



Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDL-S, FFL**

Introduction

This hearing originally convened on February 10, 2022 and was adjourned to May 9, 2022 in an Interim Decision dated February 10, 2022 (the “First Interim Decision”). This hearing was next convened on May 9, 2022 and was adjourned to August 25, 2022 in a Second Interim Decision dated May 9, 2022. This final decision should be read in conjunction with the First Interim Decision and the Second Interim Decision.

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

- 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.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The landlord called witness K.M. in the second hearing.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they are not recording this dispute resolution hearing.

Both parties confirmed their email addresses for service of this Decision.

The tenant testified that she served her evidence on the landlord via registered mail on April 26, 2022. The landlord testified that he received the tenant’s evidence three or four days before the second hearing. The landlord testified that he had a full opportunity to review the tenant’s evidence. I find that the tenant’s evidence was served on the landlord in accordance with section 88 of the *Act*. I find that while the landlord did not receive the evidence at least seven days before the second hearing, the landlord is not prejudiced by its acceptance for consideration because the landlord testified that he had time to review it prior to the second hearing. I also note that because the May 9, 2022 hearing was adjourned to August 25, 2022, the landlord had ample time to continue to review the tenant’s evidence in advance of the third hearing.

The landlord testified that he served the tenant with his evidence via registered mail but could not recall on what date. The tenant testified that she received the landlord's evidence in late February 2022 or early March 2022 via registered mail. I find that the tenant was served with the landlord's evidence in accordance with section 88 of the *Act*.

Preliminary Issue- Amendment

Both parties agree that the address of the subject rental property listed on this application for dispute resolution contains a typo. Pursuant to section 64 of the *Act*, I amend the landlord's application for dispute resolution to state the correct address of the subject rental property.

The landlord's original application for dispute resolution sought \$5,000.00 for replacing the following items:

- laminate floors and baseboards,
- washing machine seal,
- kitchen cabinet door, and
- kitchen countertop.

The landlord's original application for dispute resolution does not set out how the above claimed items add up to \$5,000.00.

In the hearing the landlord sought to increase the monetary claim by \$1,200.00 for replacing the following additional items:

- faucet,
- windowsill,
- closet and hallway casings,
- basement door weather stripping, and nosing.

The landlord did not file an amendment to notify the tenant of the additional claims. I decline to amend the landlord's application in this hearing as I find it would prejudice the tenant who was not provided with a full opportunity to review and respond to the additional claims. I will therefore only hear the landlord's original claims.

Issues

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

Background/Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on November 1, 2019 and has ended. Monthly rent in the amount of \$1,250.00 was payable on the first day of each month. A security deposit of \$600.00 was paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application. The security deposit has not been returned to the tenant.

The tenant testified that she moved out of the subject rental property on July 10, 2021 and the official end of tenancy date was July 15, 2021. The landlord testified that he couldn't exactly remember the dates the tenant moved out.

The landlord testified that he sold the subject rental property and the new owners took possession in December of 2021.

The tenant testified that she provided the landlord with her forwarding address via text message on July 17, 2021. The landlord testified that he received the tenant's forwarding address via text but could not recall on what date. The landlord testified that he likely received it within five days of it being sent. The landlord filed this application for dispute resolution on July 28, 2021, 11 days after the tenant texted the landlord her forwarding address.

Both parties agree that the landlord did not request the tenant to complete a move in or out condition inspection report with him. Both parties agree that the landlord did not complete a written move in or move out condition inspection report.

The landlord testified that the tenant caused damages and he is seeking the following compensation:

Item	Amount
Replace laminate floors and baseboards	\$2,851.03
Replace washing machine rubber seal	\$300.59
Repair kitchen countertop	\$300.00
Replace one kitchen cabinet door	\$300.00
Total	\$3,751.62

Replace laminate floors and baseboards

The landlord testified that the laminate floors and baseboards were in good condition at the start of the tenancy and had to be replaced at the end of the tenancy because they smelled of the tenant's dog and because of water damage to the floors and baseboards caused by the tenant's excessive mopping.

The landlord testified that at the end of the tenancy the laminate flooring was 8-9 years old. The landlord testified that the laminate flooring was original to the subject rental property that was built in 2013. The tenant testified that the property was completed in March of 2013, the landlord testified that he thinks that's correct.

The landlord entered into evidence an estimate for the replacement of the flooring and baseboards in the amount of \$2,851.03. The landlord testified that he did not have the laminate replaced by the provisioner of the quote but hired someone else to complete the work. The landlord testified that he did not know how much he actually paid but that it was close to \$3,000.00. The landlord did not enter into evidence the receipt for the actual work done.

The landlord called witness K.M. who testified that he is a neighbour and has been in the subject rental property through different tenancies. K.M. testified that towards the end of the tenancy he entered the subject rental property to help the landlord with a water leak from the washing machine and he also viewed the subject rental property shortly after the tenant moved out, no specific dates were provided. K.M. testified that when he viewed the property after the tenant moved out, the property was in a different condition than in past tenancies and he saw that the laminate flooring was bubbling up and smelled bad.

K.M. testified that the countertops also looked in worse condition than in previous tenancies. K.M. testified that the baseboards in the bathroom looked to be in bad condition which K.M. surmised was from excessive mopping

The tenant testified that she did not damage the floors beyond reasonable wear and tear. The tenant testified that the floors were original to the subject rental property and showed their age. The tenant testified that the flooring was still entirely functional and that the only reason the landlord changed the flooring was because he was selling the subject rental property. The tenant testified that the baseboards were not damaged.

The landlord testified that the washroom baseboards were all mouldy and that he could not sell the subject rental property in that condition.

The landlord entered into evidence the following photographs which he testified were taken after the tenant moved out:

- baseboards which appear to be water damaged,
- laminate flooring with a scratch,
- laminate flooring in which the edges appear to be peeling.

No documentary evidence regarding the move in condition of the flooring and baseboards was entered into evidence.

Replace washing machine rubber seal

The landlord entered into evidence a receipt for the replacement of the washing machine rubber seal in the amount of \$300.59. The receipt states:

Worn out parts replacement to a [sic] new ones.

The tenant testified that the washing machine started to leak in June of 2021 through no fault of her own. The tenant testified that the washing machine was 8 years old and the rubber seal failed due to regular wear and tear. The tenant testified that at the time the washing machine failed, the landlord did not ask her to pay for the repair and the first time she was asked to pay for it was on July 17, 2021 when she attended at the subject rental property for a walk through inspection. Both parties agree that the landlord did not complete any paperwork during that inspection or bring any paperwork with him.

Replace kitchen cabinet door

The landlord testified that on move in the cabinet doors were in perfect condition and on move out, one of the cabinet doors had water damage and could not close. The landlord testified that it cost around \$200.00 to replace the door and \$100.00 for labour to install it. The landlord did not enter into evidence a receipt for the above work. The landlord entered into evidence photographs of the cabinet door taken at the end of the tenancy which show that the door is damaged. The landlord did not enter into evidence any documentary evidence pertaining to the move in condition of the cabinets.

The tenant testified that the cabinet doors were the same condition on move in as on move out. The tenant testified that the cabinet door was difficult to close when she moved in, but it closed with effort. The tenant testified that the cabinet door was closed when she vacated the subject rental property.

Repair Countertop

The landlord testified that the countertop in the kitchen was in very good condition at the start of this tenancy and had water damage at the end of this tenancy. The landlord testified that the countertop was less than six years old at the end of this tenancy and was made of laminate. The landlord entered into evidence a picture of the countertop which shows that the laminate is peeling from the counter in a corner near the stove. The landlord did not enter into evidence any documentary evidence pertaining to the move in condition of the countertop.

The landlord testified that he hired a handyman to sand the countertop and “make it work”. The landlord testified that he paid the handyman \$300.00 for the above work. No receipt for the alleged work was entered into evidence.

The tenant testified that the counter was in the same condition on move in as on move out.

Analysis

Damages

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.

When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails.

The landlord did not provide receipts showing the alleged damage suffered for the:

- replacement of the flooring,
- cabinet door,
- labour to install the cabinet door,
- labour to refinish the countertop.

I find that the landlord has therefore failed to prove the value of the loss claimed and pursuant to section 67 of the *Act* and Policy Guideline #16, I dismiss the landlord's claim for the above listed damages without leave to reapply.

I note that the quote for the flooring entered into evidence is not a receipt for the actual work completed and in the hearing the landlord did not know the actual amount spent, but provided a ball park. I find that the above testimony does not prove, on a balance of probabilities the quantum of the loss allegedly suffered.

I also find that the landlord has failed to prove the move in condition of the above claimed items as no documentary evidence to support the landlord's testimony regarding the move in condition was entered into evidence, and the tenant disputed the landlord's claims. I find that the landlord has not proved, on a balance of probabilities, that the damage claimed was caused by the tenant and was not present when the tenant moved in. For this additional reason, I dismiss the above claims without leave to reapply.

Residential Tenancy Branch Policy Guideline #1 states:

The tenant is not responsible for reasonable wear and tear to the rental unit or site

....

Reasonable wear and tear refers to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. An arbitrator may determine whether or not repairs or maintenance are required due to reasonable wear and tear or due to deliberate damage or neglect by the tenant.

Based on the receipt for the washing machine which states "Worn out parts replacement to a [sic] new ones", I find that the repair was necessitated by normal wear and tear. I find that washing machine parts require repair/replacement when they are worn out. The receipt does not note any unusual or intentional damage to the rubber seal but refers to the seal as being worn out. I find, on a balance of probabilities, that the repair was not caused by deliberate damage or neglect by the tenant, but because the parts wore out after their useful life was extinguished. I dismiss the landlord's claim for the cost of the washing machine rubber seal because the tenant is not responsible for reasonable wear and tear.

Condition Inspection Reports and Security Deposits

Sections 23, 24, 35 and 36 of the *Act* establish the rules whereby joint move-in and joint move-out condition inspections are to be conducted and reports of inspections are to be issued and provided to the tenant. When disputes arise as to the changes in condition between the start and end of a tenancy, joint move-in condition inspections and inspection reports are very helpful. These requirements are designed to clarify disputes regarding the condition of rental units at the beginning and end of a tenancy.

Section 24(2)(c) of the *Act* states that the right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Both parties agree that the landlord did not complete a move in condition inspection report. Responsibility for completing the move in condition inspection report rests with the landlord. I find that the landlord did not complete the move in condition inspection report in accordance with the Regulations, contrary to section 24(2)(c) of the *Act*.

Since I find that the landlord did not follow the requirements of the *Act* regarding the move in condition inspection report, I find that the landlord's eligibility to claim against the security deposit for damage arising out of the tenancy is extinguished.

As I have determined that the landlord is ineligible to claim against the security deposit, pursuant to section 24(2)(c) of the *Act*, I find that I do not need to consider the effect of the landlord failing to complete the move out inspection report.

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit.

Section C(3) of Policy Guideline 17 (PG #17) states that unless the tenants have specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit if the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the *Act*.

In this case, while the landlord made an application to retain the tenant's security deposit within 15 days of receiving the tenant's forwarding address, the landlord was not entitled to claim against it or withhold it due to the extinguishment provisions in section 24(2)(c) of the *Act*. Pursuant to PG #17, the tenant is entitled to receive double her security deposit in the amount of \$1,200.00.

Filing Fee

As the landlord was not successful in this application for dispute resolution, I find that the landlord is not entitled to recover the \$100.00 filing fee from the tenant, pursuant to section 72 of the *Act*.

Conclusion

The landlord's application for dispute resolution is dismissed without leave to reapply.

I issue a Monetary Order to the tenant in the amount of \$1,200.00.

The tenant is provided with this Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord 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: August 26, 2022

Residential Tenancy Branch