



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

A matter regarding PROMPTON REAL ESTATE SERVICES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S, MNDCL-S, FFL

Introduction

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

- a monetary order for money owed or compensation for damage or loss under the Act, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- an order authorizing the landlord the recovery of the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The tenant had legal counsel speak on his behalf, the landlord had an agent represent them for this hearing. The parties acknowledged receipt of evidence submitted by the other. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

Issue to be Decided

Is the landlord entitled to a monetary award for damage or loss arising out of this tenancy?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to the recovery of the filing fee?

Background, Evidence

Both parties agreed to the following facts. This tenancy began on December 1, 2017 and ended on July 31, 2021. Monthly rent in the amount of \$1812.00 was payable on the first day of each month. A security deposit of \$850.00 was paid by the tenants and the landlord continues to retain that deposit. A written tenancy agreement was signed by both parties. A move-in condition inspection report was conducted with both parties participating. The tenants provided a written forwarding address to the landlord on August 3, 2021. The landlord did not have any written permission to keep any part of the tenants' deposits. The landlord's application to retain the tenants' deposits was filed on May 24, 2022.

The landlord seeks a monetary order for damages plus the application filing fee. The agent testified that the tenant told her he didn't have enough time to clean the unit and despite offering her cleaners, he declined. The agent testified that the tenant refused to sign the move out condition inspection report and stated that all of the damage pointed out by the landlord was due to normal wear and tear. The agent testified that the unit had significant amount of damage to it, much of it the landlord has chosen not to pursue a claim for. The agent testified that the tenant was very difficult to deal with and wouldn't take responsibility for any of the damage despite the unit being brand new when he moved in.

The landlord is applying for the following:

1.	Suite Cleaning	\$312.38
2.	Stovetop	1742.98
3.	Painting and Repairs	976.50
4.	Two Glass Shelves	304.50
5.	Carpet Replacement	487.50
6.	Hood Fan Replacement	1420.02
7.	Laminate Floor Replacement	1141.00
8.	Ceiling Repairs	1000.00
9.	Filing Fee	100.00
10.		
	Total	\$7,484.88

The tenants dispute the landlord's entire application. Counsel submits that the tenants did not cause any damages inside the rental unit, and they cleaned it when they

vacated. Counsel submits that the landlord has not discharged their duty by providing sufficient evidence to support their claim as many of the items claimed for can be contributed to normal wear and tear. Counsel submits that the landlords evidence is weak and deficient in many regards such as photos lacking time stamps, date stamps, location details and time gaps for receipts from when the tenants vacated to the time the work was actually done.

Counsel submits that the landlord arbitrarily decided amounts that the tenants should pay without any discussion or supporting documentation. Counsel submits that the landlord's application should be dismissed in its entirety. In the alternative, counsel submits that if they landlord is granted any compensation, it should be significantly less than claimed as the landlord has not factored in depreciation or taken reasonable steps to mitigate the damage and get multiple quotes.

Analysis

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicants to establish the claim. To prove a loss, the landlords must satisfy the following four elements on a balance of probabilities:

- 1) Proof that the damage or loss exists;
- 2) Proof that the damage or loss occurred due to the actions or neglect of the tenants in violation of the *Act*, *Regulation* or tenancy agreement;
- 3) Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- 4) Proof that the landlords followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

The following Residential Tenancy Branch ("RTB") *Rules of Procedure* are applicable and state the following, in part:

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party's agent...

...

7.17 Presentation of evidence

Each party will be given an opportunity to present evidence related to the claim. The arbitrator has the authority to determine the relevance, necessity and appropriateness of evidence...

7.18 Order of presentation

The applicant will present their case and evidence first unless the arbitrator decides otherwise, or when the respondent bears the onus of proof...

On a balance of probabilities and for the reasons stated below, I make the following findings based on the testimony and evidence of both parties.

The agent testified that a move in and move out condition inspection was conducted however, only a move in condition inspection report was submitted and not a move out condition inspection report.

Suite Cleaning

The agent states that the photos submitted support their claim, however counsel challenges the accuracy of such photos as they do not have any time, date or location stamp to confirm their veracity. In addition, the landlord did not submit the move out condition inspection report to itemize and note the alleged damages or lack of cleaning. Based on the insufficient documentation before me, I find that the landlord has not provided sufficient evidence for this claim, accordingly; I dismiss this portion of their application.

Stovetop

The landlord has not conducted the work for this item and therefore has failed to show what the loss is and what the actual cost of that loss is as required under section 67 of the Act, accordingly; I dismiss this portion of the landlords claim.

Painting and Repairs

The landlord did not submit a copy of the move out inspection report for this hearing. Counsel submits that many of these claims only came to light when the landlord filed this application. Based on the vague and inconsistent evidence from the landlord, I dismiss this portion of their claim.

Glass Shelves

The landlord testified that the glass had to be custom made to fit the specific area. The landlord did not submit a copy of the move out inspection report for this hearing. The landlord did not provide before and after photos to show the difference, if any. Based on the insufficient evidence before me, I dismiss this portion of the landlords claim.

Carpet Replacement

The landlord has not provided sufficient evidence to support this claim. The photos provided do reflect some stains but not the damage as alleged by the landlord. In addition, the amount sought is not aligned with the actual receipt and is ambiguous as to how the amount was reached. Furthermore, the landlord has failed to provide proof of mitigation or alternative attempts such as cleaning and stretching out the carpet, accordingly; I dismiss this portion of the landlords claim.

Hood Fan Replacement

The agent testified that this was the second hood fan installed during the tenancy due to excessive grease build up. The documentation submitted by the landlord does not support that statement. The landlord has failed to provide sufficient evidence that the tenant is responsible for this claim because of recklessness or negligence, accordingly; I dismiss this portion of the landlords application.

Laminate Flooring

Similar to the carpet replacement claim, the landlord has failed to provide sufficient evidence of mitigation, such as quotes to repair only affected areas, or several quotes for the replacement. Also, the landlord has failed to address how the receipt is dated five months after the tenancy ended and mentions attempts to dry the unit out due to water damage. Due to the inconsistent and ambiguous testimony and documentation before me, I dismiss this portion of the landlords application.

Ceiling Repair

The landlord has not conducted the work for this item and therefore has failed to show what the loss is and what the actual cost of that loss is as required, accordingly; I dismiss this portion of the landlords claim.

The landlord has not been successful in any portion of their application.

Section 38 of the *Act* requires the landlords to either return the tenants' 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 tenants' provision of a forwarding address in writing. If that does not occur, the landlords are required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the deposit.

However, this provision does not apply if the landlords have obtained the tenants' written authorization to retain all or a portion of the deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenants to pay to the landlords, which remains unpaid at the end of the tenancy (section 38(3)(b)).

I make the following findings on a balance of probabilities and based on the evidence of both parties. The tenancy ended on July 31, 2021. The tenants provided their written forwarding address to the landlords on August 3, 2021. The landlords did not have written permission to retain any amount from the tenants' security deposit. The landlords applied to retain the deposit on May 24, 2022, which is not within 15 days of the later date of August 3, 2021.

I find that the tenants are entitled to double the value of their security deposit as the landlord has not acted in accordance with section 38 of the *Act*, $\$850.00 \times 2 = \1700.00 plus the accrued interest of \$7.08 for a total award to the tenants of \$1707.08.

Although the tenants did not apply for the return of double the value of their security deposit, I am required to consider it, since the tenants did not waive their right to it, as per Residential Tenancy Policy Guideline 17.

I issue a monetary order to the tenants for \$1707.08. The landlord has not been successful in their application.

Conclusion

The tenants have established a claim for \$1707.08. I grant the tenants an order under section 67 for the balance due of \$1707.08. This order may be filed in the Small Claims Court and enforced as an order of that Court.

The landlord's application is dismissed in its entirety without leave to reapply.

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: June 08, 2023

Residential Tenancy Branch