



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MAINSTREET EQUITY CORP. 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 damage to the rental unit pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover its filing fee for this application from the tenant pursuant to section 72.

The landlord's agent (the landlord) attended the hearing via conference call and provided undisputed affirmed testimony. The tenant did not attend or submit any documentary evidence.

The hearing commenced at approximately 5 minutes past the start of the scheduled hearing time with only the landlord.

The landlord was advised that the conference call hearing was scheduled for 60 minutes and pursuant to the Rules of Procedure, Rule 6.11 Recordings Prohibited that recording of this call is prohibited.

The landlord stated that the tenant was served with the notice of hearing package and the some of the submitted documentary evidence via Canada Post Registered Mail on July 23, 2021 and has submitted a copy of the Canada Post Receipt and tracking label as confirmation of service. The landlord also stated that a second package was served to the tenant via Canada Post Registered Mail with the completely submitted documentary evidence on January 5, 2022. The landlord also referenced a submitted copy of the Canada Post Tracking label and Receipt as confirmation. I accept the

undisputed affirmed evidence of the landlord and find that the tenant was properly served as per sections 88 and 89 of the Act, not once but twice via Canada Post Registered Mail. Despite the landlord's initial evidence package being incomplete, the tenant is deemed served as per section 90 via the second package served via Canada Post Registered Mail on January 5, 2022.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for damage and recovery of the filing fee?
Is the landlord entitled to retain all or part of the security deposit?

Background and Evidence

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 / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on June 1, 2020 on a fixed term tenancy ending not less than 6 months later as per the submitted copy of the signed tenancy agreement dated May 26, 2020. The monthly rent was \$1,300.00 payable on the 1st day of each month. A security deposit of \$650.00 was paid.

The landlord seeks a monetary claim of \$369.37 which consists of:

\$249.37	Compensation, Damage Reglazing bathtub
\$10.00	Broken Outlet Cover
\$10.00	Replace lightbulbs
\$100.00	Filing Fee

The landlord claims that the tenant vacated the rental unit leaving it with a damaged (scratched) bathtub, a broken outlet cover and burnt out lightbulbs requiring repair and replacements. The landlord referenced a submitted copy of the completed condition inspection report for the move-in and the move-out signed by the tenant which shows that no damage was present at the start of the tenancy compared to the end of tenancy. The landlord submitted in support of these claims 6 photographs showing scratches on the bathtub, a cracked outlet cover and 2 light fixtures with missing/burnt out lightbulbs. The landlord also referenced the submitted copy of a Purchase Order by the named landlord to the associated cost and labour for each item. The landlord stated that this claim was mitigated due to the landlord choosing to "reglaze" the bathtub at a lower cost

instead of replacement of the entire bathtub. The landlord stated that the bathtub was not “reglazed” yet at the request of the new tenants and that this would be completed at a later time as per the submitted note by the new tenant when it would become convenient. The landlord stated that the “reglazing” process takes a few days and that this would be done at a time convenient for the new tenant. The landlord also referenced another copy of a purchase order for internal use for replacement of the lightbulbs and to change an outlet cover by the landlord’s maintenance staff.

Analysis

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 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 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.

I accept the undisputed affirmed evidence of the landlord and find that the landlord has provided sufficient evidence to satisfy me of damage to the bathtub, outlet cover and 1 missing lightbulb and a burnt out lightbulb. The landlord has provided copies of a completed condition inspection report completed for both the move-in and the move-out in conjunction with the submitted 6 photographs as proof of damage. The landlord has also provided copies of the landlord’s purchase order(s) which detail the cost for repair/replacement of the listed items. On this basis, I find that the landlord is entitled to the monetary claim of \$369.37 as filed which includes recovery of the \$100.00 filing fee.

I order that the landlord may offset this claim against the \$650.00 security deposit held in satisfaction of the claim. The landlord is directed to return the difference of \$280.63 to the tenant upon receipt of this decision.

Conclusion

The landlord’s application is granted.
The tenant is granted a monetary order for \$280.63.

This order must be served upon the landlord. Should the landlord fail to comply with this order, the 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: January 24, 2022

Residential Tenancy Branch