



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL

Introduction

This hearing originally convened on January 16, 2023 and was adjourned to May 30, 2023. The Interim Decision dated January 16, 2023 should be read in conjunction with this 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 tenant's legal advocate (the "advocate") and the landlord's support person/ partner (the "partner") also attended the hearing. The landlord called her contractor as a witness (BM) who affirmed to tell the truth.

The advocate and the landlord confirmed their email addresses for service of this Decision. The tenant confirmed his address for service of this Decision.

In the Interim Decision I ordered the landlord to reserve the tenant with the property service invoices claimed in this application for dispute resolution. Both parties agree that the landlord re-served the tenant with the property service invoices.

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 September 30, 2014,
- this tenancy ended at the end of April 2022 pursuant to a One Month Notice to End Tenancy for Cause,
- monthly rent in the amount of \$1,400.00 was payable on the first day of each month,
- a security deposit of \$650.00 was paid by the tenant to the landlord, and
- the tenant has not provided the landlord with a forwarding address in writing.

A written tenancy agreement was signed by both parties and a copy was submitted for this application. The landlord applied for dispute resolution on May 4, 2022.

Both parties agreed that the tenant's grandson put numerous holes in the drywall of the subject rental property while staying with the tenant. Both parties agree that glass in a door was broken during the tenancy. The tenant testified that his daughter broke the glass when she slammed the door.

The landlord testified that the glass that was broken on the door was intricate and that it was cheaper to buy a used door to replace the broken door than to have the glass repaired. The partner testified that the countertop required re-attaching to the counter and that one corner required repair. The landlord testified that the tenant left a large amount of garbage in the yard of the subject rental property. The tenant agreed that he left garbage in the yard of the subject rental property and that BM hauled his yard garbage to the dump. The tenant testified that the countertop was loose and needed re-fastening and agreed that a portion of the counter was damaged.

The landlord testified that she gave the tenant a month to repair the damage to the subject rental property and to clean the yard but he failed to do so. The tenant did not dispute this testimony. Both parties agree that before the end of the tenancy the tenant allowed the landlord and the landlord's contractor (BM) access to the subject rental property to repair the damage outlined above.

The landlord entered into evidence three property service invoices from BM dated January 27, 2022, February 10, 2022 and March 2, 2022.

The January 27, 2022 invoices states:

Labour: \$990.00
Rona: \$241.66
Valley Waste: \$10.50
Labour GST 5%: 49.50
Total: \$1,291.66

The February 10, 2022 invoices states:

Labour: \$1,650.00
Rona: \$215.75
Dollarama: \$49.38
Labour GST 5%: 82.50
Total: \$1,997.63

The March 2, 2022 invoices states:

Labour: \$1,320.00
Rona: \$460.99
New and Used: \$706.61
Home Depot: \$36.94
Valley Waste: \$52.93
w/truck w/trailer p-u/d: \$76.50
Labour GST 5%: \$66.00
Total: \$2,719.97

The landlord testified that she hired BM to complete all the repairs at the subject rental property. The landlord testified that the labour charged in the invoices was for:

- repairing the holes in the drywall,
- replacing the door,

- reattaching and repairing the kitchen counter, and
- gathering and hauling garbage left in the yard of the subject rental property.

The landlord testified that she believes the Rona, Dollarama, and Home Depot charges are for supplies needed to repair the damaged drywall. The landlord testified that lots of the drywall had to be cut away and replaced and that the discarded drywall had to be hauled to the dump. The landlord testified that the Valley Waste receipts are dump receipts for the discarded drywall and for the cost of taking the tenants yard garbage to the dump. The landlord testified that the w/truck w/trailer p-u/d charge is the cost of renting a trailer to haul the tenant's yard garbage to the dump.

The landlord testified that the "new and used" charge on the third receipt is the cost of the used door purchased to replace the door with the broken glass.

The advocate submitted that the property service invoices don't specify what the charges are for and don't show the details of the items purchased from Rona, Home Depot and Dollarama etc. The advocate submitted that the invoices don't show the address at which the work was done and so could be invoices for work completed on a different property.

The advocate submitted that the landlord frequently prefaced her testimony with words such as "I believe" and "I think" rather than "I know", implying that the landlord's testimony was not reliable.

The landlord called witness BM who testified that he completed repair work at the subject rental property. BM testified that the property was in rough shape as the drywall and doors were all kicked in. BM testified that he replaced drywall, lights and completed outside work too. BM testified that the subject rental property was heavily damaged.

Analysis

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 tenant 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.

Based on the testimony of both parties, I find that the tenant or a person permitted on the property by the tenant caused significant damage to the drywall, broke a glass panel in a door, and damaged the countertop.

Based on the testimony of both parties, I find that the tenant left garbage in the yard of the subject rental property.

The tenant confirmed that he allowed BM access to the subject rental property to complete the repairs listed above. BM testified that he completed said repairs at the subject rental property. The landlord testified that she hired BM to complete said repairs. I find, on a balance of probabilities, that BM completed repairs at the subject rental property which are reflected in the three property service invoices.

I find that the advocate's submission that the landlord has not proved that the invoices were for work done at the subject rental property to be wholly unsupported by the testimony heard in this hearing. I find it more likely than not that the invoices submitted are for work done at the subject rental property as a result of the damage caused by the tenant or persons permitted on the property by the tenant.

I find that the three property service invoices set out the labour for the work completed at the subject rental property as well as the material costs for the repairs. I accept the landlord's testimony on what the Rona, Home Depot, Valley Waste and Dollarama costs were and what they were for. I find that the property service invoices are credible, and while they may not have attached the receipts listed therein, I accept their validity. It is undisputed by the tenant that the work was completed, and I find that the costs listed in the property service invoices are reasonable and reflect the work that both parties agree was completed at the subject rental property.

I find that while the landlord frequently used words such as "I think" and "I believe" in her testimony, such prefaces did not decrease the credibility or reliability of her testimony. The landlord's style of speech was not as unequivocal as desired by the advocate; however, I find that it was based on honest recollections and was supported by the documentary evidence.

Under section 32(3) of the *Act*, a tenant must repair damage to the rental unit or common area that is caused by the actions or neglect of the tenant or a person permitted on the property by the tenant. I accept the landlord's testimony that she gave the tenant a month to complete the repairs and then when he failed to do so, she arranged for the repairs to be made. I find that in failing to make the required repairs in a timely manner, the tenant breached section 32(3) of the *Act* and under section 67 of the *Act* is required to compensate the landlord for that loss.

I find that the landlord has proved that as a result of the breach of section 32(3) of the *Act*, she has suffered a loss totalling \$6,009.26 as stated in the three property service invoices. I find that no valid mitigation issues have been raised in this hearing regarding the costs incurred by the landlord. I accept the landlord's testimony that it was cheaper to repair the broken door with a used door than to have the glass repaired.

Security Deposit

Section 38(1) of the *Act* states that within 15 days after the later of:

- (a) the date the tenancy ends, and
 - (b) the date the landlord receives the tenant's forwarding address in writing,
- the landlord must do one of the following:
- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
 - (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

I find that the landlord made an application for dispute resolution claiming against the security deposit pursuant to section 38(1)(a) and 38(1)(b) of the *Act*.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee from the tenant, pursuant to section 72 of the *Act*.

Section 72(2) of the *Act* states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit or pet damage deposit due to the tenant. I find that the landlord is entitled to retain the tenant's \$650.00 security deposit.

Conclusion

I issue a Monetary Order to the landlord as follows:

Item	Amount
Repair costs	\$6,009.26
Filing fee	\$100.00
Less security desposit	-\$650.00
TOTAL	\$5,459.26

The landlord is provided with this Order in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant 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 4, 2023

Residential Tenancy Branch