



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 two applications pursuant to the *Residential Tenancy Act* (the “**Act**”). The landlord’s for:

- 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;
- a monetary order for damage to the rental unit in the amount of \$2,014.37 pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

And the tenants’ for:

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38;
- authorization to recover the filing fee for this application from the landlords pursuant to section 72.

All parties attended the hearing. The tenants were assisted by an advocate (“**JH**”). All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenants testified, and the landlord confirmed, that the tenants served the landlord with their notice of dispute resolution form and supporting evidence package. The landlord testified, and the tenants confirmed, that the landlord served the tenants with her notice of dispute resolution form and supporting evidence package. I find that all parties have been served with the required documents in accordance with the Act.

Preliminary Issue – Partial Settlement

During the hearing, the parties agreed to settle the portion of the landlord’s claim relating to damage done to the floors of the rental unit. The parties agreed that tenants will pay the landlord \$400 as full compensation for this portion of the claim.

The claim for compensation of damaged floors represented \$790.57 of the landlord's claim.

Issues to be Decided

Is the landlord entitled to:

- 1) a monetary order for \$1,223.80;
- 2) recover her filing fee;
- 3) retain the security deposit in satisfaction of the monetary orders made?

Are the tenants entitled to:

- 1) the return of their security deposit; and
- 2) recover their filing fee?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into a written tenancy agreement starting January 1, 2019. Monthly rent was \$3,400 and is payable on the first of each month. The tenants paid the landlord a security deposit of \$1,700, which the landlord continues to hold in trust for the tenant. The tenancy ended on November 28, 2019. The parties (or their agent) conducted a move-in condition inspection on December 31, 2018 and a move-out condition inspection on November 28, 2019. The landlord provided copies of each of these reports to the tenants. The tenants provided their forwarding address to the landlord in writing on November 28, 2019.

The landlord testified that the tenants damaged the rental unit during the tenancy. She made a claim against the security deposit on December 5, 2019.

1. Kitchen Sink

The landlord testified that, on November 24, 2019, the tenants notified her that the kitchen sink was not draining. She communicated with the tenants via text message about the severity of the situation that evening and arranged for a plumber to attend the rental unit the next day.

The plumber attended the rental unit and found that the sink was "backed up with dirty sewage water." On his invoice dated November 26, 2019, the plumber wrote:

The water was sucked out by a sewer vac. and drainage opened up to inspect line. Line was found to be full of food debris. Line was snaked to the extent pf 20' and all of the sewage debris removed. Process was repeated 4 times to fully

clean up. Line was then reconnected and tested for proper function – Good working order.

The plumber charged \$798.53 for this work.

The plumber also installed new piping under the kitchen sink and removed and disposed of the garburator. He did not install a new garburator. He issued a second invoice, also dated November 26, 2019, for \$233.27 for this work.

The plumber attached several photographs of the kitchen sink and the pipes to his invoice. These photos depict the sink full of dirty water, an unidentified dark sludge being extracted from a kitchen pipe, and a white, viscous liquid in another of the kitchen pipes.

The landlord testified that the garburator was installed two-years prior, and that the tenants had never reported any issues with it during the tenancy. She argued that the tenants, in the process of cleaning the rental unit in preparation for their departure overloaded the garburator with food and poured wax that tenant AC uses in her jewelry business (what the landlord alleged the white viscous substance was) down the kitchen sink drain. She argued that the tenants should be responsible for paying the cost of hiring the plumber.

The tenants do not dispute that it was necessary to call the plumber to clear the sink, or that the cost of hiring a plumber is unreasonable. Rather, the tenants deny that they caused the kitchen sink to become clogged. They denied that the white substance in the kitchen pipes was a product used by AC in her jewelry business. The tenants denied putting anything other than food down the kitchen drain. They denied that they overloaded the garburator with food when they were moving out.

The tenants testified that the plumber told them that the white substance in the pipes was likely dishwasher soap that flowed back up the kitchen sink pipe.

2. Refrigerator

The landlord testified that the previous occupants of the rental unit left a refrigerator in the rental unit. She testified that the prior occupant offered to remove it unless the new occupants (the tenants) wanted it. The landlord asked the tenants, and tenant FS said that he would like to keep the refrigerator.

The landlord testified that the tenants left the refrigerator in the rental unit when they moved out. She testified that she paid a junk removal company \$118 to remove the refrigerator for the rental unit. In support of this, she submitted a confirmation of the junk removal appointment which stated that the minimum cost of removal is \$118.

The tenants deny that they agreed to take ownership of the refrigerator from the prior occupant. Tenant FS testified that the presence of the refrigerator in the rental unit did not bother the tenants, so they did not object to it being left there. He denied agreeing to pay for the removal costs of the refrigerator at the end of the tenancy. The tenants argued that there was no documentary evidence corroborating the landlord's assertion that the tenants agreed to take ownership of the refrigerator, and as such, I should dismiss this portion of the landlord's claim.

3. Bathroom

The landlord testified that the interior of the bathroom doorframe was damaged. She submitted a photograph of the doorframe which shows black scuff marks and coarsely abraded wood on the underside of the header of the doorframe.

The landlord testified that tenants caused staining to the interior of the bathroom cabinet under the bathroom sink. She submitted photographs depicting these stains, which are blue, and appear to be in the shape of the bottom of a plastic bottle.

These scuff marks and stains were not recorded on the move-in condition inspection report but were recorded on the move-out condition inspection report.

The landlord testified she paid a handyman \$75 to repair the damage to the bathroom.

In their written submissions, the tenants wrote that the stains under the sink were from a soap container, and that the damage to the door frame was from a clothes hanger over the door. They testified that the damage to the door was partially caused by the prior tenant, and that they did not notice it when completing the move-in condition inspection report.

The tenants argued that this damage was ordinary wear and tear and is not therefore compensable under the Act.

Analysis

1. Landlord's Claim

Section 32 of the Act states:

Landlord and tenant obligations to repair and maintain

32(1) A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

- (2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.
- (3) 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.
- (4) A tenant is not required to make repairs for reasonable wear and tear.

Section 37(2)(a) of the Act states:

Leaving the rental unit at the end of a tenancy

- 37(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, and

Residential Tenancy Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

(the “**Four-Part Test**”)

Rule of Procedure 6.6 states:

6.6 The standard of proof and onus of proof

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.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application.

So, the landlord must prove it is more likely than not that the tenants failed to repair or maintain the rental unit, that she suffered quantifiable damage or loss as a result, and that she acted reasonably to minimize her losses.

I will address each of the portions of the landlord's claim for damages in turn.

A. Kitchen Sink

Based on the fact that the plumber removed and disposed of the garburator, I find that it was no longer operational. I am unsure what caused it to break. It may be that it broke due to the tenants overloading it with food. It may also be that the garburator had reached the end of its working life or that it malfunctioned for reasons unrelated to the tenants' actions. I do not have sufficient evidence before me to make such a determination.

I do not find the presence of the white substance in the pipes to be persuasive evidence that the tenants damaged the garburator. The landlord has postulated that it is wax but has not provided any evidence to this effect. The tenants testified that the plumber told them it was dishwasher soap, however no mention of dishwasher soap appeared in his description of clog on the invoices.

The plumber only referred to food debris and sewage clogging the kitchen sink pipes. Given that he took a photograph of the white substance and attached that photo to the invoice, I find that it is more likely than not that white substance is not wax or some other novel substance used by the tenant in her jewelry business. Rather, I find it more likely that it is a food byproduct or sewage debris (as these are the only things listed as being in the pipes on the plumber's invoice), or something so innocuous (such as dishwasher soap) that the plumber did not find it necessary to record on the invoice.

As I am unable to determine what caused the garburator to stop working, and I have no evidence that anything other than food was put down the kitchen sink drain, I find that the landlord has failed to discharge her evidentiary burden that the tenants caused the kitchen sink to become clogged. As such, I decline to order that the tenants pay any amount of the plumber's invoices.

B. Refrigerator

I have no documentary evidence before me supporting the landlord's assertion that the tenants agreed to assume ownership of the refrigerator or that they agreed to dispose of the refrigerator at the end of the tenancy. As the landlord bears the onus to prove the existence of such an arrangement, I do not find that one existed, given the lack of corroboration and the conflicting testimony from the tenants.

Accordingly, I decline to order that the tenants pay for the removal of the refrigerator.

C. Bathroom

The parties agreed that the damage to the bathroom doorframe and the under the sink exists as alleged by the landlord. However, the tenants argued that the damage to the doorframe was partially caused by the prior tenant. The move-in condition inspection report makes no mention of any damage to the bathroom door frame. As such, I find that no such damage existed at the start of the tenancy, and the damage to the doorframe was wholly caused by the tenants.

I disagree with the tenants' assertion that the damage to the doorframe is reasonable wear and tear. Along with being scuffed, the material of the doorframe is coarsely abraded. I do not find that such damage is reasonably caused to the doorframe in the ordinary use of the door. Accordingly, I find that the tenants must compensate the landlord for the cost of repairing the doorframe.

I find that the staining below the bathroom sink is reasonable wear and tear. Bathroom sink cabinets are commonly used to store cleaning supplies and are infrequently cleaned or monitored for spills. It is not reasonable to expect the bathroom sink cabinet to be kept in pristine condition. Some amount of staining from cleaning products should reasonably be anticipated by the landlord. As such, I do not find that the landlord is entitled to recover any amount for removing the stains under the sink.

The landlord claimed \$75 in handyman costs to repair the damage listed above. The landlord did not provide evidence as to what portion of this amount was attributable to repairing the door frame. In the circumstances, I find it appropriate to assign the doorframe repair a cost of \$50 and the stain removal a cost of \$25.

Accordingly, I order the tenants to pay the landlord \$50.

Pursuant to section 72(2) of the Act, the landlord may retain a portion of the security deposit equal to the above-made monetary orders and must return the balance to the tenants.

2. Tenants' Claim

Section 38(1) of the Act states:

Return of security deposit and pet damage deposit

38(1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Based on the testimony of the tenants, I find that the tenancy ended on November 28, 2019 and that the tenants provided their forwarding address in writing to the landlord on that same date.

I find that the landlord made an application against the security deposit on December 5, 2019. Accordingly, she has complied with section 38(1) of the Act.

The landlord's monetary claim has been partially successful. She is entitled to retain a portion of the security deposit in satisfaction of the monetary orders made in her favour.

As stated above, the landlord must return the balance of the security deposit to the tenants.

3. Filing Fees

As both parties were partially successful in their applications, I decline to order that either reimburse the other their filing fee.

Conclusion

Pursuant to sections 38, 63, 67, and 72 of the Act, I order that the landlord return \$1,250 of the security deposit to the tenants, representing the following:

Security Deposit	\$1,700.00
Repair of bathroom door	-\$50.00
Settlement amount for floor repair	-\$400.00
Total	\$1,250.00

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: May 26, 2020

Residential Tenancy Branch