



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDL, FFL**

Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for damages and loss pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

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

Are the landlords entitled to a monetary award as claimed?
Are the landlords entitled to recover the filing fee from the tenants?

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.

The parties agree on the following facts. This tenancy began on June 1, 2020 and ended August 31, 2021. Monthly rent was \$2,695.00 payable on the first of each month. A security deposit of \$1,345.00 and pet damage deposit of \$500.00 were collected at the start of the tenancy and has been returned to the tenants in accordance with the *Act*. The parties participated in a move-in and move-out inspection and completed an inspection report. A copy of the report was submitted into evidence.

The parties disagreed on the assessment of the damage at the end of the tenancy and the tenants did not consent to any deduction from the deposits. The move-out inspection report notes the kitchen backsplash was stained and broken. The landlord obtained some quotes from third-party companies for restoring the backsplash and they were told the item would need to be replaced at a cost of \$2,025.00. The correspondence notes that the backsplash needs to be replaced as it cannot be repaired. The landlord waives the full amount and seeks a monetary award of \$1,345.00 the equivalent of the value of the security deposit for this tenancy.

The tenant disagrees with the landlord's claim and submits that the backsplash must have been nearing the end of its useful life due to the age of the property, claims they were not given sufficient instructions on maintenance at the start of the tenancy, offered to clean the backsplash after the issue was identified and submits they offered some money to the landlord in an attempt to settle the issue.

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.

Regulation 21 provides that a condition inspection report completed in accordance with the Act is evidence of the state of repair and condition of the rental unit unless there is a preponderance of evidence to the contrary.

In the present case, I accept the undisputed evidence of the parties that the kitchen backsplash of the rental unit required cleaning and work at the end of the tenancy as noted on the inspection report. I accept the evidence of the landlord that the cost for replacement of the backsplash, as recommended by the third-party professional, is \$2,025.00.

I find the submissions of the tenants to be of no probative value and have little persuasive merit. The tenants suggest that the backsplash was nearing the end of its useful life expectancy. I accept the evidence of the parties that the items are approximately 10 years old which is well within the expected lifespan of 25 years for kitchen furnishings as provided in Policy Guideline 40. I find the tenants' attempts to clean the suite after the end of tenancy and date of the inspection or attempts at negotiated settlement does not affect the landlord's right to a monetary award. I also find little merit in the tenants' complaint that they were not given sufficient instruction on cleaning.

Based on the evidence I am satisfied that the landlord has established their monetary claim on a balance of probabilities. I am satisfied with the evidence that the landlord incurred some losses attributable to the tenancy. I accept the landlord's submission that the quoted amount of the losses is \$2,025.00 but they are seeking a lesser award of \$1,345.00. Accordingly, I issue a monetary award in that amount.

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

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$1,445.00. 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.

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: May 3, 2022

Residential Tenancy Branch