



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 was convened as a result of the landlord's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act). The landlord applied for a monetary order in the amount of \$1,426.00 for damages to the unit, site or property, to retain the tenant's security deposit towards any amount owing, and to recover the cost of the filing fee.

The landlord, an agent for the landlord, MX (agent) and the tenant attended the teleconference hearing and gave affirmed testimony. The parties were advised of the hearing process and were given the opportunity to ask questions about the hearing process during the hearing. A summary of the testimony and evidence is provided below and includes only that which is relevant to the hearing. Words utilizing the singular shall also include the plural and vice versa where the context requires.

The tenant confirmed being served with the landlord's documentary evidence and confirmed that they had the opportunity to review that evidence prior to the hearing. I find the tenant was sufficiently served under the Act as a result. As the tenant confirmed they did not serve the landlord with their documentary evidence, the tenant's documentary evidence was excluded in full as it was not served in accordance with the Residential Tenancy Branch (RTB) Rules of Procedure (Rules).

Preliminary and Procedural Matter

The parties confirmed their email addresses during the hearing and confirmed their understanding that the decision would be emailed to both parties.

Issues to be Decided

- Is the landlord entitled to a monetary order under the Act, and if so, in what amount?
- What should happen to the tenant's security deposit under the Act?
- Is the landlord entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

A copy of a tenancy agreement was submitted in evidence. A fixed-term tenancy began on April 1, 2020 and was scheduled to convert to a month-to-month tenancy after July 30, 2021. Monthly rent was \$1,800.00 per month and due on the first day of each month. The landlord accepted a security deposit of \$1,800.00, which exceeded the amount under the Act, which I will address later in this decision. The parties agreed that the landlord has returned \$900.00 of the \$1,800.00 already. The landlord continues to hold \$900.00 of the tenant's security deposit. The parties agreed that the tenant vacated the rental unit on July 30, 2021.

The parties agreed that the tenant surrendered \$900.00 of their \$1,800.00 security deposit at the end of the tenancy.

The landlord has claimed \$1,326.00 to replace carpets that were stained, plus the \$100.00 filing fee. The landlord however writes in their application that they are actually claiming \$2,226.00 and reached \$1,325.00 after offsetting the tenant's security deposit balance of \$900.00. As a result, I find the landlord has claimed \$2,226.00 before applying the security deposit balance.

The landlord submitted a Condition Inspection Report (CIR) where the incoming portion is dated March 15, 2020 and the outgoing portion is dated July 29, 2021. The landlord also provided two colour photos, which clearly show stained carpet and appear to be coffee stains. The tenant first denied that they knew where the stains came from and then later admitted that the stains were coffee stains.

The document submitted by the landlord is written in a language other than English. Instead, the landlord has written in red font to explain in English what work was quoted. The document reads "PUOTATION" instead of "QUOTATION" as follows:

[REDACTED] MAINTENANCE

PUOTATION

DATE: 2021.8.12 日

PHONE: [REDACTED]

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DESCRIPTION	AMOUNT
联系电话: [REDACTED]	
项目地址: [REDACTED]	
项目内容: [REDACTED]	
项目范围: 长 132 英寸×宽 117 英寸 Project size: length 132 in x width 117 in	
Bedroom carpet stain, cannot be washed, need to replace entire carpet. 一、卧室羊毛地毯局部被污染, 清洗不掉, 需要整个地毯更换。	
1、拆卸踢脚线、拆除旧地毯和地毯衬 \$380.00 Steps to remove current carpet \$380	
2、清理拆除的垃圾 \$160.00; Taking out garbage from carpet removal \$160	
3、运送垃圾到垃圾场 \$200.00 Transporting garbage to garbage disposal fields	
4、铺设地毯衬、安装新地毯和安装踢脚线及打胶 \$1380.00 Steps to installing new carpet \$1380	
5、合计: 2120.00 Total: \$2120.00	
6、GST5% \$106.00	
7、共计: 2226.00 Final Total: \$2226.00	
	\$ 2226.00

Thank you for your business

The landlord was asked how old the carpet was and the landlord testified that they were installed on April 1, 2020, which was the start date of the tenancy. The tenant claims they attempted to clean the carpet however provided no documentary evidence to support the attempt to clean the carpet such as a carpet cleaning invoice.

The tenant stated that there was carpet in more areas than just the bedroom, as a sitting room also had carpet. The landlord stated that they are only charging the tenant for the area that was stained and not the entire carpeted area.

The parties testified that although they had some discussions previously, they could not agree to an amount for the carpet damage, hence this hearing.

Regarding the tenant's written forwarding address, the parties confirmed that the tenant provided an incorrect forwarding address initially and on September 14, 2021 did provide a correct forwarding address. The landlord filed their application on September 2021.

Analysis

Based on the documentary evidence presented, the testimony of the parties and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what was reasonable to minimize the damage or loss.

In the matter before me, the landlord bears the burden of proof to prove all four parts of the above-noted test for damages or loss.

Carpet claim – Policy Guideline 40 – Useful Life of Building Elements states that carpets have a useful life of 10 years or 120 months. I have used the testimony of the landlord to calculate the age of the carpets, being new as of April 2020. As the tenancy ended at the end of July 2021, I find the carpets were 15 months old by the end of the tenancy. Therefore, I find the carpets have depreciated a total of 12.5% (15 months divided by 120 months). As a result, 12.5% of \$2,226.00 equals \$278.25, which I find results in the maximum amount the landlord could receive would be \$1,947.75 (\$2,226.00 minus \$278.25), which is before the filing fee is applied.

In addition, section 37(2)(a) of the Act applies and states:

37(2) When a tenant vacates a rental unit, the tenant must

- (a) **leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and**
[emphasis added]

Given the above and considering the tenant's testimony that the carpet stains were due to coffee stains, I find that the coffee stains support that the tenant was negligent and that coffee stains as shown in the photo evidence which I find were major stains are not normal wear and tear on carpets. Therefore, I find the tenant is liable for the entire depreciated amount of **\$1,947.75 for carpet replacement as claimed and I award that amount.**

As the landlord's claim had merit, I grant the landlord the recovery of the cost of the filing fee in the amount of **\$100.00** pursuant to section 72 of the Act.

Based on the above, I find the landlord has established a total monetary claim of **\$2,047.75** and pursuant to sections 38 and 67 of the Act, I grant the landlord authorization to retain the tenant's security deposit balance of \$900.00 in partial satisfaction of the landlord's monetary claim. Pursuant to section 67 of the Act, I grant the landlord a monetary order for the pursuant to section 67 of the Act, for the balance owing by the tenant to the landlord in the amount of **\$1,147.75**.

Conclusion

The landlord's claim is mostly successful.

The landlord has established a total monetary claim of \$2,047.75. The landlord has been authorized to retain the tenant's full security deposit balance of \$900.00, which has accrued \$0.00 in interest, in partial satisfaction of the landlord's monetary claim pursuant to sections 38 and 67 of the Act.

The landlord is granted a monetary order pursuant to section 67 of the Act, for the balance owing by the tenant to the landlord in the amount of \$1,147.75. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The tenant can be held liable for all costs related to enforcement of the monetary order.

This decision will be emailed to both parties. The monetary order will be emailed to the landlord only for service on the tenant.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 27, 2022

Residential Tenancy Branch