



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNDCL, FFL

Introduction

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

- a Monetary Order for damage or compensation, pursuant to section 67;
- a Monetary Order for damage, pursuant to section 67;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee from the tenant, pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 1:40 p.m. in order to enable the tenant to call into this teleconference hearing scheduled for 1:30 p.m. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord was advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. The landlord testified that he was not recording this dispute resolution hearing.

Per section 95(3) of the *Act*, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

The landlord confirmed his email address for service of this decision and order.

The landlord testified that the tenant was served with a copy of this application for dispute resolution and evidence via registered mail on November 16, 2021. A Canada Post receipt for same was entered into evidence.

The landlord testified that the tenant did not provide him with a forwarding address, but the tenant's address is a P.O. box that did not change when the tenancy ended. The communications notes on this file state:

Below Task completed. New hrg notices emailed to applicant & as respondent does not have an email addy (per call w/ him), mailed to his service address. Confirmed correct in DMS.

I find that in the above communications note, an information officer confirmed with the tenant that the address on file for the tenant is correct. The address on file is the P.O. Box the tenant was served at. Pursuant to the above, I find that the P.O. box is the tenant's correct address for service. I find that the tenant was deemed served with the landlord's application for dispute resolution and evidence on November 21, 2021, five days after the documents were mailed, in accordance with sections 88, 89 and 90 of the *Act*.

Issues to be Decided

1. Is the landlord entitled to a Monetary Order for damage or compensation, pursuant to section 67 of the *Act*?
2. Is the landlord entitled to a Monetary Order for damage, pursuant to section 67 of the *Act*?
3. Is the landlord entitled to retain the tenant's security deposit, pursuant to section 38 of the *Act*?
4. Is the landlord entitled to recover the filing fee from the tenant, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the landlord, not all details of the landlord's submissions and arguments are reproduced

here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The landlord provided the following undisputed testimony. This tenancy began on November 1, 2013 and ended on September 29, 2021. Monthly rent in the amount of \$550.00 was payable on the first day of each month. A security deposit of \$275.00 was paid by the tenant to the landlord. A written tenancy agreement was signed by the tenant and a copy was submitted for this application.

The landlord testified that the tenancy ended pursuant to an undisputed One Month Notice to End Tenancy for Cause (the "Notice"). The landlord testified that the Notice was served on the tenant because the tenant damaged the subject rental property.

The landlord testified that he is seeking compensation for the following damages:

Item	Amount
Cleaning	\$2,520.00
Flooring replacement	\$4,224.28
Painting	\$3,276.00
Loss of rental income	\$825.00
Filing fee	\$100.00
Total	\$10,945.28

Cleaning

The landlord testified that the subject rental property was in good repair and clean when the tenant moved in and was filthy and full of garbage when the tenant moved out. The landlord testified that the tenant left an incredible mess and that it stunk.

The landlord entered into evidence photographs of the subject rental property that the landlord testified were taken at the end of the tenancy. The photographs show the subject rental property is littered with garbage and possessions and has not been cleaned and is very dirty.

The landlord testified that it took approximately 10 days to clean the subject rental property and to remove all of the garbage. The landlord entered into evidence a letter from the company hired to clean the subject rental property which states, in part:

This apartment was in very rough condition. It was pretty much full of personal belongings, not to mention all the garbage left behind. In total, we did 8-9 loads to the dump. The apartment also had the lingering smell of cigarette and cannabis use.

The landlord entered into evidence a receipt for cleaning the subject rental property totalling \$2,520.00.

Flooring replacement

The landlord testified that the flooring in the subject rental property was in good condition at the start of the tenancy and portions were damaged at the end of the tenancy and needed replacement.

The landlord testified that the flooring in the living room was laminate and was new at the start of this tenancy. The landlord testified that the living room flooring had to be replated at the end of the tenancy due to burn marks made by the tenant. The landlord entered into evidence a photograph of burn marks on the floor next to a bowl of cigarette butts left by the tenant.

The landlord testified that the flooring in the kitchen and hallway was linoleum that was 15 years plus old at the end of the tenancy but was in good condition at the start of this tenancy. The landlord testified that the tenant caused water damage to the linoleum necessitating its replacement. Photographs of warped linoleum were entered into evidence.

The landlord entered into evidence a receipt for replacement flooring materials totalling \$1,713.10 and a receipt for the labour to install the new flooring, in the amount of \$2,511.18

Painting

The landlord testified that all of the subject rental property except the laundry room, was painted just before the tenant moved in. The landlord testified that the subject rental property required re-painting after the tenant moved out because the walls smelled heavily of cigarette smoke.

The landlord entered into evidence a receipt for painting totalling \$3,276.00.

Loss of rental income

The landlord testified that the subject rental property was not fully repaired until November 14, 2021. The landlord testified that he was able to advertise the property for rent in early November 2021 and that new tenants moved in on November 15, 2021. The landlord testified that he lost 1.5 months' rental income because of the condition the tenant left the subject rental property. The landlord is seeking \$825.00 in lost rental income.

Analysis

Section 67 of the *Act* states:

Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Policy Guideline 16 states that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To be successful in a monetary claim, the applicant must establish all four of the following points:

1. a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
2. loss or damage has resulted from this non-compliance;
3. the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
4. the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Failure to prove one of the above points means the claim fails.

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means

that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Residential Tenancy Guide #40 states:

This guideline is a general guide for determining the useful life of building elements for considering applications for additional rent increases and determining damages which the director has the authority to determine under the Residential Tenancy Act and the Manufactured Home Park Tenancy Act . Useful life is the expected lifetime, or the acceptable period of use, of an item under normal circumstances.

When applied to damage(s) caused by a tenant, the tenant's guests or the tenant's pets, the arbitrator may consider the useful life of a building element and the age of the item. Landlords should provide evidence showing the age of the item at the time of replacement and the cost of the replacement building item. That evidence may be in the form of work orders, invoices or other documentary evidence. If the arbitrator finds that a landlord makes repairs to a rental unit due to damage caused by the tenant, the arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant's responsibility for the cost or replacement.

Section 37(2)(a) of the *Act* states that when tenants vacate a rental unit, the tenants must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Cleaning

Based on the landlords' undisputed testimony and the photographs entered into evidence, I find that the tenant breached section 37(2)(a) of the *Act* by leaving the subject rental property dirty and full of garbage.

I find that the tenant's breach of the *Act* caused the landlord to suffer a loss of \$2,520.00, the cost of garbage removal and cleaning of the subject rental property. I find that the landlord has proved the value of the loss as evidenced by the receipt entered into evidence. I find that no mitigation issues are present. Pursuant to section 67 of the *Act*, I award the landlord \$2,520.00 for cleaning costs incurred.

Flooring replacement

PG #40 states:

If a building element does not appear in the table, the useful life will be determined with reference to items with similar characteristics in the table or information published by the manufacturer. Parties to dispute resolution may submit evidence for the useful life of a building element. Evidence may include documentation from the manufacturer for the particular item claimed.

The useful life on linoleum and laminate flooring is not located in PG #40; however, PG #40 states that hard wood and parquet flooring has a useful life of 20 years and tile has a lifespan of 10 years. I will use the middle ground between these flooring types for the useful life of linoleum and laminate flooring, that being 15 years. I note that no evidence on the useful life of laminate or linoleum was presented during the hearing.

I find that the useful life of the linoleum in the subject rental property had expired at the end of this tenancy and the landlord is therefore not entitled to the cost of its replacement.

Based on the landlord's undisputed testimony and the photographs of burn marks beneath the tenant's bowl of cigarette butts, I find, on a balance of probabilities, that the tenant burned the living room laminate flooring, contrary to section 37(2)(a) of the *Act*.

The receipts for the flooring replacement do not distinguish between the cost to replace the laminate versus the cost to replace the linoleum; however, it appears from the photographs that approximately 50% of the square footage of replaced flooring was laminate and 50% was linoleum. I will therefore complete a useful life calculation for the laminate using 50% of the cost to replace all of the flooring.

Using a useful life for laminate of 15 years (180 months), I find that at the time the tenant moved out, there was approximately 85 months of useful life that should have been left for the laminate of this unit. I find that since the laminate required replacement after only 95 months, the tenant is required to pay according to the following calculations:

$$\text{\$ 2,112.14 (approximate cost of replacing laminate) / 180 months (useful life of laminate) = \$11.73 (monthly cost)}$$

\$11.73 (monthly cost) * 85 months (expected useful life of laminate after tenant moved out) = **\$997.05**

Painting

PG #40 states that the useful life of interior painting is four years. As the paint in this unit was more than four years old at the end of this tenancy, I find that the landlord is not entitled to compensation for re-painting after a nearly eight-year tenancy. The landlord's claim for the cost of painting is dismissed without leave to reapply.

Loss of rental income

I accept the landlord's undisputed testimony that the subject rental property was not in a rentable condition at the end of this tenancy and that the condition of the subject rental property prevented the subject rental property from being rented for October 1, 2021. This finding is supported by the deplorable condition of the subject rental property as left by the tenant. I therefore award the landlord \$550.00 in lost rental income for the month of October 2021.

I decline to award the landlord the ½ months' rent sought for November 2021 as some of the repairs/replacement completed were for items whose useful life had expired and which the landlord would likely have had to replace in any event. The landlord is not entitled to collect loss of rent for the time it took to make repairs/replacement for items whose useful life had expired.

Filing fee

As the landlord was successful in this application for dispute resolution, the landlord is entitled to recover the \$100.00 filing fee from the tenant, in accordance with section 72 of the *Act*.

Security Deposit

Section 38(1) of the *Act* states that within 15 days after the later of:

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing, the landlord must do one of the following:
- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

I accept the landlord's undisputed testimony that the tenant has not provided the landlord with his forwarding address in writing.

I find that the landlord made an application for dispute resolution claiming against the security deposit pursuant to section 38(1)(a) and 38(1)(b) of the *Act*.

Section 72(2) of the *Act* states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit or pet damage deposit due to the tenant. I find that the landlord is entitled to retain the tenant's security deposit in the amount of \$275.00.

Conclusion

I issue a Monetary Order to the landlord under the following terms:

Item	Amount
Cleaning	\$2,520.00
Floor replacement	\$997.05
Loss of rental income	\$550.00
Filing Fee	\$100.00
Less security deposit	-\$275.00
TOTAL	\$3,892.05

The landlord is provided with this Order in the above terms and 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: May 27, 2022

Residential Tenancy Branch