



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNDCL-S, FFL, FFT, MNCT, MNSD

Introduction

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

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for its application from the tenant, pursuant to section 72.

This hearing also dealt with the tenant's cross-application pursuant to the *Act* for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement, pursuant to section 67; and
- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38; and
- authorization to recover the filing fee for its application from the tenant, pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The parties acknowledged receipt of evidence submitted by the other. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

Issue(s) to be Decided

Are the landlords entitled to a monetary award for loss and damages arising out of this tenancy?

Are the landlords entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

Are the landlords entitled to recover the filing fee for this application from the tenant?

Are the tenants entitled to a monetary award equivalent to the amount of their security deposits?

Are the tenants entitled to a monetary order as compensation for loss or damage under the Act, regulation or tenancy agreement?

Are the tenants entitled to recover the filing fee for this application from the landlord?

Background and Evidence

SR gave the following testimony on behalf of the landlords. The tenancy began on March 15, 2013 and ended on September 15, 2020. The tenants were obligated to pay \$1126.50 per month in rent in advance and at the outset of the tenancy the tenants paid a \$487.50 security deposit. SR testified that written condition inspection reports were not done at move in or move out. SR testified that the tenant damaged the hardwood floors to which the landlord received a quote of \$1430.08 to repair them.

SR testified that the tenants removed light fixtures which left the ceiling exposed and revealed that the wiring wasn't up to code. SR testified that they have had that work done by an electrician and feel the tenants should pay for that. SR testified that the tenants left the grout damaged and dirty and it will cost \$168.00 repair it. SR seeks \$325.50 for rental rebate to the existing tenant for the anticipated amount of days of inconvenience to do the grouting and floor repair. SR seeks \$1500.00 for the stress and anxiety of this situation.

The landlords are applying for the following:

1.	Hardwood Floors	\$1430.08
2.	Electrical work	682.00
3.	Grout Repair	168.00
4.	Refund Rent	325.50
5.	Aggravated Damages	1500.00
6.		
	Total	\$4105.58

TA gave the following testimony on behalf of the tenants. TA disputes all of the claims made by the landlord. TA submits that since there wasn't a move in and move out

inspection the landlord is unable to prove the differences in the unit from move in to move out. TA testified that her sister; EA, had to live with the threat of bedbugs in the home from July 16, 2020 to September 15, 2020. TA testified that the landlord's inaction created a level of stress and anxiety that forced the end to this tenancy. TA testified that moving costs, the last two months of rent and compensation for pain and suffering should be awarded to the tenants. TA also requests the return of the security deposit.

The tenants are applying for the following:

1.	Return of Security Deposit	\$487.50
2.	Repayment of Rent	2270.67
3.	Moving Fees	248.33
4.	Pain and Suffering	5000.00
5.		
6.		
	Total	\$8006.50

Analysis

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 arguments are reproduced here. The principal aspects of each party's claim and my findings around each are set out below.

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 provide **sufficient evidence of the following four factors**; the existence of the damage/loss, that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party, the applicant must also show that they followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed, and that if that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Firstly, I address the landlords claim and my findings as follows.

Hardwood Floors – \$1430.08

The landlord provided a quote for this claim and has not done the work despite re-renting the unit. In addition, it was explained in great detail to the landlord the vital and useful nature of the inspection report. Without the condition inspection report or any other supporting documentation, I am unable to ascertain the changes from the start of tenancy to the end of tenancy, if any. The landlord has not provided sufficient evidence to support this portion of their claim and I therefore dismiss this portion of their application.

Light fixture and electrical work \$682.00

The landlord testified that when they discovered that a light fixture was removed the wiring and box that was left exposed wasn't up to code and required an electrician to update it. Section 32 of the Act addresses this issue as follows:

Landlord and tenant obligations to repair and maintain

32 (1)**A landlord must provide and maintain** residential property in a state of decoration and repair that

(a)complies with the health, **safety and housing standards required by law**, and

(b)having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

This is a cost that clearly is the landlord's responsibility and not that of the tenant, accordingly; I dismiss this portion of the landlord's application.

Grout Repair - \$168.00

The landlord provided a quote for this claim and has not done the work despite re-renting the unit. In addition, it was explained in great detail to the landlord the vital and useful nature of the inspection report. Without the condition inspection report or any other supporting documentation, I am unable to ascertain the changes from the start of tenancy to the end of tenancy, if any. The landlord has not provided sufficient evidence to support this portion of their claim and I therefore dismiss this portion of their application.

Rental Rebate \$325.50

The landlord is anticipating at least five days of inconvenience to the current tenant to conduct the work, however; as the landlord has failed to show that the tenants are responsible for those repairs and since I have dismissed the landlords claim to conduct the work based on insufficient evidence, I also dismiss this claim.

Aggravated Damages

Although it is understandable that the long term relationship between the parties ended poorly, the process of having to file an application and prepare for a hearing is not sufficient to be awarded aggravated damages. Stating that the process caused anxiety and stress is not isolated just to the landlord, but to both parties. This process is what is available for both parties and both parties must navigate through it. Based on the insufficient evidence before me, I dismiss this portion of the landlord's application.

As the landlord has not been successful in their application, they are not entitled to the recovery of the filing fee. The landlord's application is dismissed in its entirety without leave to reapply.

I address the tenant's application and my findings as follows.

Return of Rent \$2270.67, Moving Fee - \$248.33 & Pain and Suffering -\$5000.00.

The three items claimed by the tenant are a result of the same issue. TA testified that EA ended the tenancy because the landlord had bedbugs in one room in their suite. EA testified that the stress of knowing that bedbugs were in the building during the last two months of her tenancy left her feeling uncomfortable and uneasy. EA testified that she was having difficulty sleeping as a result. TA testified that as a result of this, the last two months of rent, moving costs and compensation for pain and suffering should be granted in the amount of \$7519.00.

The landlord testified that they contacted pest control one day after discovering the bedbugs and had them attend within three days. As noted above under section 67 of the Act, a party must satisfy all four elements to be granted a monetary award. The tenants failed to show how the landlord was reckless or negligent and what steps the tenants took to mitigate the issue. I find that the landlord acted responsibly and quickly to the situation and did all they could under the circumstances. The tenant confirmed that she did not observe any bedbugs in her unit at any time. The tenant chose to move

out and was not forced out due to any infestation. The tenants have not provided sufficient evidence to show that they are entitled to any of the costs claimed. Based on all of the above and the insufficient evidence before me, I dismiss these claims.

As the landlord's application has been dismissed, they must return the security deposit back to the tenants. I decline to award the recovery of the filing fee as the tenants, as the majority of their claim has been dismissed.

Conclusion

The tenant has established a claim for \$487.50. I grant the tenant an order under section 67 for the balance due of \$487.50. This order may be filed in the Small Claims Court and enforced as an order of that Court.

The landlord's application is dismissed without leave to reapply.

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: February 05, 2021

Residential Tenancy Branch