



Dispute Resolution Services

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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 damages and loss pursuant to section 67;
- Authorization to retain the deposits for this tenancy pursuant to section 38; and
- Authorization to recover the filing fee from the tenant pursuant to section 72.

Both parties were represented at the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord was represented by their agent (the "landlord").

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

As both parties were present service was confirmed. The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to a monetary award as claimed?

Is the landlord entitled to retain the security deposit for this tenancy?

Is the landlord entitled to recover the filing fee from the tenant?

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

This tenancy began on March 1, 2019 and ended on May 31, 2021. The monthly rent was \$1,800.00 payable on the first of each month. A security deposit of \$900.00 was paid at the start of the tenancy and is still held by the landlord.

The parties prepared a condition inspection report at the start and end of the tenancy and a copy was submitted into evidence. The report notes several issues with the unit at the end of the tenancy including markings on the wall that were not there at the start of the tenancy, a glass island countertop that was chipped, damage to the ceiling and a broken closet door. The parties disagreed on the assessment of damages and the tenant did not agree to any deduction from their security deposit.

The landlord submitted into evidence various correspondence and estimates from third-parties regarding the cost of repairs. The landlord also provided photographs of the areas they claim are damaged. The landlord testified that some of the work has been completed while others have not been done. The landlord said that they have entered a tenancy agreement with a new occupant who is residing in the suite. The landlord was uncertain what the actual amount of their losses are as at the date of the hearing. The landlord estimate that they have incurred approximately \$600.00 for cleaning, repairs and replacement of fixtures. The landlord testified that based on estimates they have obtained they believe the replacement of the glass island countertop will be approximately \$900.00.

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 the present case, I accept the submissions of the landlord that there was some damage to the rental unit as a result of the tenancy. I find the condition inspection report completed by the parties at the start of the tenancy notes some pre-existing damage, but the state of the rental unit evidenced in the photographs are in excess of the issues noted. While the tenant characterizes the issues noted in the move-out inspection and shown in the photographs as “nitpicking” I find that markings on the walls and ceilings and the chipped island countertop to be noticeable and noteworthy. I am satisfied on a balance of probabilities that the rental unit incurred damage that is greater than the simple wear and tear expected from occupancy. Based on the absence of these issues being noted in the move-in report I find it reasonable to attribute these issues to the tenant.

While I find that there was some damage to the rental unit I am not satisfied that the landlord has met the subsequent of a monetary claim in established the amount of the damage. While the landlord has provided some documentary materials by way of estimates and price of replacement parts the landlord testified that a new tenancy has been commenced while repairs have not been completed. The landlord stated they were uncertain as to the cost of the repairs that have been completed and how they would perform additional repairs if the suite is occupied by new tenants. The landlord estimate that they have incurred approximately \$600.00 for cleaning, repairs and replacement of fixtures.

I further find that much of the scope of repairs quoted appears to be disproportionate to the damage shown in the photographs and noted in the inspection reports. The quotes for work appear to be for major repainting of the whole suite rather than simply address the areas where there are damage. I am not satisfied that this level of work is necessary or reasonable and find it more in the nature of upgrades rather than restoring the suite to its pre-tenancy condition. While I accept that a glass countertop that has been broken must be replaced in its entirety, I am not satisfied that the other costs claimed are reasonable.

Based on the foregoing I find it appropriate to issue a monetary award in the landlord's favour in the amount of \$1,500.00 for the damages and loss incurred as a result of this tenancy. This figure includes the amounts actually incurred by the landlord estimated to be \$600.00 and the estimated cost of replacing the glass countertop of \$900.00.

As the landlord was successful in their application they are entitled to recover the filing fee from the tenant.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenant's security deposit in partial satisfaction of the monetary award issued in the landlord's favour

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$700.00, allowing for the monetary claim, recovery of the filing fee and to retain the deposit for this tenancy. The tenant must be served with this Order as soon as possible. Should the tenant 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: January 6, 2022

Residential Tenancy Branch