



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL

Introduction

The landlord filed an Application for Dispute Resolution (the “Application”) on July 6, 2020 seeking an order to apply a portion of the tenants’ paid security deposit to damage in the rental unit. The landlord also applied to recover the filing fee for the Application. The matter proceeded by way of a hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the “Act”) on October 29, 2020. In the conference call hearing I explained the process and provided the attending party the opportunity to ask questions.

The tenants and landlord both attended the hearing, and I provided each with the opportunity to present oral testimony. In the hearing, the tenant confirmed they received the notice of the hearing and the landlord’s evidence package via post. The landlord confirmed receipt of the tenant’s evidence via the Residential Tenancy Branch.

Issue(s) to be Decided

Is the landlord entitled to a Monetary Order for Damage or Compensation, applying the security deposit to the claim, pursuant to 67 of the *Act*?

Is the landlord entitled to recover the filing fee for this Application pursuant to section 72 of the *Act*?

Background and Evidence

I have reviewed all submissions and evidence before me; however, only those relevant to the issues and findings in this matter are described in this section.

The landlord spoke to the terms of the tenancy agreement, referring to the document submitted as evidence. The tenancy began on November 1, 2016, and the tenancy agreement shows successive yearly dates written in for each extension of the tenancy. The then-current tenancy-end date on the agreement is October 30, 2020.

On their Application, the landlord indicated the current security deposit amount was \$900. They indicated the pet damage deposit was \$800; however, the tenant provided that the correct amount was \$900, with both deposits increasing each year. The current amount of rent, as shown in the agreement, is \$1,800. The tenant verified this rent amount in the hearing.

In the hearing the landlord stated the tenants ended the tenancy “without any notice”, via text message in March 2020. The tenants stated they initially had concerns over an amount of mould within the rental unit. On March 16, they asked the landlord for an inspection and stated their concern to the landlord. The landlord’s response to this, according to the tenants, was they could move out if they wanted. The tenants then messaged to the landlord “for one-month’s notice”, and the landlord said “fine.”

The tenants provided that their move-out date was May 31, 2020 and they paid the rent up until this date. The landlord verified this fact.

The landlord provided there was a condition inspection meeting together with the tenants on May 31. They provided a copy of the ‘Condition Inspection Report’ with this same date. The report bears the one of the tenant’s signature in the space for move-out, and the indication is that they agree that the report “fairly represents the condition of the rental unit.” Neither of the tenants signed in the space authorizing the landlord to keep the total of both the security deposit and pet damage deposit.

In the hearing the tenants stated they “did not sign off on the report” – they mistakenly signed in the move-out space. They stated the landlord provided the large ‘X’ notation in the margin. On this, the landlord stated: “they see everything, the house was in very bad condition” and “the unit was a disaster.” Opposingly, the tenants stated there was no pet damage in the unit and the landlord was lying and talking “condescendingly”.

The landlord prepared a ‘Monetary Order Worksheet’ dated July 6, 2020; this was then revised on July 8. The worksheet shows the claimed amounts as follows:

#	Item(s)	\$ claimed
1	construction work	1,942.50
2	carpet cleaning	165.00
3	carpet replacement	816.00
4	painting 700 sq. ft	600.00
5	dishwasher/laundry check	126.00
6	new washer/dryer	1668.29
Total		\$5,317.79

The landlord provided receipts for item 1. It shows a construction company checking for water damage (\$150). This check revealed the tenant's upstairs unit "spread water repeatedly on the floor" with showers or "with children". Further items of repair are: water-damaged floor/ceiling repair (\$500); tiles on the fireplace and water faucet (\$250); a broken door (\$250) and damaged exterior door (\$700).

The tenants provided a document in response to this, dated October 16, 2020. They state some of these costs are unreasonable. They made the landlord aware of water damage issues "months before moving out", the fireplace damage was that of a single tile (normal wear and tear), and a hole was made in the bedroom door to assist a child locked inside. Additionally, the \$700 cost for a replacement exterior door is unreasonable and they propose use of "another used door in a similar condition".

The tenants agree to item 2 carpet cleaning. They propose the carpet replacement for item 3, and painting for item 4, is normal wear and tear and note there was no invoice provided by the landlord.

For dishwasher repair, the landlord provided a receipt for a service call that describes the dishwasher as needing parts. A representative from the service centre estimates the cost to fix the dishwasher at \$450 – 500, and parts "roughly \$350." The tenants provide that they made the landlord aware "years ago" that it was not working, and the landlord did not replace or repair – they point to a text message provided by the landlord here. They maintain that they went without the dishwasher for three years, and no repairman came in to inspect this, even though they requested this specifically. In the past, they did offer to pay 50/50 on a new dishwasher.

For the item 6 appliance replacement, the same receipt for the service call describes the "motors in the dryer and washer both seized" and "Parts no longer available to fix laundry center." The landlord stated the washer worked "very well" initially and the washer was brand new. They quoted the repairperson as saying "it looks like someone did this on purpose."

The tenants state the replacement was based on the age of the washer/dryer, with parts no longer available. Also: "Landlord was notified about dryer not working, did not repair." Further: "This was an old double stack washer/dryer, washer below never worked. There was a separate washer beside it that was being used and working prior to moving out."

Analysis

Section 37(2) of the *Act* requires a tenant, when vacating a rental unit to leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and give the landlord all the keys and other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

I find the landlord has met the burden of proof to show they are entitled to compensation on some items from their claim; however, on other items they have not.

I find the landlord has clearly established there was damage to both the bedroom and exterior doors. In both cases, this required replacement. The tenants presented they wished for an alternative to the backdoor replacement; that is a used door at lesser cost. They did not provide sufficient evidence to show how they would accomplish this. The photo evidence provided by the landlord shows a hole for a pet missing from the lower portion of the door. The bedroom door, as shown, was significantly damaged. I find the tenants shall reimburse the landlord for the cost of these door replacements; this is the equivalent to \$950. Adding Goods and Services Tax brings this amount to \$997.50.

The tenants acknowledged the need for carpet cleaning and agreed to covering this amount, for \$165.

The landlord did not provide sufficient evidence to show that the repairs listed justify the amount of money claimed. Specifically:

- For the water-damaged floor and lower unit ceiling, the landlord did not provide ample evidence to show the need for repair. I find it more likely than not that the landlord did not raise this subject with the tenant earlier on, and I accept the tenants' evidence that they instead raised their concern with the landlord "months before" and the landlord mis-stated the cause as a "furnace drip issue". In sum, the needed work to this area has come too late for this to be attributed to the actions or inactions of the tenants – this is not an effort at mitigating the loss for this issue.
- There is evidence of a single tile needing replacement on the fireplace; however, there is no photo evidence to show the need for a faucet replacement – as such, there is no justification for the claimed amount of \$250 here.

- The need for carpet replacement is not shown – further, the specific amount claimed does not have a description of what area of the rental unit needs new carpeting. There is no evidence of the existing carpet's age – I find it more likely than not that the carpet replacement is due to “wear and tear” as stated by the tenant. The landlord did not indicate damage to the carpet on the condition inspection report.
- Similarly, the need for painting to the extent claimed is not shown – the landlord only provided portions of specific parts needing re-painting – this is not evidence that establishes any paint mar is the responsibility of the tenants, as opposed to wear and tear.

There are two pieces which the landlord claims for appliances. One is the \$126 cost of a service call to examine the washer/dryer and dishwasher. This service person determined that both the dishwasher and the washing machine were too old to repair. This is chiefly due to lack of parts.

The landlord did not provide sufficient evidence on the age of the dishwasher and laundry appliances. With parts no longer available, I find it more likely than not that the appliances themselves are beyond repair and needing replacement in any event. The landlord has not established the clear link from the tenants to the non-working appliances. While they provided that the tenant attempted to wash several pairs of shoes at once, there is no evidence for this. For this reason, it is implausible that the tenants caused damage to the laundry that necessitated replacement.

Chiefly, the lack of parts for these appliances points to the appliances having passed their useful life cycle. I find as fact that the tenants were using a secondary washing machine. In my analysis this makes it more likely than not that the washing machine outlived its usefulness some time prior. For this reason, I find the tenants shall not compensate the landlord for the new washer/dryer replacement cost. Similarly, the landlord established the cause or need for dishwasher and laundry repair and an assessment of parts too late for this to become an obligation of the tenants upon the end of tenancy. I accept the tenants' evidence that they advised the landlord of these faulty appliances some time prior.

For the reasons above, I find the landlord is entitled to an award of the amount of \$1,162.50. This is for replacement of the doors and carpet cleaning.

The *Act* section 72(2) gives an arbitrator the authority to make a deduction from the security deposit held by the landlord. The landlord has established a claim of \$1,162.50. After setting off the security deposit, there is a balance of \$262.50. I am

authorizing the landlord to keep the security deposit amount and award the balance of \$262.50 as compensation for the damages itemized and presented in their evidence.

As the landlord is successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

Pursuant to sections 67 and 72 of the *Act*, I grant the landlord a Monetary Order in the amount of \$362.50, for damages claimed and recovery of the filing fee for their Application. The landlord is provided with this Order in the above terms and the tenants 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 *Act*.

Dated: November 24, 2020

Residential Tenancy Branch