



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, pursuant to section 67;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee from the tenant, pursuant to section 72.

The landlord, the landlord's spouse and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The tenant called her mother as a witness. The tenant's mother affirmed to tell the truth.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they are not recording this dispute resolution hearing.

Both parties confirmed their email addresses for service of this decision and order.

The landlord testified that the tenant was served with this application for dispute resolution and evidence on March 19, 2021. The tenant testified that she received the above documents on March 20, 2021. I find that the above documents were sufficiently served on the tenant, for the purpose of this *Act*, pursuant to section 71 of the *Act*.

Both parties agree that the landlord emailed the tenant additional evidence this morning.

Section 3.14 of the Residential Tenancy Branch Rules of Procedure states that the applicant's evidence must be received by the respondent and the Residential Tenancy Branch not less than 14 days before the hearing.

I find that the evidence served on the tenant this morning was not served in accordance with section 3.14 of the *Rules* and is late.

Section 3.11 the *Rules* state that if the arbitrator determines that a party unreasonably delayed the service of evidence, the arbitrator may refuse to consider the evidence.

The late evidence is dated March 23, 2021. I find that the landlord could easily have served the tenant with the late evidence more than 14 days before this hearing and unreasonably delayed the service of evidence. The evidence served today is not accepted into evidence and will not be considered.

Issues to be Decided

1. Is the landlord entitled to a Monetary Order for damage, pursuant to section 67 of the *Act*?
2. Is the landlord entitled to retain the tenant's security deposit, pursuant to section 38 of the *Act*?
3. Is the landlord entitled to recover the filing fee from the tenant, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on August 27, 2019 and ended on March 1, 2021. Monthly rent in the amount of \$1,300.00 was payable on the first day of each month. A security deposit of \$650.00 was paid by the tenant to the landlord. A written tenancy agreement was submitted for this application. The tenant personally served the landlord with the tenant's forwarding address in writing on

January 26, 2021. The landlord filed this application for dispute resolution on March 10, 2021.

Both parties agree that at the start of this tenancy the landlord did not ask the tenant to complete a move in condition inspection report and the landlord did not complete a move in condition inspection report at the start of this tenancy.

Both parties agree that the landlord did not ask the tenant to complete a move out condition inspection report at the end of this tenancy. The landlord and her spouse testified that they completed a move in and out condition inspection report after the tenant vacated the property. The move in and move out condition inspection reports were entered into evidence.

The landlord's spouse testified that the subject rental property was newly renovated in August of 2017 and was in excellent condition at the start of this tenancy. No documentary evidence to prove the move in condition of the subject rental property were entered into evidence. The landlord's spouse testified that the floors were in excellent condition at the start of this tenancy and were damaged in two locations at the end of this tenancy. The landlord entered into evidence a quote for the damaged planks of floor to be replaced, the quote is for 72.09 square feet of flooring for a total of \$322.15. The landlord entered into evidence an internet search query that states that the cost of installing hardwood flooring averages between \$6 and \$12 per square foot.

The landlord's spouse testified that the landlord is seeking the cost of materials to replace the damaged floor in the amount of \$322.15 plus the cost of labour in the amount of \$462.00. The landlord's spouse testified that the landlord received a quote for labour installation in the amount of \$462.00. No documentary proof of the above quote was accepted into evidence.

The tenant testified that the floor was already scratched when she moved in and that she did not damage the floor. The tenant's mother testified that she did not recall the condition of the floor when the tenant moved in.

The landlord's spouse testified that the tenant left wet things on the kitchen counter, damaging it, and that the kitchen counter needs to be re-finished. The landlord's spouse testified that the landlord received a quote to re-finish the countertop for \$231.00. No documentary proof of the above quote was accepted into evidence. The landlord's spouse testified that the landlord is seeking to recover the cost of re-finishing in the amount of \$231.00 from the tenant.

The tenant testified that the kitchen counter was already damaged at the start of this tenancy and that she did not damage the counter. The tenant's mom testified that at the start of this tenancy the kitchen counter was scratched and gouged. The landlord's spouse asked the tenant's mom if the counter had water damage at the start of the tenancy. The tenant's mother testified that she did not recall if there was water damage, but that she does recall seeing scratches and gouges at the start of this tenancy.

The tenant testified that the landlord's right to claim against her security deposit is extinguished because the landlord did not complete move in and out condition inspection reports with her.

Analysis

Section 67 of the *Act* states:

Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Policy Guideline 16 states that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To be successful in a monetary claim, the applicant must establish all four of the following points:

1. a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
2. loss or damage has resulted from this non-compliance;
3. the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
4. the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Failure to prove one of the above points means the claim fails.

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails.

Section 37(2)(a) of the *Act* states that when tenants vacate a rental unit, the tenants must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

I find the tenant's mother's testimony to be unhelpful as she did not recall the condition of the floors at the start of this tenancy and did not recall if there was water damage to the counters at the start of this tenancy.

The landlord claimed that the tenant damaged the flooring and the kitchen counter. The tenant denies damaging the flooring and the kitchen counter and testified that they were already damaged when she moved in. The landlord did not provide any documentary evidence to prove the move in condition of the subject rental property. I find that parties have provided an equally probable explanation of the move in condition of the subject rental property. As this is the landlord's application, the landlord bears the burden of proof. I find that the landlord has not proved, on a balance of probabilities, that the tenant caused the damage to the floors and kitchen counter. The landlord's claims for damages are therefore dismissed without leave to reapply.

As the landlord was not successful in this application for dispute resolution, I find that the landlord is not entitled to recover the \$100.00 filing fee from the tenant, pursuant to section 72 of the *Act*.

Condition Inspection Reports

Sections 23, 24, 35 and 36 of the *Act* establish the rules whereby joint move-in and joint move-out condition inspections are to be conducted and reports of inspections are to be issued and provided to the tenants. When disputes arise as to the changes in condition between the start and end of a tenancy, joint move-in condition inspections and inspection reports are very helpful. These requirements are designed to clarify disputes regarding the condition of rental units at the beginning and end of a tenancy.

Section 24(2) of the *Act* states that the right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord does not offer the tenant two opportunities to complete the

condition inspection. Pursuant to section 17 of the *Residential Tenancy Act Regulations* (the “Regulations”), the second opportunity must be in writing.

The landlord testified that she did not ask the tenant to complete a move in condition inspection report at the start of this tenancy and that no move in condition inspection report was completed at the start of this tenancy. Responsibility for completing the move in inspection report rests with the landlord. I find that the landlord did not complete the move in condition inspection and inspection report in accordance with the Regulations, contrary to section 24 of the *Act*.

Since I find that the landlord did not follow the requirements of the *Act* regarding the joint move-in inspection and inspection report, I find that the landlord’s eligibility to claim against the security deposit for damage arising out of the tenancy is extinguished. As I have determined that the landlord is ineligible to claim against the security deposit, pursuant to section 24 of the *Act*, I find that I do not need to consider the effect of the landlord failing to provide two opportunities, the last in writing, to complete the move out inspection and failing to complete the move out inspection report.

Security Deposit Doubling Provision

Section 38 of the *Act* requires the landlord to either return the tenant’s security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenant’s provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit.

Section C(3) of Policy Guideline 17 states that unless the tenants has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit if the landlord has claimed against the deposit for damage to the rental unit and the landlord’s right to make such a claim has been extinguished under the *Act*.

In this case, while the landlord made an application to retain the tenant’s security deposit within 15 days of receiving the tenant’s forwarding address in writing, the landlord is not entitled to claim against it due to the extinguishment provisions in section 24 of the *Act*. Therefore, the tenant is entitled to receive double the security deposit in the amount of \$1,300.00.

Conclusion

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

I issue a Monetary Order to the tenant in the amount of \$1,300.00.

The tenant is provided with this Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord 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 *Residential Tenancy Act*.

Dated: July 29, 2021

Residential Tenancy Branch