



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL, MNSDB-DR, FFT

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 and pet 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:

- authorization to obtain a return of all or a portion of their security and pet deposit pursuant to section 38; and
- authorization to recover the filing fee for its application from the landlord 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 and to make arguments. 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 to be Decided

Is the landlord entitled to a monetary award for damages and losses arising out of this tenancy?

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

Is the landlord entitled to recover the filing fee for this application from the tenant?

Is the tenant entitled to a monetary award for the return of a portion of his pet damage and security deposits?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background, Evidence

The landlord's testimony is as follows. The tenancy began on April 1, 2018 and ended on August 31, 2020. The tenant was obligated to pay \$2050.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$1025.00 security deposit and \$1025.00 pet deposit. The landlord testified that she has returned \$965.00 to the tenant and presently holds \$1085.00 in trust. The landlord testified that the tenant caused a water backup in the kitchen sink by trying to address a clogged garburator by using Drano pellets. The landlord testified that the Drano pellets are for regular sinks only and that by using them, the tenant caused water to soak the carpets, warp kitchen cabinets, island gables, and minor warping to kitchen floors.

The landlord testified that she contacted her insurance company to address the matter on August 31, 2020; the insurance company attended on September 10, 2020. The landlord testified that she was intending to replace the carpets after this tenant moved out so there was a tight window to have the suite ready for the new incoming tenants. The new tenants were scheduled to move in on September 3, 2020 but had to be delayed one day. The new tenants were also displaced for three days on September 25-28, 2020 to allow the insurance company to use drying machines and address some of the repairs.

The landlord is applying for the following:

1.	Insurance Deductible	\$500.00
2.	Fix kitchen grease clog	200.00
3.	Remove damaged Garburator	200.00
4.	Quote for new Garburator	322.00
5.	Quote to fix patio blinds	109.00
6.	Quote to fix closet door	95.00
7.	3 heaters for drying water damage	102.00
8.	Replace blackout curtains	103.00
9.	Cleaning supplies	40.00
10.	Rental loss for four days	280.00
11.	Filing fee	100.00
	Total	\$2051.00

The tenant gave the following testimony. The tenant testified that he agrees that he is responsible for the plumbing repair. The tenant acknowledged that he put the wrong type of treatment in the garburator and that when the dishwasher ran it caused it to clog. The tenant testified that the landlord did not advise of many of the claims at the move out condition inspection but only days later.

The tenant testified that he did not have a chance to inspect or rectify any of the claims as the landlord was pressuring him to move out early to allow for the new flooring work to be done before the new tenants moved in. The tenant testified that he doesn't understand why the landlord contacted her insurance as the water leak was minimal and minor. The tenant testified that the landlord overreacted and that the amount sought is inflated due to the insurance company's involvement. The tenant is requesting the return of his deposit minus the plumbing repair cost.

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. 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.

Item 1 from claim table \$500.00

The landlord did not provide a proof of payment or invoice to show that she had paid a \$500.00 deductible as claimed. Due to the insufficient documentation before me, I dismiss this portion of the landlords claim.

Item 2 - \$200.00

The tenant does not dispute this claim and takes responsibility for the plumber to have to unclog the sink, accordingly; I find that the landlord is entitled to \$200.00.

Item 3- \$200.00

The landlord has provided sufficient evidence to show that the garburator was damaged as a result of the tenants' actions leaving it inoperable and requiring it to be removed so that the plumber could replace the basket drain, inspect, test and install. Based on the documentation before me, I find that the landlord is entitled to \$200.00.

Items 4-9 \$851.00

The landlord testified that she has not conducted the repairs to items 4-6. In addition, the landlord has not provided sufficient proof that she purchased items 7-9. Based on the insufficient documentation before me and the lack of corroborating documentation to show the **actual out of pocket costs**, I dismiss these claims.

Item 10 - \$280.00

Although the landlord provided an e-transfer to show that she paid the money, she failed to show the scope of work requiring the tenants to vacate the unit. In addition, the landlord failed to provide sufficient evidence of negligence or recklessness on the tenants' part, accordingly; I dismiss this portion of the landlord's application.

Item 11- \$100.00

As both parties were successful in their applications, I apply the offsetting provision under section 72 of the Act and decline to award the recovery of this fee for either party, they must each bear the cost of their filing fee.

The landlord is entitled to retain \$400.00 from the deposits being held in full satisfaction of the claim. The tenant is entitled to the return of \$685.00.

Conclusion

The landlord has established a claim for \$400.00. I order that the landlord retain that amount and return the remaining \$685.00 of the deposits to the tenant. I grant the tenant order under section 67 for the balance due of \$685.00. This order may be filed in the Small Claims 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: February 09, 2021

Residential Tenancy Branch