



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HOMELIFE PENINSULA PROPERTY
MANAGEMENT→ and [tenant name suppressed to protect privacy]

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 money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application, 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. Both parties were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing. Both parties confirmed that they understood.

The tenant confirmed receipt of the landlord's dispute resolution application ('Application') and evidence. In accordance with sections 88 and 89 of the *Act*, I find that the tenant was duly served with the Application and evidence. The tenant did not submit any written evidence for this hearing.

Issue(s) to be Decided

Is the landlord entitled to a Monetary Order for damage to the unit, site, or property, money owed or compensation for loss under the *Act*, regulation or tenancy agreement?

Is the landlord entitled to recover the cost of the filing fee for this application?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This fixed-term tenancy began on September 1, 2020, and ended on April 1, 2021. Monthly rent was set at \$3,200.00, payable on the first of every month. The landlord had collected a security and pet damage deposit in the amount of \$1,600.00 each deposit, which the landlord still holds.

The landlord is seeking compensation for the following losses associated with the tenancy:

Item	Amount
Rubbish Removal	\$884.63
Cleaning Services	1,480.00
Replacement Refrigerator	837.21
Total Monetary Order Requested	\$3,201.84

The landlord testified that both move-in and move-out inspections as well as reports were completed, although the tenant refused to sign the move-out inspection report. The landlord testified that the tenant failed to leave the home in reasonably clean and undamaged condition.

The landlord submitted invoices for cleaning, rubbish removal, as well as the cost of the replacement refrigerator. The landlord testified that the refrigerator was broken, and had to be replaced. The landlord was unable to confirm the age of the refrigerator, but testified that the tenant had left rotten food inside, as shown in the photographs. The landlord testified that the tenant also failed to properly clean the rental unit, as shown in the photos, or remove all of the items on the property, which required a rubbish removal company to remove. The landlord confirmed that the rubbish removal included the removal of the old refrigerator.

The tenant does not dispute that the yard was a mess, but states that rubbish belonged to the previous owner, and that the property was a grow operation previously. The tenant testified that due to the history, the tenant had to provide a \$4,000.00 deposit to set up the utilities. The tenant questioned when the photographs were taken.

The tenant also testified that they had informed the landlord in February or March 2021 that the refrigerator was broken, and required repairs. The tenant testified that the food spoiled and attracted fruit flies as it had stopped working.

Analysis

Under the *Act*, a party claiming a loss bears the burden of proof. In this matter the landlord must satisfy each component of the following test for loss established by **Section 7** of the *Act*, which states;

Liability for not complying with this Act or a tenancy agreement

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

The test established by Section 7 is as follows,

1. Proof the loss exists,
2. Proof the loss was the result, *solely, of the actions of the other party (the landlord)* in violation of the *Act* or Tenancy Agreement
3. Verification of the actual amount required to compensate for the claimed loss.
4. Proof the claimant (tenant) followed section 7(2) of the *Act* by taking *reasonable steps to mitigate or minimize the loss*.

Therefore, in this matter, the landlord bears the burden of establishing their claim on the balance of probabilities. The landlord must prove the existence of the loss, and that it stemmed directly from a violation of the tenancy agreement or a contravention of the *Act* on the part of the other party. Once established, the landlord must then provide evidence that can verify the actual monetary amount of the loss. Finally, the landlord must show that reasonable steps were taken to address the situation to *mitigate or minimize* the loss incurred.

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

The tenant disputes the landlord's claim for the refrigerator. Section 40 of the *Residential Tenancy Policy Guideline* speaks to the useful life of an item. As per this policy, the useful life of refrigerator is fifteen years. As noted above, the burden of proof is on the applicant to support their claim. In this case, I find that the landlord failed to provide sufficient evidence to show what the age of the refrigerator was. As there is no way to ascertain whether the refrigerator had exceeded, or was approaching its useful life, I find that the landlord has failed to meet the burden of proof to support their loss associated with broken refrigerator. Accordingly, I dismiss this portion of the landlord's monetary claim without leave to reapply.

In terms of the rubbish removal, the tenant testified that the previous owners had left their items behind on the property. In consideration of the evidence before me, I am not satisfied that the invoice for rubbish removal accurately reflected the losses associated with the tenant's failure to leave the home in reasonably clean condition. I note that the rubbish removal included the removal of the old refrigerator, which I determined to be an item that the tenant is not responsible for. Accordingly, I dismiss the landlord's claim for rubbish removal without leave to reapply.

Although the tenant disputes the landlord's claim for cleaning, and the validity of the photos submitted, in light of the evidence before me, I find that the landlord had provided evidence to support that the rental unit was not cleaned, and as a result the landlord had suffered a loss in obtaining the services of a cleaning company. Although the rental unit may not have been cleaned to the satisfaction of the tenant at the beginning of the tenancy, the onus is still on the tenant to return the rental unit to the landlord in reasonably clean condition, which I do not find to be reflected in the evidence provided by the landlord. The tenant did not provide evidence to support their claims. I am satisfied that the landlord had supported their claim for cleaning, and accordingly, I allow this portion of the landlord's claim.

I allow the landlord to recover the filing fee for this application.

In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain a portion of the tenant's security deposit in satisfaction of the monetary claim. The remainder shall be returned to the tenant.

Conclusion

I allow the landlord's claim for cleaning services and recovery of the filing fee. I allow the landlord to retain a portion of the tenant's security deposit in satisfaction of the claims.

Item	Amount
Cleaning Services	1,480.00
Filing Fee	100.00
Less Deposits Held	-3,200.00
Total Monetary Order to Tenant	\$1,620.00

The tenant is provided with this Order in the above terms for the return of the remainder of their deposits, and the landlord must be served with a copy of 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.

The remainder of 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: November 19, 2021

Residential Tenancy Branch