



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes L: MNDL-S, FFL
 T: MNSD

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution under the *Residential Tenancy Act* (the Act) for monetary damages to the rental unit allegedly caused by the Tenant during the tenancy under section 67 of the Act, and reimbursement of the application filing fee under section 72 of the Act.

This hearing also dealt with the Tenant's Application for Dispute Resolution under the Act requesting the Landlord return the security deposit.

The Landlord served the proceeding package to the Tenant by courier on August 21, 2023. A completed Proof of Service form together with the courier shipment confirmation was provided by the Landlord. The Landlord also provided copies of their evidence to the Tenant by courier and Canada Post registered mail. The Tenant stated she provided copies of her evidence to the Landlord by Canada Post registered mail. Both parties confirmed receipt of the other party's evidence prior to the hearing.

Issues to be Decided

Is the Landlord entitled to a Monetary Order for damage or loss under the Act, regulation or tenancy agreement?

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 recover the filing fee for this application from the Tenant?

Background and Evidence

I have reviewed the evidence, including the testimony of the parties, but will refer only to what I find relevant to my decision.

Evidence was provided establishing that this tenancy began on February 2, 2022, on a month-to-month basis. The tenancy ended on July 30, 2023 and the Tenant provided her forwarding address to the Landlord on July 31, 2023. The monthly rent during the tenancy was \$2,300.00 and the Tenant provided a security deposit to the Landlord in the amount of \$1,150.00 at the commencement of the tenancy which the Landlord continued to hold in trust. The residential building consisted of two levels: the Tenant occupied the upper level and another tenant occupied the basement suite.

Neither a move-in nor move-out condition inspection report was completed by the Landlord with the Tenant. The Landlord stated that when the Tenant moved in and moved out, a walk-through was done. The Landlord testified that at the commencement of the tenancy, "everything was fine" with the rental unit. When the Tenant moved out, the Landlord stated that damages to the unit were noted in the Tenant's presence.

The Landlord testified that the rental unit required repainting after the Tenant moved out. The Landlord testified the cost was \$2,940.00 for repainting the unit to more neutral colors. The Landlord also stated that the deck to the rental unit had to be cleared off, and there was mold and a smell in the basement unit that required the use of a ventilation system to remove. The Landlord also testified that the Tenant had an inflatable pool on the deck and alleged that it both damaged the deck and water from the inflatable pool this caused damage to the lower level of the residence. The Landlord retained a home inspector (who charged \$630.00 for his report). The Landlord stated the inspector informed them that the deck required \$10,000.00 in repair. A copy of the report was provided in evidence. The Landlord also stated that another contractor had been contacted who quoted the Landlord \$6,800.00 for repair of damage to the deck. Invoices and estimates were not provided in evidence by the Landlord.

The Landlord also requested compensation for alleged damage caused by the Tenant to a light fixture in a closet (slightly dislodged), nail holes in a wall, dents to the bottom freezer drawer of the refrigerator, damage to a curtain rod and a wooden blind (a slat broken). The Landlord provided photographs of the nail holes, freezer drawer, wooden blind and displaced closet light.

The Tenant replied that there were a few nail holes in the wall, but she did not repair these as she assumed the unit would need repainting. The Tenant disavowed that she should pay for the cost to repaint the unit. The Tenant stated she had no idea how the damage to the freezer drawer occurred, but that it had "always been there." The Tenant denied damaging the deck or causing mold in the rental unit. The Tenant stated that the one slat on the blind was broken or had a crack in it.

The Tenant testified that she had an inflatable pool on the deck but denied it had caused water damage to the deck or was the source of water infiltration into the home. The Tenant stated that the rental unit residence was approximately 66 years old. She explained that the home was on a hill and during her tenancy there had been a large snowstorm that when the snow melted was the source of water infiltration into the home. She also stated that at one point during the tenancy the toilet had flooded and this was another source of water coming into the residence. The Tenant also pointed out that the Landlord had done work in the backyard, and that this may have contributed to the drainage issue and caused water infiltration into the basement of the residential building.

Analysis

Is the Landlord entitled to a Monetary Order for damage or loss under the Act, regulation or tenancy agreement?

To be awarded compensation for a breach of the Act, the tenant must prove:

- the landlord has failed to comply with the Act, regulation or tenancy agreement
- loss or damage has resulted from this failure to comply
- the amount of or value of the damage or loss
- the tenant acted reasonably to minimize that damage or loss

In this case, the Landlord did not provide a move-in condition inspection report, signed by the Tenant, which would have established a baseline for the condition of the unit at the time the start of the tenancy. This would have provided a basis from which the condition at time the Tenant vacated the unit could be compared and alleged damage to the unit assessed.

I find that the Landlord has not provided sufficient evidence to establish that the Tenant had an inflatable pool on the deck to the residence which is a cause of mold or water infiltration into the residential building. The Landlord's inspector's report notes the presence of mold and moisture in the building but does not state with particularity that the Tenant's inflatable pool, as opposed to the position of the home on a hill or any other landscape or weather condition, was the cause of the mold in the residence.

However, I do find that the Tenant did make holes in the wall for her wall hangings. Policy Guideline 1 provides that it is a Tenant's responsibility to repair excessive nail holes. The nail holes depicted in the Landlord's photograph evidence a large number of nail holes on a wall. I further find that the Landlord has established that the window blind slat was broken during the tenancy. The Landlord did not provide sufficient evidence to establish, on a balance of probabilities, the remaining items of damage to the unit allegedly caused by the Tenant, including the damage to the freezer drawer or light fixture in the closet.

For the above reasons, the Tenant's application for a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act is granted. I find that the Landlord is entitled to an award of \$350.00 in compensation for damage caused by the Tenant to the rental unit during the 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?

Section 38 of the Act states that within 15 days of either the tenancy ending or the date that the landlord receives the tenant's forwarding address in writing, whichever is later, a landlord must repay a security deposit to the tenant or make an application for dispute resolution to claim against it. As the forwarding address was provided on July 31, 2023, and the Landlord made their application on August 14, 2023, I find that the Landlord made their application within 15 days of the Tenant providing her forwarding address to the Landlord.

I find that the Landlord is entitled to retain a portion of the Tenant's security deposit in satisfaction for damages and reimbursement of the filing fee (as set forth in greater detail below). This conclusively deals with the Tenant's security deposit.

Is the Landlord entitled to recover the filing fee for this application from the Tenant?

As the Landlord was successful in this application, the Landlord's application for authorization to recover the filing fee for this application from the Tenant under section 72 of the Act is granted.

Conclusion

The Landlord's application is granted.

I grant the Tenant a Monetary Order in the amount of **\$726.22** under the following terms:

Monetary Issue	Granted Amount
Return of the Tenant's security deposit (\$1,150.00) plus interest (\$26.22)	\$1,176.22
Less monetary award to Landlord under section 67	(\$350.00)
authorization to the Landlord recover the filing fee for this application from the landlord under section 72 of the Act	(\$100.00)

Total Amount	\$726.22
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The Tenant is provided with this Order in the above terms and the Landlord must be served with **this Order** as soon as possible. Should the Landlord 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: February 13, 2024

Residential Tenancy Branch