



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL

Introduction

The Landlords seeks the following relief under the *Residential Tenancy Act* (the “Act”):

- an order pursuant to s. 38 and 67 seeking monetary compensation for damage to the rental unit caused by the Tenant by claiming against the security deposit; and
- return of their filing fee pursuant to s. 72.

F.P. appeared as the Landlord. M.R. appeared as the Tenant.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The parties advise that they served their application materials on the other side. Both parties acknowledge receipt of the other’s application materials without objection. Based on the mutual acknowledgments of the parties without objection, I find that pursuant to s. 71(2) of the *Act* that the parties were sufficiently served with the other’s application materials.

Issues to be Decided

- 1) Are the Landlords entitled to claim against the security deposit for monetary compensation due to damage to the rental unit caused by the Tenant?
- 2) Are the Landlords entitled to the return of their filing fee?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this decision.

The parties confirmed the following details with respect to the tenancy:

- The Tenant moved into the rental unit on June 1, 2020.
- The Landlord obtained vacant possession of the rental unit on February 1, 2022.
- Rent of \$1,100.00 was due on the first day of each month.
- The Tenant paid a security deposit of \$550.00 to the Landlord.

The Landlord provided a copy of the tenancy agreement.

The Landlord testified that the Tenant broke a glass stove top through the course of the tenancy. The Landlord indicates that the Tenant advised him near to the end of the tenancy that the stove top was cracked, though when he took possession found it to be broken. The Landlord provides a photograph of the damaged range top. The Tenant testified that the stove was very old when she took possession and had very fine cracks. She says that she was cooking on it cracked.

The Landlord testified that it cost \$575.00 to replace the range top, which was calculated as follows:

- \$375.00 for the purchase of a used range.
- \$50.00 for delivery.
- \$150.00 for the installation.

The Landlord testified that the stove replacement was purchased used from an online marketplace in two components, the stove and glass top, with the combined cost being \$375.00. The Landlord's evidence includes screenshots of the advertisements for the items he purchased. The Landlord says that the stove parts were purchased from sellers in another community and seeks \$50.00 for going to pick them up. The Landlord finally testified that he had an electrician install the range at a cost of \$150.00, though did not provide a receipt for this amount.

The Landlord further testified that the Tenant had not cleaned the rental unit and left garbage behind. The Landlord provides photographs of the rental unit showing its state when the Tenant left. The Landlord says the rental unit was clean when she moved in.

The Landlord further says that the Tenant told him prior to moving out that the garbage bins were full such that she could not dispose of her garbage. The Tenants evidence includes a text message dated February 2, 2022 indicating the same and that she would come back to take the garbage.

The Tenant says that she hired a cleaner and left one garbage bag behind. The Tenant provides no receipt from a cleaner.

The Landlord seeks \$150.00 for the cost of cleaning the rental unit. The Landlord says that he hired someone to do it for that amount. No receipt with respect to this amount has been provided by the Landlord.

The Tenant indicates that she provided her forwarding address to the Landlord sometime in February 2022, later clarifying that she did so by sending a letter to the Landlord on February 23, 2022. The Tenant did not provide a copy of the letter she says sent to the Landlord.

The Landlord denies receiving the Tenants forwarding address. I enquired with respect to the address provided by the Landlord in his application. He says that that address was the one the Tenant used when she applied for the rental unit. He says that he personally served his application materials on the Tenant as he knows where she works and only knows the city where the Tenant lives as no forwarding address was provided.

The parties confirmed the Landlord currently retains the security deposit in full. The parties confirmed that there was no written move-in or move-out inspection report.

Analysis

The Landlord seeks compensation for damages he says were caused by the Tenant and claims against the security deposit.

Section 38(1) of the *Act* sets out that a landlord must within 15-days of the tenancy ending or receiving the Tenant's forwarding address, whichever is later, either repay a tenant their security deposit or make a claim against the security deposit with the Residential Tenancy Branch. A landlord may not claim against the security deposit if the application is made outside of the 15-day window established by s. 38(1) of the *Act*. Under s. 38(6) of the *Act*, when a landlord fails to either repay or claim against the

security deposit within the 15-day window, the landlord may not claim against the security deposit and must pay the tenant double their deposit.

In this instance, the Tenant testified that she provided the Landlord with her forwarding address by mail sent on February 23, 2022. The Tenant has provided no evidence in the form of the letter sent to the Landlord, though the Tenant's evidence includes a text message from early February in which she provides her email and asks whether the Landlord has been able to transfer the deposit. The Landlord denies ever receiving the Tenant's forwarding address and indicates that he personally served the Tenant with his application materials at her workplace as he had no forwarding address.

On the evidence before me, I am unable to make a finding that the Tenant provided her forwarding address to the Landlord. There is no evidence to support that any letter was sent to the Landlord. The Landlord specifically denies receiving a forwarding address. I note that an email address does not comply with the requirement to provide a physical address. The need for a physical mailing address is critical because it dovetails with s. 89 of the *Act* dealing with the service of materials in dispute resolution proceedings, a point that is critical should a landlord file an application claiming against the security deposit. As I cannot find a forwarding address was provided, I find that the 15-day return or deposit deadline imposed by s. 38(1) of the *Act* has not been triggered.

Under s. 67 of the *Act*, the Director may order that a party compensate the other if damage or loss result from that party's failure to comply with the *Act*, the regulations, or the tenancy agreement. Policy Guideline #16 sets out that to establish a monetary claim, the arbitrator must determine whether:

1. A party to the tenancy agreement has failed to comply with the *Act*, the regulations, or the 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.
4. The party who suffered the damage or loss mitigated their damages.

The applicant seeking a monetary award bears the burden of proving their claim.

Section 37(2) of the *Act* imposes an obligation on tenants to leave the rental unit in a reasonably clean and undamaged state, except for reasonable wear and tear, and to give the landlord all keys in their possession giving access to the rental unit or the

residential property. Policy Guideline 1 defines reasonable wear and tear as the “natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion.”

Dealing first with the range, I have reviewed the photographs provided to me by the Landlord, which clearly shows the glass range is not merely cracked but broken with a piece of glass falling through onto the element. The Tenant says that the crack happened spontaneously while she was cooking. I do not accept that the crack happened spontaneously. The damage is significant and shows that something was dropped onto and breaking the glass. I accept that the damage is more than mere wear and tear. I find that the broken range constitutes a breach by the Tenant of her obligation under s. 37 of the *Act* to return the rental unit in an undamaged state, giving rise to the Landlord’s claim for compensation.

The Landlord submits that the cost of replacing the range was \$575.00. Looking at the cost of replacing the range, I accept that the Landlord purchased the necessary parts second hand at a cost of \$375.00, as evidenced by the online ads provided. However, I have been provided no receipts evidencing the \$150.00 cost of the stove’s installation. Further, I do not accept that \$50.00 for the Landlord’s time to drive and pick up the stove parts is appropriate as it appears to be based on a bare estimate. I find that the Landlord has failed to quantify his claim with respect to the delivery cost and the installation cost.

I do not find that betterment is present here as the Landlord purchased used parts, which also demonstrates his attempt to mitigate his damages. Accordingly, I grant the Landlord’s claim for the range, though only to \$375.00.

Looking next at the cleaning costs, without considering the other aspects of the Landlord’s claim, I find that the Landlord has failed to quantify his claim by providing receipts for the cleaning costs. As the Landlord’s evidence lacks supporting documents, I find that the Landlord has failed to demonstrate this aspect of his claim.

The Landlord had mixed success in his application. Accordingly, I find that he is not entitled to the return of his filing fee. His claim under s. 72 is dismissed without leave to reapply.

Policy Guideline #17 states the following with respect to the retention or the return of the security deposit through dispute resolution:

1. The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the *Act*, on:
 - a landlord's application to retain all or part of the security deposit; or
 - a tenant's application for the return of the deposit.

Unless the tenant's right to the return of the deposit has been extinguished under the *Act*. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for dispute resolution for its return.

Though the Tenant has not provided her forwarding address, her right to the return of the security deposit has not yet been extinguished under s. 39 of the *Act*. The parties confirm that the security deposit has been retained in full by the Landlord. As I have found that the Landlord is entitled to \$375.00, I order that the balance of the security deposit, being \$175.00, be returned to the Tenant.

Conclusion

The Landlord has demonstrated an entitlement to monetary compensation under s. 67 of the *Act* totalling \$375.00. All other aspects of the Landlord's claim are dismissed without leave to reapply.

The Landlord had mixed success in his application. I dismiss his claim for the return of his filing fee under s. 72 of the *Act* without leave to reapply.

As the Landlord has retained the security deposit of \$550.00 and given that he has proven an entitlement of \$375.00, I order that the balance, being **\$175.00**, be returned to the Tenant.

It is the Tenant's obligation to serve the monetary order on the Landlord. If the Landlord does not comply with the monetary order, it may be filed by the Tenant with 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: October 28, 2022

Residential Tenancy Branch