



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL

Introduction

On April 17, 2020, the Landlord made an Application for Dispute Resolution seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the “*Act*”), seeking to apply the security deposit towards these debts pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

Both the Landlord and the Tenant attended the hearing. All parties provided a solemn affirmation.

The Landlord advised that he served the Notice of Hearing package to the Tenant by email on April 18, 2020 and the Tenant confirmed that he received this package. The Landlord also stated that he served additional evidence to the Tenant by email on April 23, 2020 and the Tenant confirmed receipt of this as well. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenant has been served the Notice of Hearing and evidence packages. As such, I have accepted the Landlord’s evidence and will consider it when rendering this Decision.

The Tenant advised that he served his evidence to the Landlord by email and the Landlord confirmed that he received this evidence more than 14 days before the hearing. Based on this undisputed testimony, I have accepted the Tenant’s evidence and will consider it when rendering this Decision.

All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to a Monetary Order for compensation?

- Is the Landlord entitled to apply the security deposit towards these debts?
- Is the Landlord entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on July 15, 2018 and that the tenancy ended when the Tenant gave up vacant possession of the rental unit on April 15, 2020. Rent was established at \$1,950.00 per month and was due on the first day of each month. A security deposit of \$975.00 was also paid. A copy of the signed tenancy agreement was submitted into evidence.

All parties agreed that a move-in inspection report was conducted on July 13, 2018 and that a move-out inspection report was conducted on April 15, 2020. A copy of these reports was submitted as documentary evidence.

They also agreed that the Tenant provided a forwarding address in writing on the move-out inspection report and that the Tenant gave the Landlord written consent to deduct \$100.00 from the security deposit.

The Landlord advised that he was seeking compensation in the amount of **\$148.31** because the Tenant damaged a light pendant. He stated that the light was fine at the start of the tenancy, but he noticed that a portion of it was broken upon conducting the move-out inspection report. He stated that the Tenant advised him that it broke in February 2020, but the Tenant never told him of this at the time. He submitted that the Tenant claimed that this light fixture fell by itself; however, it is his position that this could not happen as the part of the light fixture that broke is supported by a metal ring that would have to be removed.

The Tenant advised that he was in his bedroom when he heard the light fixture fall. He then put the broken piece aside with the intention to tell the Landlord about it; however, he became preoccupied with his life and relationship, and this was the reason he did not inform the Landlord that it was broken. He did not have the pieces of this fixture anymore as his ex-girlfriend threw them out. He stated that they never changed the lightbulb in the time that they lived there so this fixture was never touched. It was his belief that the Landlord advised him that a tool was necessary to open this light fixture to replace the bulb. He also pointed to damage on the sink below the light fixture to support his position that this fell on its own.

The Landlord stated that the rental unit was renovated in 2016 by a professional interior design company and that a tool is not required to replace the lightbulb for this particular

fixture. He submitted a copy of the invoice for the cost of this replacement part to support his claim.

The Landlord advised that he was seeking compensation in the amount of **\$1,276.25** because the Tenant damaged the thermafoil layer on the kitchen cabinet drawers next to the oven. Again, he stated that the kitchen was installed professionally in 2016 and that he lived there from 2016 to before the Tenant moved in. He used the oven frequently during this time and there was no damage to the cabinets at the start of the Tenant's tenancy. He advised that this damage was caused by improper use of the oven and he submitted pictures to demonstrate the damage.

He contacted the company that originally installed the cabinets and they indicated that a repair was not suitable as a full replacement would be the proper course of action to completely remedy this issue. He submitted a quote for the cost to restore the kitchen cabinets to the condition prior to being damaged.

The Tenant advised that the oven was not utilized in a manner other than that of which an oven would normally be used. The self-cleaning function was never utilized either. He stated that this damage was never noticed during the tenancy and that his ex-girlfriend cleaned the oven but never informed him of any damage. While the Landlord claimed that the damage was noticeable as it would make a noise when opening and closing the cabinet drawers, he stated that this was not noticed by him. He referenced articles that he found on the internet which suggested that thermafoil should not be installed near the oven without a heat shield. It is his position that the thermafoil had degraded over time and happened to be noticeable primarily during his tenancy. He suggested that the Landlord's estimate is excessive, as he found a contractor who could do this repair for \$200.00.

Both parties disagreed on when the Landlord acknowledged that he observed this damage, according to his emails; however, the consistent evidence is that this damage was not noted on the move-in inspection report and happened during the tenancy.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 23 of the *Act* states that the Landlord and Tenant must inspect the condition of the rental unit together on the day the Tenant is entitled to possession of the rental unit or on another mutually agreed day.

Section 35 of the *Act* states that the Landlord and Tenant must inspect the condition of the rental unit together before a new tenant begins to occupy the rental unit, after the day the Tenant ceases to occupy the rental unit, or on another mutually agreed day. As

well, the Landlord must offer at least two opportunities for the Tenant to attend the move-out inspection report.

Section 21 of the *Residential Tenancy Regulations* (the “*Regulations*”) outlines that the condition inspection report is evidence of the state of repair and condition of the rental unit on the date of the inspection, unless either the Landlord or the Tenant have a preponderance of evidence to the contrary.

Sections 24(2) and 36(2) of the *Act* state that the right of the Landlord to claim against a security deposit for damage is extinguished if the Landlord does not complete the condition inspection reports. As all parties agreed that a move-in and move-out inspection report was conducted with the Tenant, I find that the Landlord did not extinguish his right to claim against the security deposit.

Section 38(1) of the *Act* requires the Landlord, within 15 days of the end of the tenancy or the date on which the Landlord receives the Tenant’s forwarding address in writing, to either return the deposit in full or file an Application for Dispute Resolution seeking an Order allowing the Landlord to retain the deposit. If the Landlord fails to comply with Section 38(1), then the Landlord may not make a claim against the deposit, and the Landlord must pay double the deposit to the Tenant, pursuant to section 38(6) of the *Act*.

The undisputed evidence is that the Tenant’s forwarding address in writing was provided to the Landlord on April 15, 2020 and that the tenancy ended that same day. As the Landlord made this Application within the 15-day frame to claim against the deposit, and as the Landlord’s right to claim against the deposit was not extinguished, I find that the doubling provisions do not apply in this instance.

With respect to the Landlord’s claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, “It is up to the party who is claiming compensation to provide evidence to establish that compensation is due”, that “the party who suffered the damage or loss can prove the amount of or value of the damage or loss”, and that “the value of the damage or loss is established by the evidence provided.”

Regarding the Landlord’s claims for compensation in the amount of \$148.31 to cover the cost of replacing the light pendant, while I acknowledge that it is possible that this pendant did fall on its own accidentally, I find this to be the least likely scenario. Even though neither party indicated when the bulbs were last changed, I find it more likely than not that over the course of the Tenant’s almost two-year tenancy, that some bulbs might have required changing. When I weigh this possibility versus the likelihood of the light fixture having never been touched and falling on its own, I find that I am satisfied on a balance of probabilities that this light fixture was likely damaged when touched.

While there were contradictory submissions about this particular light fixture requiring a special tool to replace the lightbulb, generally, I find it less likely that many light fixtures would be designed to necessitate a special device to access the lightbulb. Based on this, and the pictures of the light fixture, I am satisfied that the damaged part of the light fixture did not fall down of its own accord but was more likely than not damaged when the bulb required replacement. As a result, I am satisfied that the Landlord should be granted a monetary award in the amount of **\$148.31** to satisfy this claim.

With respect to the Landlord's claim for compensation in the amount of \$1,276.25 as the cost to replace the kitchen cabinet drawers, the consistent and undisputed evidence is that these drawers were damaged at the end of the tenancy. While I acknowledge that it is possible that the thermafoil degraded over time and only happened to become noticeable during the Tenant's tenancy, given that the kitchen was installed by a professional design company and that they recommended the thermafoil be replaced after being notified of the damage, I find it unlikely that this company would recommend using the same product if this was not a suitable material to be used.

I acknowledge the Tenant's submissions that his research has indicated that thermafoil should not be used without a heat shield; however, I note that he did not provide the articles that he quoted these excerpts from, for my consideration. Furthermore, when I weigh the submissions of the professional design company against materials that the Tenant found on the internet, I find that I give more weight to the Landlord's evidence. As a result, I find that I prefer the Landlord's evidence on the whole and that the damage caused to the cabinet drawers was more likely than not due to the Tenant's negligence. Consequently, I am satisfied that the Landlord has established this claim and I grant a monetary award in the amount of **\$1,276.25** to satisfy this issue.

As the Landlord was successful in his claims, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this Application. Under the offsetting provisions of Section 72 of the *Act*, I allow the Landlord to keep the security deposit in partial satisfaction of the debt awarded. As a note, the Tenant has already given the Landlord written authorization to retain \$100.00 from the security deposit for other issues. This will be reflected in the table below.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Landlord a Monetary Order as follows:

Calculation of Monetary Award Payable by the Tenant to the Landlord

Light fixture	\$148.31
Kitchen cabinet repair	\$1,276.25
Filing fee	\$100.00
Remaining security deposit	-\$875.00
TOTAL MONETARY AWARD	\$649.56

Conclusion

The Landlord is provided with a Monetary Order in the amount of **\$649.56** in the above terms, and 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.

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: September 9, 2020

Residential Tenancy Branch