



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFL, MNDL-S, MNDCL-S**

Introduction

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

- A monetary award for damages and loss pursuant to section 67;
- Authorization to retain the security deposit for this tenancy pursuant to section 38; and
- Authorization to recover their filing fee from the tenant pursuant to section 72.

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

As both parties were present service was confirmed. Based on the testimonies of the parties I find each party was served with the respective materials in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Are the landlords entitled to a monetary award as claimed?

Are the landlords entitled to retain the security deposit for this tenancy?

Are the landlords entitled to recover their filing fee from the tenant?

Background and Evidence

This fixed-term tenancy began in September 2019. The monthly rent was \$1,500.00 payable on the first of each month. A security deposit of \$750.00 was collected and is still held by the landlord. The tenancy ended on January 31, 2020 in accordance with a

written notice issued by the tenant on November 16, 2019. No condition inspection report was prepared at any time for this tenancy. The tenant provided a forwarding address in writing on January 31, 2020.

The landlord submits that there was a considerable amount of damage to the rental unit requiring repairs including a carpet that needed to be replaced due to it being torn up by the tenant's cat, replacement of broken fixtures, removal of some furniture, and repainting of some pieces of furniture. The landlord also submits that major cleaning was required throughout the rental unit. The landlord submitted into evidence photographs of the rental unit and invoices and receipts for the work done. The total amount of the work undertaken by the landlord is \$1,375.41.

The tenant agreed with some of the items claimed by the landlord but disputed that they were responsible for the other issues. The tenant agreed that they left a dresser in the rental unit and agreed that they were responsible for its removal and disposal at a cost of \$168.00. While the tenant agreed that their cat had scratched portions of the carpet they disagreed that the damage was so extensive as to require its removal and replacement.

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/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.

As the tenant agreed with the portion of the landlords' claim for \$168.00 for disposal of furniture, I issue a monetary award in the landlords' favour in that amount accordingly.

The parties confirm that no condition inspection report was prepared at any time for this tenancy. In the absence of a proper report prepared by the parties at the start of the tenancy in accordance with the *Act*, I find that there is insufficient evidence to determine that the damage to the rental unit can be attributed to the tenant. I find the photographs submitted by the landlord to be insufficient to determine causality. They show some issues but the parties disagreed to whether they pre-dated the tenancy or were the

result of the tenant's actions or negligence. I find that the disputed testimony of the landlord and the handful of photographs to be insufficient to meet the evidentiary onus on a balance of probabilities that the damage claimed by the landlords is due to this tenancy.

Similarly, while the tenant agrees that their cat caused some scratches to the carpeting I find the landlord's claim to be wholly disproportionate to the damage. The landlord's own photographic evidence shows some scratches to small areas of the carpeting in the rental unit. I find that the damage shown by the photographs to be cosmetic and minor in nature and not something that requires the wholesale replacement of the carpeting throughout the rental unit. I find the nature of the landlord's repairs goes beyond merely restoring the rental unit to its pre-tenancy condition and is more in the nature of an improvement. A respondent is only liable for restoration and not for an improvement. For these reasons I dismiss the balance of the landlords' claim.

As the landlord was not wholly successful in their application I decline to order recovery of their filing fee.

Conclusion

The landlord is authorized to retain \$168.00 of the security deposit of \$750.00 for this tenancy.

I issue a monetary order in the tenant's favour in the amount of \$582.00, the balance of the security deposit. The landlords must be served with this Order as soon as possible. Should the landlords 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: July 2, 2020

Residential Tenancy Branch