



Dispute Resolution Services

Page: 1

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 to the rental unit pursuant to section 67;
- 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;
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. The landlord stated that the tenant was served with the notice of hearing package and the submitted documentary evidence via regular mail. The tenant confirmed receipt of the notice of hearing but argued that no documentary evidence was part of the package. The landlord stated that he does not have any evidence to support the claim of service of the documentary evidence. On this basis, I find that as the tenant has disputed receipt of the documentary evidence and the landlord is unable to provide any supporting evidence of service that the landlord's 9 documentary files are excluded from consideration in this hearing. Both parties confirmed that the tenant served the 2 documentary files to the landlord via regular mail on May 21, 2020. I find that both parties have been sufficiently served with the notice of hearing package and the tenant's documentary evidence package as per sections 88 and 89 of the Act.

At the start of the hearing the landlord provided conflicting and contradictory evidence. The landlord stated that he had misunderstood each time. When asked the landlord stated that he did not understand the questions. The landlord was advised to listen to the tenant's mandarin translator as he has stated that he speaks mandarin. Both parties were cautioned repeatedly that if they did not understand what was being said

that it was their responsibility to notify the Arbitrator. For the remaining portions of the hearing, the landlord was instructed to wait and listen for the translator to interpret for the tenant to confirm his understanding of the hearing dialogue.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for damage and recovery of the filing fee?
Is the landlord entitled to retain all or part of the security deposit?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

The landlord seeks a clarified monetary claim of \$650.00 for damage caused to sink which consists of:

\$514.50	Broken Sink Replacement
\$40.00	Cleaning, oven cleaner and future sink cleaning
\$100.00	Filing Fee
\$654.50	Total
\$650.00	Total Claim Filed

The landlord confirmed his filed claim is only for \$650.00 as opposed to the total amount of the claims.

The landlord claims that after the tenant vacated the rental unit, the bathroom sink was found to be broken. The landlord stated that a plumbing professional stated that the sink needed to be replaced as it was unrepairable.

The landlord provided undisputed affirmed testimony that the sink had a crack when it was found. The landlord also stated that an estimate was obtained for \$514.50 for the cost of removing a cracked sink and installing a new Kohlar Sink, which also includes the tax. The landlord provided written details stating that the rental unit was "brand new" at the start of tenancy.

The tenant argued that the rental unit furnishings were not new when he moved in. The tenant stated that he was not sure if the crack was caused by him. The tenant further

stated that the landlord would periodically enter the rental unit without notice. The tenant stated that he “does not accept” the landlord’s claim as the sink could have become cracked due to wear and tear. The tenant was not able to provide any details of how the sink could have a crack due to wear and tear.

The landlord also seeks \$40.00 for cleaning. The landlord claims that he purchased an oven cleaner for \$14.99 plus tax to clean the oven left by the tenant. The tenant argues that he has never used the oven the entire time he was a tenant. The landlord also seeks the remaining amount for general cleaning of the sink area after the sink is replaced.

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. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

In this case, I find on a balance of probabilities that the tenant vacated the rental unit with a damaged sink (cracked). The landlord provided undisputed affirmed testimony that this was a brand new unit and that the unit was found with a crack in the sink at the end of tenancy. The landlord obtained an estimate for \$514.50 for the installation of a new sink. Although the tenant stated that he “does not agree” with the landlord’s claim, the tenant did confirm in his direct testimony that he could not be sure if he had caused the crack in the sink. On this basis, the landlord has been successful in his claim for compensation of \$514.50.

On the landlord’s claim for cleaning costs of \$40.00, I find that the landlord has failed. The landlord provided affirmed testimony that the oven was left dirty which is disputed by the tenant. The tenant stated that he has never used the oven since moving in. The landlord did not submit any proof of a dirty oven or purchase of any cleaning supplies for an oven. During the hearing the landlord confirmed that a condition inspection report for the move-in or the move-out were not completed. I also find that the landlord’s claim

for future cleaning costs to be pre-mature and without merit at this time as no specified amount or details have been provided. On this basis, this portion of the landlord's claim is dismissed.

The landlord has established a total monetary claim of \$514.50. The landlord is also entitled to recovery of the \$100.00 filing fee.

During the hearing the tenant also requested return of double the security deposit. Both parties were cautioned that normally the tenant would need to file a formal application for dispute, but as the landlord has filed a claim against the security deposit, a determination shall be made.

Both parties confirmed the tenant paid the landlord a \$550.00 security deposit at the start of the tenancy. Both parties confirmed the tenancy ended on April 30, 2020. Both parties confirmed that the tenant provided his forwarding address in writing for return of the security deposit on May 21, 2020. A review of landlord's application for dispute shows that it was filed on June 3, 2020. As such, I find that the tenant's request for return of double the security deposit is dismissed as the landlord did file for dispute of returning the security deposit within the allowed 15 day period.

I authorize the landlord to retain the \$550.00 security deposit in partial satisfaction of this claim.

Conclusion

The landlord is granted a monetary order for \$64.50.

This order must be served upon the tenant. Should the tenant fail to comply with this order, the order may be filed 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 29, 2020

Residential Tenancy Branch