



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDL-S, FFL**
 MNSDS-DR, FFT

Introduction

This hearing addressed applications from both the landlords and the tenants pursuant to the *Residential Tenancy Act* (the “Act”) as follows:

The landlords applied for –

- A monetary award for damage to the unit pursuant to section 67 of the *Act*;
- An application to keep all or part of the security deposit, pursuant to section 38 of the *Act*; and
- A request to be reimbursed by the tenant for the filing fee, pursuant to section 72 of the *Act*.

The tenants applied for –

- A return of their security deposit pursuant to section 38 of the *Act*; and
- A return of their filing fee pursuant to section 72 of the *Act*.

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

Both parties confirmed receipt of each others application for dispute resolution and evidentiary packages. I find all parties were duly served in accordance with section 88 & 89 of the *Act*.

Issue(s) to be Decided

Are the landlords entitled to a monetary award?
Can the landlords retain the tenants’ security deposit?

Is either party entitled to a return of the filing fee?

Background and Evidence

The parties confirmed this tenancy began on December 1, 2018 and ended on August 31, 2020. Rent was \$2,500.00 per month and a security deposit of \$1,250.00 paid at the outset of the tenancy continues to be held by the landlords.

The landlords are seeking to retain the tenants' security deposit and a monetary award of \$2,100.00 while the tenants are seeking a return of their security deposit. Both parties have applied for a return of their filing fee.

The landlords explained their monetary award represented the costs associated with bringing the suite to a reasonable state of repairs and cleanliness following the conclusion of the tenancy. The landlords detailed the following expenses:

- Cleaning \$450.00
- Drywall and Painting \$1,200.00
- Carpet cleaning \$250.00
- Return of Filing Fee \$100.00

As part of their evidentiary package, the landlords provided various photos purporting to depict the rental unit following the tenants' departure. Further, the landlords provided a detailed work-order quote for repairs and cleaning that was required in the suite. Landlord V.A. confirmed that professional cleaning of the suite had not yet taken place, however, he stated that he intended to have the suite cleaned following his own personal departure from the rental unit.

The tenants acknowledged that some further cleaning of the suite was required following their departure and they stated that some minor damage had occurred during the tenancy. The tenants disputed the costs associated with remediating the rental unit and they highlighted the fact that the carpet was stained at their move-in. Both tenants confirmed their forwarding address was provided to the landlord on September 5, 2020,

Analysis

The landlords have applied for a Monetary Order of \$2,100.00 to recoup the expenses associated with repairing damage done to the rental unit and for cleaning. The landlords

are also seeking to retain the security deposit to apply against any monetary award granted, and to recover the filing fee.

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. A claim for damage or loss under the *Act* will be examined within the context of Policy Guideline #16 which sets out that 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 landlords to prove their entitlement to a claim for a monetary award.

The tenants did not dispute that some cleaning and repairs were required following their departure, but they questioned the amounts requested by the landlords. The tenants alleged the quotations submitted were for the entire house, a claim that was disputed by the landlords.

A review of the addendum signed by the tenants indicates at point #16 the following, "The tenant will pay the landlord for the professional cleaning of the carpets upon the termination of the tenancy agreement." I find this addendum supports the landlords' application for a return of funds associated with carpet cleaning as the tenants acknowledged the carpets were not professionally cleaned at the conclusion of the tenancy, and therefore award the landlords this portion of their application.

The remainder of the landlords' application concerns costs associated with cleaning and drywall/painting. I find that the landlords have fulfilled all requirements of the four-point test as described above and as detailed in Policy Guideline #16 in relation to the drywall and paint repairs. The landlords have produced a reputable invoice, shown evidence of the damage and detailed associated remediation costs. For these reasons, I award the landlords the entirety of their monetary claim for drywall repairs and painting.

I decline to award the landlords any amount for cleaning as the tenancy ended in August 2020 and these costs have yet to be incurred. Further, I note the presence of landlord V.A. living in the rental unit would render any cleaning from a past tenancy void. While I acknowledge the tenants' arguments about the costs associated with such repairs and cleaning, I accept the landlords' testimony that no charges were levied for any items outside of those named in their application.

Section 38 of the *Act* requires the landlord to either return a tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the *later* of the end of a tenancy and, or upon receipt of the tenant's forwarding address in writing.

No evidence was produced at the hearing that the landlords applied for dispute resolution outside of the 15-day period following receipt of the tenants' forwarding address on September 5, 2020. A review of the application reveals the landlords applied to retain the deposit on September 14, 2020.

Pursuant to section 72 of the *Act*, I allow the landlords to retain the tenants' security deposit in its entirety and to set it against the monetary award granted.

As the landlords were successful in their application, they may recover the \$100.00 filing fee.

Conclusion

I issue a Monetary Order of \$300.00 in favour of the landlords as follows:

Item	Amount \$
Drywall and Painting	1,200.00
Carpet Cleaning	250.00
Return of Filing Fee	100.00
Less Security Deposit	(-1,250.00)
Total =	\$300.00

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: January 08, 2021

Residential Tenancy Branch