



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNDL-S, MNDCL-S, FFL

Introduction

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

- a monetary order pursuant to ss. 67 and 38 to pay for repairs caused by the tenant during the tenancy by claiming against the deposit;
- a monetary order pursuant to ss. 67 and 38 compensating for loss or other money owed by claiming against the deposit; and
- return of the filing fee pursuant to s. 72.

Z.Z. appeared as the Landlord. The Landlord’s agent, C.W., also attended. K.K. appeared as the Tenant. The Tenant was assisted in his submissions by S.P..

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 Landlord advised that the Tenant was served with her application and evidence. The Tenant acknowledged its receipt without objection. Pursuant to s. 71(2) of the *Act*, I find that the Tenant was sufficiently served with the Landlord’s application materials.

The Tenant advised not having served any evidence in response to the Landlord’s application.

Issues to be Decided

- 1) Is the Landlord entitled to compensation for damage to the rental unit?
- 2) Is the Landlord entitled to compensation for loss or other money owed?

- 3) Is the Landlord entitled to claim against the security deposit?
- 4) Is the Landlord entitled to her filing fee?

Evidence and Analysis

The parties were given an opportunity to present evidence and make submissions. I have reviewed all included written and oral evidence provided to me by the parties and I have considered all applicable sections of the *Act*. However, only the evidence and issues relevant to the claims in dispute will be referenced in this decision.

General Background

The parties confirm the following aspects regarding the tenancy:

- The Tenant moved into the rental unit on January 15, 2022.
- The Tenant moved out of the rental unit on October 31, 2022.
- Rent of \$1,870.00 was due on the first of each month.
- A security deposit of \$935.00 was paid by the Tenant.

A copy of the tenancy agreement was put into evidence by the Landlord.

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.

1) Is the Landlord entitled to compensation?

The Landlord provides a monetary order worksheet in her evidence in which she claims the following amounts for damage to the rental unit:

• Toilet Replacement	\$381.43
• Plumber's Invoice	\$525.00
• Parking Pass Replacement	\$50.00
• Cleaning Costs	\$375.00

a) *Toilet Replacement/Plumber's Invoice*

The Landlord and her agent advise that at the end of the tenancy two tubes of toothpaste were found inside the toilet. I am told the plumber retained by the plumber was unable to clear the tubes from toilet drain and had to replace the toilet. The Landlord argued that this was intentional damage caused by the Tenant or another occupant.

The Landlord's evidence includes invoices for the plumber dated November 21, 2022 in the amount of \$525.00 and a receipt for the toilet dated November 18, 2022 in the amount of \$381.43.

The Tenant denied that he or his roommates put a tube of toothpaste in the toilet as alleged by the Landlord. The Tenant argued that the toilet in question was not functioning properly since the start of the tenancy and reported the same to the Landlord's agent. The Tenant says that a plumber came to inspect the toilet on February 8, 2022 and pulled a tube of toothpaste from the toilet drain on that occasion. The Tenant says that the toilet still did not work, that the issue was never resolved by the Landlord, and that he and his roommates used another bathroom in the rental unit.

The Landlord's agent acknowledged that a plumber did attend the rental unit in early February 2022 and did find a tube of toothpaste in the toilet at that time. It was argued by the agent, however, that there the toilet was functioning at the beginning of the tenancy and that he was unsure how the toothpaste tube got in the toilet in early February, implying the Tenant or the other occupants may have done so. I am provided with a move-in condition inspection report, though it does not list the state of the toilet when the tenancy started.

I have conflicting evidence on how the tubes of toothpaste ended up in the toilet. There can be little doubt that putting a tube of toothpaste into a toilet constitutes an intentional act. No less than three tubes have been removed from the toilet. The question is whether the Tenant or someone permitted onto the property by him did it.

I am not satisfied that the Landlord has demonstrated that the Tenant, or one of the other occupants, caused this damage. There is evidence to suggest that the issue pre-existed the tenancy, with the acknowledgement from the Landlord's agent that a tube of toothpaste was removed in early February 2022. The move-in report does not note the toilet's condition, or if it was functioning. Finally, I have insufficient evidence to support a finding on credibility when the Tenant denies having caused the damage.

This is the Landlord's claim. She bears the burden of proving it. Though I am cognizant that this matter does constitute an intentional act, I do not have sufficient evidence to support a finding that the Tenant, or someone permitted onto the property by the Tenant, caused the damage. This portion of the claim is dismissed without leave to reapply.

b) Parking Pass Replacement

The Landlord indicates that the Tenant failed to return a visitor parking passes at the end of the tenancy, which she says cost \$50.00 to replace by purchasing new ones from the strata. The Tenant testified that he was told by the strata that the parking passes had expired and could not be used. The Tenant says he has no issue paying this portion, though argued it was unfair.

The issue with this portion of the Landlord's claim is that there is no documentary evidence to support the quantification of the loss. If the Landlord did pay the \$50.00 for the parking pass replacements, the strata management company ought to have issued a receipt or letter explaining this.

Again, as the Landlord's claim, the Landlord bears the burden of proving it. This also includes evidence quantifying the loss by reference to supporting documents. In this instance, I find that the Landlord has failed to do so. This portion of the claim is also dismissed without leave to reapply.

c) Cleaning Fee

The Landlord also seeks \$375.00 for a cleaning fee in her application. At the hearing, I was initially told by the Landlord and her agent that the Tenant agreed to pay this amount such that it was not in issue. Review of the move-out condition inspection report provided by the Landlord shows that the Tenant agreed to the following deductions from the security deposit: "\$375.000 of cleaning fee + \$200.00 toilet (Hold)".

The issue with this portion of the claim is that the Landlord's right to claim against the security deposit was extinguished by s. 24(2) of the *Act*.

Under s. 23(4) of the *Act*, the Landlord is required to complete a written move-in inspection report in accordance with the Regulation. Section 20 of the Regulation requires that a condition inspection report contain the legal name of the Landlord and the Landlord's address for service, both of which are absent in the report provided. I find that the Landlord failed to comply with the requirements for completing a condition inspection report in accordance with the *Act* and Regulation.

I make reference to this because s. 38(5) of the *Act* is clear that a landlord's right to retain a portion of the security deposit when a tenant agrees in writing for them to do so is not permitted when their right to claim against the security deposit has been extinguished by s. 24(2).

I find that the Landlord cannot claim for the cleaning fee by reference to the agreement in the move-out report as their right to claim against the security deposit was extinguished by s. 24(2) of the *Act*.

I have not been provided with a receipt to support the amount claimed either, such that I find that the Landlord has further failed to quantify their claim for cleaning costs.

As such, this portion of the claim is dismissed without leave to reapply.

2) Is the Landlord entitled to claim against the security deposit?

As mentioned above, I find that the Landlord's right to claim against the security deposit is extinguished under s. 24(2) of the *Act*.

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. 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.

I am told by the parties and accept that the Tenant provided his forwarding address to the Landlord on November 10, 2022. The Landlord's evidence includes a text message to this effect.

I am told by the Landlord that she has retained the security deposit in full. I have turned my mind to the issue of the Landlord being permitted to claim against the security deposit for compensation other than damage to the rental unit. With respect to this portion of the claim, I find that it is limited to the return parking passes, with cleaning costs to be associated with the other portion of the claim.

As the Landlord was not permitted to claim against the security deposit for damages, I find that she had no other option but to return the security deposit, less the amount claimed for the parking pass, within 15-days of November 10, 2022. Since that did not occur, I find that the Tenant is entitled to double the return of his security deposit under s. 38(6) of the *Act*, less the \$50.00 claim that could have been retained by the Landlord pending this decision.

As stated in Policy Guideline #17, I may order the return of the security deposit to the Tenant even though this is the Landlord's application. Given the above, I order that the Landlord pay \$1,820.00 $(\$935.00 \times 2) - \50.00 to the Tenant.

3) *Is the Landlord entitled to her filing fee?*

The Landlord was unsuccessful on her application such that I find she is not entitled to her filing fee. Her claim under s. 72(1) of the *Act* is dismissed without leave to reapply.

Conclusion

I dismiss the Landlord's monetary claims without leave to reapply.

I order under s. 38(6) of the *Act* that the Landlord return the security deposit to the Tenant in the amount of **\$1,820.00**.

I dismiss the Landlord's claim for her filing fee without leave to reapply.

It is the Tenant's obligation to serve the monetary order on the Landlord. If the Landlord does not comply with the order, it may be enforced by the Tenant at the Provincial 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 14, 2023

Residential Tenancy Branch