



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL
 MNSDB-DR, FFT

Introduction

This was a cross application hearing that dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for the return of the security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

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

- a Monetary Order for damages, pursuant to section 67;
- authorization to retain the tenant's security and pet damage deposits, pursuant to section 38; and
- authorization to recover the filing fee for this application 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.

Both parties confirmed their email addresses for service of this decision and order.

Issues to be Decided

1. Is the tenant entitled to a Monetary Order for the return of the security deposit, pursuant to section 38 of the *Act*?
2. Is the tenant entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?

3. Are the landlords entitled to a Monetary Order for damages, pursuant to section 67 of the *Act*?
4. Are the landlords entitled to retain the tenant's security and pet damage deposits, pursuant to section 38 of the *Act*?
5. Are the landlords entitled to recover the filing fee for this application 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 both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlords' claims and my findings are set out below.

Both parties agreed to the following facts:

- This tenancy began on February 25, 2019
- The tenant moved out on or around August 20, 2022
- This tenancy officially ended on August 31, 2022
- Rent was \$1,900.00 per month
- The tenant paid the landlords a security deposit of \$800.00 and a pet damage deposit of \$800.00
- The landlords did not return the security or pet damage deposit at the end of the tenancy
- The tenant gave the landlords her forwarding address via text on August 27, 2022
- The parties completed a move in condition inspection and report on or around February 23, 2019
- The parties completed a move out condition inspection and report on or around August 20, 2022

The landlords applied for dispute resolution on September 13, 2022. The tenant applied for dispute resolution on September 19, 2022. The landlords testified that they did not give the tenant a copy of the move out condition inspection report until the tenant was served with evidence for the landlord's application for dispute resolution in person on September 29, 2022. This testimony was not disputed by the tenant.

The move in and out condition inspection reports were entered into evidence. The move in condition inspection report is signed by the tenant but not the landlords. The move out condition inspection report is not signed by either party.

The landlords testified that the tenant stained and damaged the carpet in the two bedrooms at the subject rental property beyond repair. A video of the carpets taken after the tenancy ended was entered into evidence and shows that the carpets are heavily stained.

The move in condition inspection report does not state the move in condition of the carpet in "bedroom (2)" or "[K's] bedroom". The move out condition inspection report for bedroom (2) states "carpet very dirty will need to be replaced". The move out condition inspection report for "[K's] bedroom" states "carpet stained- will need to be replaced. Paint?"

The landlords testified that the carpets damaged by the tenant were wool carpets. The landlords testified that they spoke with the carpet company she purchased the original carpet from and another carpet company and they told her that her wool carpets had a life expectancy of 20 years. The landlords entered into evidence what appears to be a photocopied page out of a book or pdf titled "The Carpet Primer" which states that wool carpets are durable.

The landlords testified that they decided to install vinyl in the bedrooms instead of carpet. The landlords entered into evidence an estimate of \$1,640.10 for vinyl flooring. The landlords testified that they installed the vinyl flooring and paid the full price of the above quote. The landlord testified that they are seeking the entire cost of the vinyl flooring quote from the tenant as well as \$111.62 for a broken fridge shelf. The landlord's application for dispute resolution claims for damage for the cost of replacing the carpet but does not mention damage to a fridge shelf. No receipts for fridge shelf were submitted into evidence.

The landlords testified that it was cheaper to replace the carpets with vinyl than with wool carpet. A quote for wool carpet in the amount of \$2,520.00 was entered into evidence.

The landlords testified that the carpet was manufactured in March of 2015 and were 3-3.5 years old at the start of this tenancy.

The tenant testified that in one of the bedrooms the condition of the carpet was the result of regular wear and tear. The tenant testified that her daughter spilt paint on the carpet in the other bedrooms.

The tenant testified that she did not provide the landlords with written authorization to retain any portion of her security deposit. This was not disputed by the landlord.

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.

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.

Based on the testimony of both parties I find that the tenant's daughter spilled paint in K's bedroom. I find that the carpeting in K's bedroom required replacement due to the paint spill.

The tenant testified that the condition of the carpet in bedroom #2 at the end of the tenancy was the result of reasonable wear and tear. The move in condition was left blank on the move in condition inspection report and no other documentary evidence was provided to clarify the issue. I find that the landlord has not proved the condition of the carpet in bedroom #2 at the start of the tenancy. I am therefore not able to determine if the condition of bedroom #2 is reasonable wear and tear. I find that the landlord has not proved, on a balance of probabilities, that the tenant damaged the carpet in bedroom #2 beyond reasonable wear and tear. The landlords claim for damages for bedroom #2 is therefore dismissed without leave to reapply.

Residential Tenancy Guide #40 (PG #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.

The landlords testified that their wool carpet had a useful life of 20 years. Residential Tenancy Policy Guideline #40 states that the useful life of carpet is 10 years. The page submitted by the landlords states that wool carpet is durable but does not provide a useful life. The landlords did not submit any statements from a carpet store or other carpet expert regarding useful life. I find that the landlord's have not provided enough

evidence to prove, on a balance of probabilities, that the useful life of their carpet was double that set out in PG #40. I find that the useful life of the carpet is 10 years.

I find that at the end of this tenancy, using the manufacture date of March 2015 provided by the landlords, the carpet was approximately 89 months old. I find that at the time the tenant moved out, there was approximately 31 months of useful life that should have been left for the carpet in K's bedroom. I find that since the room required new flooring after only 89 months, the tenant is required to pay according to the following calculations:

$\$1,640.10$ (cost of new flooring) / 2 (landlord only entitled to damages for one bedroom) = $\$820.05$ / 120 months (useful life of carpet) = $\$6.83$ (monthly cost)

$\$6.83$ (monthly cost) * 31 months (expected useful life of carpet after tenant moved out) = **\$211.73**

I decline to consider the landlords' claim for the cost of a broken fridge shelf because the landlords application for dispute resolution did not make such a claim. I find that it would be procedurally unfair to amend the landlord's claim to include the fridge claim as the tenant was not provided with a full opportunity to respond to said claim in advance of this hearing.

Security Deposit

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.

Sections 35 and 36 of the *Act* state 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 a condition inspection report in accordance with the regulation and provide the tenant a copy of that report in accordance with the regulation.

Section 18(1) of the regulation states that the landlord must give the tenant a copy of the signed move out condition inspection report within 15 days of the later of the date the condition inspection report is completed and the date the landlord received the tenant's forwarding address in writing.

I find that the landlord was sufficiently served for the purposes of this *Act*, pursuant to section 71 of the *Act* with the tenant's forwarding address via text message on August 27, 2022 because the landlords confirmed receipt on that date.

Based on the testimony of both parties, I find that the landlords did not provide the tenant with a copy of the move out condition inspection report within 15 days of the end of this tenancy. The landlord's right to retain the deposit is therefore extinguished.

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 states that unless the tenant has 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 landlords made an application to retain the tenants' security deposit within 15 days of the end of the tenancy, the landlords were not entitled to claim against or hold it due to the extinguishment provisions in section 36 of the *Act*. Therefore, the tenant is entitled to receive double their security deposit and pet deposit as per the below calculation:

$\$800.00 \text{ (security deposit)} \times 2 \text{ (doubling provision)} = \$1,600.00$

$\$800.00 \text{ (pet damage deposit)} \times 2 \text{ (doubling provision)} = \$1,600.00$

Total = \$3,200.00

As both parties were successful in their applications for dispute resolution, I find that they are each entitled to recover the \$100.00 filing fee from the other. The amounts are offset against each other for zero recovery for each party.

Conclusion

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

Item	Amount
Doubled deposits	\$3,200.00
Less carpet damages	-\$211.73
TOTAL	\$2,988.27

The tenant is provided with this Order in the above terms and the landlords must be served with this Order as soon as possible. Should the landlords 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: June 06, 2023

Residential Tenancy Branch