



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

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

- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 11:20 a.m. in order to enable her to attend this face-to-face hearing in the Burnaby Office of the Residential Tenancy Branch (the RTB) scheduled for 11:00 a.m. The landlord and his spouse attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions.

The landlord's spouse testified that on May 7, 2013, she sent the tenant a copy of the landlord's dispute resolution hearing package to the tenant by registered mail. She sent this package to the forwarding address provided by the tenant to the landlord on April 30, 2013. She provided a copy of the Canada Post Tracking Number to confirm this registered mailing and showed the original of this Tracking Number to me at the hearing. I am satisfied that the landlord served the tenant with the dispute resolution hearing package and the landlord's written evidence package in accordance with the *Act*.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for losses and damage arising out of this 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? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

This periodic tenancy commenced on December 1, 2012. Monthly rent was set at \$940.00, payable in advance on the day before the first day of each month. The landlord continues to hold the tenant's \$470.00 security deposit paid on November 22, 2012. The landlord testified that the tenant vacated the premises on February 28, 2013. The landlord entered into written evidence a copy of the November 22, 2012 joint move-in condition inspection report. No joint move-out condition inspection was conducted. The landlord entered into written evidence copies of bills, receipts, invoices and photographs of the condition of the rental unit at the end of this tenancy.

The landlord's application for a monetary award of \$477.00 included a request for reimbursement of a \$225.00 cleaning bill they paid for cleaning that was necessary when the tenant vacated the rental unit. The landlord also sought a monetary award of \$252.00, the estimated replacement cost of one of the refrigerator drawers. The landlord entered into written evidence a copy of a \$252.00 estimate provided by an appliance company for the replacement of this drawer. The landlord and his spouse testified that they could not replace this part as the parts are no longer available.

Analysis

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 prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

Based on the landlord's undisputed written and photographic evidence, and sworn oral testimony from the landlord and his spouse, I am satisfied that the landlord is entitled to the recovery of the \$225.00 in cleaning costs incurred at the end of this tenancy. This payment was made to a cleaning company on March 5, 2013.

Turning to the landlord's claim for the broken drawer in the refrigerator, I note that the landlord's spouse and landlord testified that they did not know how old the refrigerator was when they purchased it used on May 25, 2012. Although they both testified that the refrigerator was in very good shape when they bought it, the landlord's spouse

testified that the refrigerator was probably five years old when they purchased it. They did not provide any evidence with respect to the cost of the used refrigerator.

Residential Tenancy Branch Policy Guideline 40 identifies the useful life of items associated with residential tenancies for the guidance of Arbitrators in determining claims for damage. In the case of refrigerators for residential tenancies, the useful life is estimated at 15 years. Based on the sworn testimony of the landlord's spouse, one-third of the useful life of the refrigerator (5/15) had expired by the time the landlords purchased that appliance. Since purchasing the refrigerator another $\frac{3}{4}$ year had passed by the time the tenancy ended. Thus, the remaining useful life of the refrigerator at the time the tenancy ended was 61.7% (i.e., $15 - 5.75/15 = .617$). However, based on the photographic evidence, I find that the drawer in question, although damaged, was certainly still functional at perhaps 50% of its original utility. Using the above calculations, I allow the landlord a monetary award of \$77.74 (i.e., $\$252.00 \times 61.7\% \times 50\% = \77.74) for the damage to the refrigerator in the rental unit.

As the landlord has been successful in this application, I allow the landlord to recover his \$50.00 filing fee from the tenant.

I allow the landlord to retain the above amounts, \$352.74 in total, from the tenant's security deposit. I order the landlord to return the remaining \$117.26 from the tenant's security deposit plus applicable interest to the tenant forthwith. No interest is payable over this period.

Conclusion

I issue a monetary Order in the tenant's favour under the following terms which allows the landlord to retain \$352.74 from the tenant's security deposit for damage and losses arising out of this tenancy and for the landlord's filing fee.

Item	Amount
Cleaning Costs	\$225.00
Damage to Refrigerator ($\$252.00 \times .671 \times .50 = \77.74)	77.74
Less Security Deposit	-470.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	(\$117.26)

The tenant is provided with these Orders in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with these Orders and pay the tenant the remaining \$117.26 from the tenant's security

deposit forthwith, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: August 07, 2013

Residential Tenancy Branch

