



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for damage, pursuant to section 67;
- authorization to retain the tenants' security deposit, pursuant to section 38; and
- authorization to recover the filing fee from the tenants, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The landlord testified that the tenants were served with his application for dispute resolution and evidence package via email on June 4th or 5th, 2020. The tenants testified that they received the landlord's application for dispute resolution on June 8, 2020. I find that the tenants were served in accordance with the March 30, 2020 Director's Order.

Issues to be Decided

1. Is the landlord entitled to a Monetary Order for damage, pursuant to section 67 of the *Act*?
2. Is the landlord entitled to retain the tenants' security deposit, pursuant to section 38 of the *Act*?
3. Is the landlord entitled to recover the filing fee from the tenants, pursuant to section 72 of the *Act*?

Background and Evidence

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

Both parties agreed to the following facts. This tenancy began on November 23, 2018 and ended on May 31, 2020. Monthly rent in the amount of \$2,050.00 was payable on the last day of each month. A security deposit of \$1,025.00 was paid by the tenants to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

Both parties agree that a joint move in condition inspection and report were completed on November 23, 2018. Both parties signed the move in condition inspection report and agreed to its contents. The move in condition inspection report was entered into evidence.

Both parties agree that a move out condition inspection and report were completed on May 31, 2020. The tenants testified that they signed the agreement but noted that they disagreed with the contents of the report. Both parties agree that the tenants provided the landlord with their forwarding address on the move out condition inspection report. The move out condition inspection report was entered into evidence.

The landlord testified that the following damages arose from this tenancy:

Item	Amount
Replace glass in over door	\$294.00
Paint closet walls/ entryway	\$250.00
Carpet cleaning	\$125.00
Total	\$669.00

Replace glass in over door

The landlord testified that the tenant broke the glass in the oven door and that it cost \$294.00 to repair. A receipt for same was entered into evidence. The move in condition inspection report states that the oven is in good condition. The move out condition inspection report states that the glass in the oven door is broken.

The tenant testified that they did not break the glass in the oven and that it spontaneously broke on its own after an automatic cleaning cycle on May 29, 2020. The tenants entered into evidence a news segment from 2016 in which ovens are shown to have reportedly broken spontaneously.

The landlord testified that the oven is 13 years old.

Paint closet walls/ entryway

The landlord testified that the walls in the bedroom and entry way closets and the walls in the entryway were in good condition at the beginning of the tenancy and required repainting at the end of the tenancy. The move in condition inspection report states that walls in the closets and entryway are in good condition. The move out condition inspection report states that the walls in the bedroom closet are in good condition, the walls in the entry way closet are dirty and the entrance way walls are dirty.

The landlord entered into evidence an estimate of \$2.00 per square foot. The landlord testified that he measured the areas requiring re-painting and it came out to 125 square feet and so he is seeking \$250.00 from the tenants. The landlord testified that he did not know the last time the subject rental property was painted.

Carpet cleaning

The landlord testified that the carpet at the subject rental property was unstained when the tenants moved in and was stained when the tenants moved out. The move in condition inspection report states that the carpet in the subject rental property is in good condition. The move out condition inspection report states that the carpet is in good condition except in the bedroom where stains are noted.

The tenants testified that they rented a carpet cleaning machine and cleaned the carpets at the end of the tenancy. The tenants entered into evidence a video of the subject rental property in which tenant A.B. can be seen shampooing the carpets.

Both parties agree that the landlord pointed out stains in the carpet during the move out condition inspection and that the tenants tried, to no avail, to get the stains out during the move out condition inspection report. The tenants testified that they did not have cleaning supplies with them during the move out condition inspection and so could not

get the stains out at that time.

Analysis

Section 67 of the *Act* states:

Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Policy Guideline 16 states that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To be successful in a monetary claim, the tenant must establish all four of the following points:

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

Failure to prove one of the above points means the claim fails.

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that 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.

When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails.

Residential Tenancy Guide #40 states:

This guideline is a general guide for determining the useful life of building elements for considering applications for additional rent increases and determining damages which the director has the authority to determine under the Residential Tenancy Act and the Manufactured Home Park Tenancy Act . Useful

life is the expected lifetime, or the acceptable period of use, of an item under normal circumstances.

When applied to damage(s) caused by a tenant, the tenant's guests or the tenant's pets, the arbitrator may consider the useful life of a building element and the age of the item. Landlords should provide evidence showing the age of the item at the time of replacement and the cost of the replacement building item. That evidence may be in the form of work orders, invoices or other documentary evidence. If the arbitrator finds that a landlord makes repairs to a rental unit due to damage caused by the tenant, the arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant's responsibility for the cost or replacement.

Section 37(2)(a) of the *Act* states that when tenants vacate a rental unit, the tenants must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Section 32(3) and (4) of the *Act* state:

(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.

Replace glass in oven door

I find that the landlord has not proved, on a balance of probabilities, that the damage to the oven door was caused by the tenant's actions or neglect and not by reasonable wear and tear of a 13-year-old oven. I therefore dismiss the landlord's claim for the cost of repairing the oven.

Paint closet walls

Residential Tenancy Branch Policy Guideline #40 states that the useful life of interior paint is four years. The landlord testified that he did not know when the subject rental property was painted. I find, on a balance of probabilities, that the landlord has not proved that the subject rental property was painted within the last four years. The onus

is on the landlord to prove that the useful life of the interior paint has not expired. As the landlord failed to do so, I dismiss the landlord's claim for the cost of painting.

Carpet cleaning

Based on the testimony of both parties, I find that the tenants left stains in the carpet of the subject rental property, contrary to section 37(2)(a) of the *Act*. The landlord entered into evidence a quote for carpet cleaning in the amount of \$125.00. While the tenants shampooed the subject rental property, they did not remove all of the stains. I find that the stains are not reasonable wear and tear, and that the tenants are responsible for the cost of further carpet cleaning in the amount of \$125.00.

Filing fee

As the landlord was successful in his application for dispute resolution, I find that he is entitled to recover the \$100.00 filing fee from the tenants, pursuant to section 72 of the *Act*.

Security Deposit

Section 38 of the *Act* states that 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.

I find that the landlord made an application for dispute resolution claiming against the security deposit pursuant to section 38(a) and 38(b) of the *Act*.

Section 72(2) of the *Act* states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit or pet damage

deposit due to the tenant. I find that the landlord is entitled to retain \$225.00 from the tenants' security deposit and must return the remaining \$800.00 to the tenants.

Conclusion

I issue a Monetary Order to the tenants in the amount of \$800.00.

The tenants are provided with this Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord 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.

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: June 30, 2020

Residential Tenancy Branch