divide by 30 days = \$43.33). The landlord is entitled to receive \$86.66 for the two days overholding by the tenant.

Cleaning costs

The landlord submitted photographs of the rental unit which illustrated that the tenant had left the stove, dryer and bathroom ceiling fan unreasonably clean and dirty.

Under section 37(2) of the *Act*, the tenant must leave a rental unit *reasonably clean*.

Leaving the rental unit at the end of a tenancy

37 (1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.

- (2) When a tenant vacates a rental unit, the tenant must
(a) leave the rental unit reasonably clean, and undamaged
except for reasonable wear and tear

In consideration of the uncontradicted evidence of the landlord, the evidence submitted, and the burden of proof required, I find on a balance of probabilities that the landlord has established the tenant did not leave the unit reasonably clean.

I accept the landlord's evidence which is supported by photographs of the stove, dryer and air vent that the unit required cleaning when the tenant left. I accept the amount requested as compensation for the cleaning expenses to have been incurred by the landlord. I accept the charges and invoice from the cleaning Company, therefore find the landlord is entitled to a monetary award against the tenant in the amount of \$125.40 for cleaning.

Duct and Vent Cleaning

The Residential Policy Guideline Procedure Rules #1 states that it is the landlord's responsibility to clean the air and dryer vents. I find cleaning and purification of these items are the responsibility of the landlord.

I do not allow the landlord the monetary for the cleaning of the air ducts. The cleaning of the central vacuum, sanitizing the Hvac and furnace which is included in the invoice is the responsibility of the landlord under the Policy Guideline Procedure Rules.

Using the provisions contained in section 72 of the *Act*, I allow the landlord to retain partial security deposit, in satisfaction of the monetary award.

I grant the landlord a monetary amount of \$212.06 against the tenant.

Filing Fee

As the landlord was successful in her application, she may recover \$100.00 of the filing fee pursuant to section 72 of the *Act*.

ITEM	AMOUNT
Cleaning	\$125.40
Overholding	\$86.66
Filing fee	\$100.00
Deduct the security deposit	(\$650.00)
Total	(\$337.94)

Conclusion

I grant the landlord a monetary amount of \$312.06 against the tenant. The landlord must return the tenant the sum of \$337.94 comprising of the partial security deposit within 14 days of receiving this decision.

Should the landlord fail to pay this amount the tenant is at liberty to file an Application for Dispute Resolution seeking a monetary order.

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: March 25, 2020

Residential Tenancy Branch