



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNSD, FFT, MNDL-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 and pet deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for its application from the tenant, pursuant to section 72.

This hearing also dealt with the tenant's cross-application pursuant to the *Act* for:

- authorization to obtain a return of double their security deposit pursuant to section 38; and
- authorization to recover the filing fee for its application from the landlord, pursuant to section 72.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

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 and pet deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Are the tenants entitled to a monetary award equivalent to double the value of their security and pet deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*?

Are the tenants entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The landlord's testimony is as follows. The tenancy began on December 1, 2021 and ended on February 28, 2023. The tenants were obligated to pay \$1980.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$990.00 security deposit and \$990.00 pet deposit. The landlord continues to hold both deposits in trust. Written condition inspection reports were conducted at move in and move out with the tenants.

The landlord is applying for the following:

1.	Repairs to wall and painting	\$1,195.43
2.	Garage Gate Service Call	457.71
3.	Garage Gate Replacement	3,097.50
4.	Filing Fee	100.00
5.		
6.		
	Total	\$4,850.64

The landlord testified that the unit was left with an excessive amount of nail holes from hanging pictures, wall brackets and a television. The landlord testified that the amount of holes were excessive and large requiring the walls to be repaired and repainted. The landlord testified that the tenants family member drove her large truck into the parking gate of the garage. The landlord attempted to have it repaired through a service call but the damage was so extensive that the gate had to be replaced. The landlord testified that the tenants had advised that ICBC would address the matter but to no avail. The landlord seeks the filing fee along with the above costs.

JN testified that the previous manager had told her that as long as the tenants lived there for a year that they didn't need to worry about nail holes as suites were painted after one year. JN testified that they filled the holes and that the landlord only had to paint. JN testified that her sister hit the parking garage gate with a rented vehicle and

would take responsibility for getting the landlord money for the gate but hasn't done so at this point. The tenants seek the return of double the deposits as the landlord has not returned their deposits within 15 days of the end of the tenancy.

Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the party's claim and my findings around each are set out below.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. **In order to claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof.** The claimant must provide **sufficient evidence of the following four factors**; the existence of the damage/loss, that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party, the applicant must also show that they followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed, and that if that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I address the landlords claims and my findings as follows.

Painting

The tenant did not have any documentation to support her claim that she was allowed to put as many nail holes and brackets in the wall as she wanted. I am satisfied that the amount of nail holes was excessive, but the tenants did do some patching and sanding. The landlord advised that the paint was two years old when the tenants moved in. I must consider Residential Tenancy Policy Guideline 40 and the useful life of paint which is listed at four years. Using that calculation there was only 9 months of useful life left. The landlord is entitled to the following amount $\$1195.43 \div 48 \text{ months} = \24.90 per month $\times 9 \text{ months} = \224.14 . The landlord is entitled to \$224.14 for wall repair and painting.

Garage Gate Service Call and Replacement

The tenant acknowledged that her sister damaged the garage gate with a rental vehicle. The tenant testified that she would take care of the matter and help facilitate payment

from ICBC to the landlord. The damage occurred on January 28, 2023, but the tenant has not taken care of the matter despite ten months passing. Section 32 of the Act states the following:

Landlord and tenant obligations to repair and maintain

32 (3)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.

The tenant has had ample time to repair the damage or facilitate payment to the landlord but did not do so, accordingly; I find that the landlord is entitled to the recovery of the service call to try to repair the gate and the replacement of said gate for an award of \$3,555.21.

The landlord is also entitled to the recovery of the \$100.00 filing fee. The landlords total award is \$3,879.35.

I address the tenants claim and my findings as follows:

The tenant said she is applying for the return of double the security deposit as the landlord has not complied with the s. 38 of the *Residential Tenancy Act*.

Section 38 (1) says that except as provided in subsection (3) or (4) (a), 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.

The tenants provided their forwarding address on February 28, 2023. The landlord filed their application to retain the deposits on March 13, 2023, therefore, the landlord has applied within the legislated timeline and the doubling provision does not apply. In

addition, the landlord has been granted a monetary award that exceeds the deposits. Using the offsetting provision under section 72 of the Act, I hereby order that the landlord retain both the security and pet deposit and any accrued interest in partial satisfaction of their claim.

The tenants have not been successful in their application and are not entitled to the recovery of the filing fee, accordingly; I dismiss that portion of their claim without leave to reapply.

Conclusion

The landlord has established a claim for \$3,879.35. I order that the landlord retain the security deposit and pet deposit of \$1,980.00 and interest of \$34.38 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$1,864.97. This order may be filed in the Small Claims Court and enforced as an order of that Court.

The tenant'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: November 23, 2023

Residential Tenancy Branch