



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDL, MNDCL, FFL

Introduction

This hearing dealt with the landlords' 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 tenants confirmed receipt of the landlords' application ('Application'). In accordance with section 89 of the *Act*, I find that the tenants duly served with the Application. All parties confirmed receipt of each other's evidentiary materials.

Preliminary Issue – Tenant's Evidence

The landlord testified that they did not receive the tenants' evidentiary materials until February 25, 2022.

Rule 3.15 of the RTB's Rules of Procedure establishes that "the respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. Subject to Rule 3.17, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing"

The definition section of the Rules contains the following definition:

In the calculation of time expressed as clear days, weeks, months or years, or as “at least” or “not less than” a number of days weeks, months or years, the first and last days must be excluded.

In accordance with rule 3.15 and the definition of days, the last day for the tenant to file and serve evidence in response to the landlords’ application was February 28, 2022.

I find that the tenants’ evidence was served within the required timeline. I find that the landlords did have the opportunity to review this evidence, and that there is no undue prejudice by admitting these materials, which were in fact served on time. Accordingly, the tenants’ evidence was considered for the purposes of this hearing.

Issue(s) to be Decided

Are the landlords entitled to monetary compensation as requested for losses or money owed?

Are the landlords entitled to recover the filing fee for this application from the tenants?

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 July 16, 2020, and ended on July 15, 2021. Monthly rent was set at \$1,700.00, payable on the first of the month. The landlords had collected a security deposit of \$850.00, which has been returned to the tenants.

The landlord is requesting the following damages related to the tenants’ failure to leave the rental unit in reasonably clean and undamaged condition.

Item	Amount
Replacement bathroom rod	\$71.66
New Dryer Filter	79.91
Quote for replacement blind	764.90
Private cleaning	300.00
Filing Fee	100.00
Total Monetary Order Requested	\$1,316.47

The landlords testified that the rental unit was brand new at the beginning of the tenancy, and although the landlords did not perform a move-in inspection, the landlords testified that the move-out condition of the rental unit reflects the damage caused by the tenants during this tenancy, as well as their failure to properly clean the rental unit.

The landlords testified that the tenants had removed the bathroom curtain rod, and due to the missing parts the landlords had to purchase a new rod, which they submitted a receipt for. The landlords testified that the tenants also damaged the dryer filter, which was replaced, as well as the blinds. The landlords submitted photos to show that the blinds were damaged, as well as the dryer filter. The landlords testified that they believed that the tenants had kept a pet without their knowledge as they landlords discovered animal fur in the rental unit. The landlords also believe that the blind damage was caused by a pet. The landlords testified in the hearing that the blinds have yet to be replaced, but the landlords submitted a quotation, as well as a text message from the blind contractor stating that the damage was not typical wear and tear, and most likely caused by “bad use or a pet”.

The tenants testified that they take some responsibility for the damaged blinds, but dispute the remainder of the claims. The tenants testified that although the rental unit was brand new, there were already existing deficiencies. The tenants do not dispute that the shower rod was taken down, but that the shower rod was still in the rental unit, and could have been easily reinstalled. The tenants also dispute that they had damaged the dryer filter, and believe that this was a defect of the washer.

The tenants submitted a video of the rental unit, and testified that they had cleaned the rental unit. The tenants feel that the landlords not only failed to establish that the tenants had caused the damage, but also failed to support the actual value of the losses claimed.

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 or 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 landlords to

prove, on a balance of probabilities, that the tenants had caused damage or losses in the amounts claimed by the landlords.

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 condition except for reasonable wear and tear. The landlord confirmed that no move-in inspection was performed, and no move-in inspection report was filled out as the rental unit was brand new. Sections 23 of the *Act* requires the landlords to perform a move-in inspection, and fill out a condition inspection report regardless of whether the rental unit was brand new or not.

As noted in Residential Policy Guideline #17:

The right of a landlord to obtain the tenant's consent to retain or file a claim against a security deposit for damage to the rental unit is extinguished if:

- *the landlord does not offer the tenant at least two opportunities for inspection as required (the landlord must use Notice of Final Opportunity to Schedule a Condition Inspection (form RTB-22) to propose a second opportunity); and/or*
- *having made an inspection does not complete the condition inspection report.*

I must note, however, that the above does not exclude the landlord from being able to file a monetary claim for damages as noted in the policy guideline:

A landlord who has lost the right to claim against the security deposit for damage to the rental unit, as set out in paragraph 7, retains the following rights:

- *to obtain the tenant's consent to deduct from the deposit any monies owing for other than damage to the rental unit;*
- *to file a claim against the deposit for any monies owing for other than damage to the rental unit;*
- *to deduct from the deposit an arbitrator's order outstanding at the end of the tenancy;*
and
- *to file a monetary claim for damages arising out of the tenancy, including damage to the rental unit.*

Accordingly, I will consider the landlords' monetary claims, and my findings are as follows:

In consideration of the evidence before me, I find that there is obvious damage to the blinds, which the tenants take partial responsibility for. Although the landlords submitted an estimate to fix the broken blinds, they have not undertaken the repairs. Furthermore,

the landlords did not provide sufficient evidence to show that they had attempted to mitigate this loss, either by obtaining competing quotes, or consider alternative solutions to repair the broken blinds. Although the belief of the blind company was that the damage was not typical wear and tear, and may have been caused by a pet, I find that there is insufficient evidence to support what had caused the actual damage. I am satisfied that the rental unit was brand new, and the blinds were damaged sometime during this tenancy. I am not convinced that that replacement blinds are necessary, nor am I convinced that the landlords have no other option than to pay \$764.90 to replace the broken blinds. As the tenants take partial responsibility, and as the loss has not been sufficiently proven, I may apply nominal damages.

Residential Tenancy Branch (“RTB”) Policy Guideline 16 states the following with respect to types of damages that may be awarded to parties:

An arbitrator may only award damages as permitted by the Legislation or the Common Law. An arbitrator can award a sum for out of pocket expenditures if proved at the hearing and for the value of a general loss where it is not possible to place an actual value on the loss or injury. An arbitrator may also award “nominal damages”, which are a minimal award. These damages may be awarded where there has been no significant loss or no significant loss has been proven, but they are an affirmation that there has been an infraction of a legal right.

Accordingly, I order that the tenants pay the landlords \$200.00 in nominal damages for the damage to the blinds.

It is undisputed by the tenants that the shower curtain rod was removed. The tenants argue that the rod simply needed to be reinstalled, which would not have caused the landlords a monetary loss. The landlords argued that the rods were missing a part, which necessitated the purchase of a new rod, as supported by the invoice provided in evidence. In this case, I find that the tenants had removed the rod, but failed return the rod to the bathroom. I find that the landlords have met their evidentiary burden on a balance of probabilities. The amount claimed by the landlords is supported by documentary evidence. I find the evidence to be sufficient to show that the landlords incurred this loss as a result of their inability to restore the original rod to its original location, and that this loss is attributable to the tenants. I accept the evidence of the landlords that the total cost to replace the rod with a functioning one was \$71.66. Accordingly, I issue a monetary award in the landlords’ favour in that amount.

In consideration of the landlords' claim for the damaged dryer filter, I find that the tenants provided conflicting evidence about how the filter was damaged. I find that it was probable that the damage was caused by a defect rather than the tenants' deliberate or neglectful actions. On this basis, I dismiss this claim without leave to reapply.

Lastly, the landlords are seeking a monetary order for cleaning. In this case, although the tenants testified that they had left the rental unit in reasonably clean condition, I find that the landlords did provide sufficient evidence to show that there were areas that were missed by the tenants. In consideration of the specific claim, however, I am not satisfied that the landlords had supported the loss claimed. As stated above, when no loss is proven, I may still apply nominal damages where no significant loss was proven. Accordingly, I order that the tenants pay the landlords \$100.00 in nominal damages for failing to leave the rental unit in reasonably clean condition.

The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. As the landlords were only partially successful with their claims, I find that the landlords are entitled to recover half of the \$100.00 filing fee paid for this application.

Conclusion

I issue a \$421.66 Monetary Order in favour of the landlords under the following terms:

Item	Amount
Replacement bathroom rod	\$71.66
Nominal damages for damaged blinds	200.00
Nominal Damages for cleaning	100.00
Filing Fee	50.00
Total Monetary Order Requested	\$421.66

The tenants must be served with this Order as soon as possible. Should the tenants 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 landlords' monetary claims are 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: April 08, 2022

Residential Tenancy Branch