



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNDL-S, FFL

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The landlords applied for:

- a monetary order for loss under the Act, the regulation or tenancy agreement, pursuant to section 67;
- an authorization to retain the security and pet deposits (the deposits), under section 38; and
- an authorization to recover the filing fee, under section 72.

I left the teleconference connection open until 2:28 P.M. to enable the tenants to call into this teleconference hearing scheduled for 1:30 P.M. The tenants did not attend the hearing. Landlord CB (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. The landlord represented landlord OB. 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.

At the outset of the hearing all the parties were clearly informed of the Rules of Procedure, including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11, which prohibits the recording of a dispute resolution hearing. All the parties confirmed they understood the Rules of Procedure and section 95(3) of the Act.

I accept the landlord's testimony that the tenants were served with the application and evidence (the materials) by registered mail on August 30, 2022, in accordance with section 89(1)(c) of the Act. The landlord mailed the packages to the tenants' forwarding address provided in writing by the tenants on August 06, 2022. The tracking numbers and the tenants' forwarding address are recorded on the cover of this decision.

Section 90 of the Act provides that a document served in accordance with section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is

mailed. Given the evidence of registered mail the tenants are deemed to have received the materials on September 04, 2022, in accordance with section 90 (a) of the Act.

Rule of Procedure 7.3 allows a hearing to continue in the absence of the respondents.

Preliminary Issue – Partial Withdrawal

The landlord withdrew her claim related to kitchen damages.

Pursuant to my authority under section 64(3)(c) of the Act, I amended the application to withdraw the monetary claim related to kitchen damages.

The landlords are seeking monetary compensation in the total amount of \$1,628.25.

Issues to be Decided

Are the landlords entitled to:

1. a monetary order for loss?
2. an authorization to retain the deposits?
3. an authorization to recover the filing fee?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending party, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlords' claims and my findings are set out below. I explained rule 7.4 to the attending party; it is the landlords' obligation to present the evidence to substantiate the application.

The landlord affirmed the tenancy started on November 01, 2016 and ended on July 31, 2022. Monthly rent was \$1,280.00, due on the first day of the month. The landlord collected a security deposit of \$600.00 and a pet deposit of \$600.00 at the outset of the tenancy and currently holds the deposits in the total amount of \$1,200.00 in trust. The tenancy agreement was submitted into evidence.

The landlord submitted the condition inspection report (the report) into evidence signed by both parties when the tenancy started and only by the landlord when the tenancy ended, as the tenants' representatives refused to sign it. The landlord also submitted 21 photographs taken during the move out inspection.

The rental unit was a 2 bedroom, 1,000 square feet suite built in the 1980s and renovated around 2008.

The landlords are claiming \$282.00, as the tenants removed the blinds (the windows coverings):

- one in the kitchen measuring 48 x 36 inches. Cost: \$49.00. Labour: \$15.00;
- two in the living room measuring 52 x 36 inches. Total cost: \$98.00. Labour: \$30.00.
- two in the bedroom measuring 36 x 36 inches. Total cost: \$60.00. Labour: \$30.00.

The report indicates that when the tenancy ended the windows coverings were missing in the kitchen, living room and master bedroom. The landlord submitted five photographs showing missing windows coverings in the kitchen, living room and master bedroom.

The landlords are claiming \$106.00 for extra labour to install the windows coverings brackets. The monetary order worksheet indicates:

new brackets for blinds (old style not avail.): \$56.00
fill old bracket + holes and paint: \$40.00

The landlord stated that the claim for \$106.00 is only for labour to install the brackets. The landlord does not know how long it will take to replace the windows covering brackets.

The landlords are claiming \$33.00, as the tenants damaged the front door weather strip. The landlord testified that a similar weather strip costs \$18.00 and the labour to replace it costs \$15.00 for 15 minutes. The report indicates: "weather strip damaged". The landlord submitted a photograph that shows a damaged weather strip.

The landlords are claiming \$30.00, as the tenants damaged the bedroom windows screen. The landlord said that a similar window screen costs \$10.00 and the labour to replace it costs \$20.00 for 20 minutes. The landlord submitted a photograph that shows a damaged window screen.

The landlords are claiming \$183.75, as the tenants did not clean the rental unit's carpet. The landlord submitted a carpet cleaning receipt for the amount claimed. It states: "Living room and bedroom, extremely soiled, stained fibre damage, unreasonably maintained, recommend replacement". The report indicates that when the tenancy ended the carpet was dirty in the dining room and in both bedrooms.

The landlords are claiming \$643.50, as the tenants damaged the bedroom carpet. The landlord affirmed that the bedroom measures 143 sq ft (11 x 13 feet) and that it will cost her \$4.50 to purchase and install a similar carpet. The report indicates the carpet in the bedroom was "Perm. Stained/damaged fibres" when the tenancy ended. The landlord expected the professional carpet cleaning to repair the damaged bedroom carpet. However, as the carpet cleaning could not remove the stains, the landlord replaced the bedroom carpet.

The landlords are claiming \$350.00, as the tenants damaged the backyard. The tenants had exclusive possession of the backyard. The landlord stated that she authorized the tenants to have a vegetable garden in the backyard if the tenants restored the backyard to its original condition when the tenancy ends. The landlord submitted two photographs showing the damaged backyard when the tenancy ended. The landlord paid \$150.00 for the gravel necessary to restore the backyard and is seeking compensation for the gravel expenses and ten hours of work at \$20.00 per hour.

Analysis

Section 7 of the Act states:

Liability for not complying with this Act or a tenancy agreement

(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Residential Tenancy Branch (RTB) Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

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

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 the case is on the person making the claim.

Windows coverings

Section 32(3) of the Act states: "A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant".

RTB Policy Guideline 1 states:

INTERNAL WINDOW COVERINGS

1. If window coverings are provided at the beginning of the tenancy they must be clean and in a reasonable state of repair.
2. The landlord is not expected to clean the internal window coverings during the tenancy unless something unusual happens, like a water leak, which is not caused by the tenant.
3. The tenant is expected to leave the internal window coverings clean when he or she vacates. The tenant should check with the landlord before cleaning in case there are any special cleaning instructions. The tenant is not responsible for water stains due to inadequate windows.
4. The tenant may be liable for replacing internal window coverings, or paying for their depreciated value, when he or she has damaged the internal window coverings deliberately, or has misused them e.g. cigarette burns, not using the "pulls", claw marks, etc

Based on the landlord's convincing and undisputed testimony, the report and the photographs, I find the landlords proved, on a balance of probabilities, that the tenants breached section 32(3) of the Act by removing the windows coverings in the kitchen, living room and bedroom and the landlords suffered a loss of \$282.00.

As such, I award the landlords \$282.00 in compensation for this loss.

Brackets

I find the landlord's testimony about the labour needed to replace the brackets vague. Furthermore, the monetary order worksheet indicates the landlords are claiming \$106.00 for the windows coverings brackets and the labour, and the landlord affirmed that the claim is only for the labour.

Based on the landlord's vague testimony, I find the landlords failed to prove that they suffered a loss due to the tenants' non-compliance with the Act.

As such, I dismiss this claim.

Weather strip

Based on the landlord's convincing and undisputed testimony, the report and the photograph, I find the landlords proved, on a balance of probabilities, that the tenants breached section 32(3) of the Act by damaging the front door weather strip and the landlords suffered a loss of \$33.00.

As such, I award the landlords \$33.00 in compensation for this loss.

Windows screens

Based on the landlord's convincing and undisputed testimony and the photographs, I find the landlords proved, on a balance of probabilities, that the tenants breached section 32(3) of the Act by damaging the bedroom windows screens and the landlords suffered a loss of \$30.00.

As such, I award the landlords \$30.00 in compensation for this loss.

Carpet cleaning

Section 37(2) of the Act states:

Leaving the rental unit at the end of a tenancy

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

RTB Policy Guideline 1 states:

The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard. The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises), or for cleaning to bring the premises to a higher standard than that set out in the Residential Tenancy Act.

Based on the landlord's convincing and undisputed testimony, the report and the receipt, I find the landlords proved, on a balance of probabilities, that the tenants breached section 37(2) of the Act by not cleaning the carpet and the landlords suffered a loss of \$183.75 to clean the 1,000 square foot rental unit's carpet.

As such, I award the landlords \$183.75 in compensation for this loss.

Carpet replacement

Based on the landlord's convincing and undisputed testimony, the receipt and the report, I find the landlords proved, on a balance of probabilities, that the tenants breached section 32(3) of the Act by damaging the carpet and the landlords suffered a loss of \$643.50.

As such, I award the landlords \$643.50 in compensation for this loss.

Backyard

Based on the landlord's convincing and undisputed testimony, I find the landlords proved, on a balance of probabilities, that the tenants breached section 32(3) of the Act by not restoring the backyard to its original condition and the landlords suffered a loss of \$350.00.

As such, I award the landlords \$350.00 in compensation for this loss.

Filing fee, deposits and summary

As the landlords were successful in this application, I find the landlords are entitled to recover the \$100.00 filing fee.

I find the landlords submitted this application within the timeframe of section 38(1), as the tenancy ended on July 31, the landlord confirmed receipt of the forwarding address on August 06 and submitted this application on August 12, 2022.

As explained in section D.2 of Policy Guideline #17, section 72(2)(b) of the Act provides that where an arbitrator orders a party to pay any monetary amount or to bear all or any part of the cost of the application fee, the monetary amount or cost awarded to a landlord may be deducted from the deposit held by the landlord. I order the landlords to retain the \$1,200.00 deposits in partial satisfaction of the monetary award.

In summary, the landlords are entitled to:

| Expenses | \$ |
|--------------------|---------------|
| Windows coverings | 282.00 |
| Weather strip | 33.00 |
| Windows screens | 30.00 |
| Carpet cleaning | 183.75 |
| Carpet replacement | 643.50 |
| Backyard | 350.00 |
| Filing fee | 100.00 |
| Subtotal | 1,622.25 |
| Deposits (minus) | 1,200.00 |
| Total | 422.25 |

Conclusion

Pursuant to sections 67 and 72 of the Act, I authorize the landlords to retain the \$1,200.00 deposits and grant the landlords a monetary order in the amount of \$422.25.

The landlords are provided with this order in the above terms and 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 16, 2023

Residential Tenancy Branch