



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFT MNDCT MNSD (tenant); FFL MNDCL-S MNDL-S (landlord)**

Introduction

This hearing also dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for compensation for damage or loss under the Act, Residential Tenancy Regulation (“Regulation”) or tenancy agreement pursuant to section 67 of the Act;
- An order for the landlord to return the security deposit pursuant to section 38;
- An order requiring the landlord to reimburse the tenant for the filing fee.

This hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* (“Regulation”) or tenancy agreement pursuant to section 67 of the *Act*;
- Authorization to retain all or a portion of the tenant’s security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*; and
- Authorization to recover the filing fee for this application pursuant to section 72.

Both parties attended the hearing. Each party had the opportunity to call witnesses and present affirmed testimony and written evidence. Each party acknowledged receipt of the other party's Notice of Hearing and evidentiary materials. No issues of service were raised. I find each party served the other in accordance with the *Act*.

Issue(s) to be Decided

Is the tenant entitled to the following:

- A monetary order for compensation for damage or loss under the Act, Residential Tenancy Regulation (“Regulation”) or tenancy agreement pursuant to section 67 of the Act;
- An order for the landlord to return the security deposit pursuant to section 38; and
- An order requiring the landlord to reimburse the tenant for the filing fee.

Is the landlord entitled to the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the Act, Residential Tenancy Regulation (“Regulation”) or tenancy agreement pursuant to section 67 of the Act;
- Authorization to retain all or a portion of the tenant’s security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the Act; and
- Authorization to recover the filing fee for this application pursuant to section 72.

Background and Evidence

The parties submitted considerable documentary evidence, including photographs, texts, letters from witnesses, invoices, correspondence and financial information. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, I only refer to the evidence relevant to the issues and findings in this matter.

The origin of these applications is the landlord’s failure to return the tenant’s complete deposit after a tenancy of five years. The parties agreed they entered into a signed residential tenancy agreement beginning March 1, 2014 for a term of one year. The tenancy continued on a year-to-year basis afterwards. Rent was \$1,200.00 a month payable on the first of the month.

At the beginning of the tenancy, the tenant provided a security and pet deposit (“the security deposit”) of \$1,200.00; the tenant has not provided consent to the landlord to retain the security deposit. The landlord returned \$900.00 of the security deposit to the tenant on March 6, 2019. The parties agreed the landlord has not returned the balance of \$300.00 of the deposit.

A copy of the tenancy agreement was entered as evidence.

The landlord testified she had purchased the house three years before the tenancy began, had occupied the unit herself, and had conducted renovations. The landlord stated everything was in good, working order when the tenancy began. The landlord submitted no photographs or evidence of the condition of the unit at the beginning of the tenancy.

The tenant testified the unit was an “old house” of indeterminate age, well-worn, and that she returned the unit to the landlord in the same condition as at the start of the tenancy, wear and tear excepted.

The tenant vacated the unit on February 28, 2019 after giving one month’s notice in writing. In her letter giving notice of intention to vacate, the tenant provided her forwarding address; the tenant submitted a copy of the letter as evidence.

No condition inspection was conducted on moving in or moving out.

After the landlord returned \$900.00 of the \$1,200.00 deposit on March 6, 2019, the tenant filed an application on March 13, 2019, for the return of her deposit, refund of an overpayment of rent allegedly made at the beginning of the tenancy, and reimbursement of the filing fee.

The parties submitted substantial banking documents in support of their respective competing claims around the alleged overpayment of rent by the tenant five years ago at the beginning of the tenancy in the amount of \$800.00.

The landlord testified that she did a hasty “walk through” when the tenancy ended and later, when she fully examined the unit, discovered damage. The landlord filed a cross-application on March 26, 2019 claiming compensation for damages and loss to the unit, authorization to apply the balance of the deposit to the monetary order and reimbursement of the filing fee.

Landlord's Application

The landlord stated that the unit was damaged in many respects at the end of the tenancy. In her application, the landlord stated:

The tenant damaged the washing machine rendering it inoperable until repaired. The tenant broke the bathtub apron, it now has a long sharp split along the length. There is significant damage to the hardwood floors. Walls and windows throughout house need cleaning. The tenant allowed dogs to defecate on the deck. The yard has substantial garbage and dog waste to clean up.

The landlord claimed the following:

ITEM	AMOUNT
Washing machine – repair of gasket	\$276.00
Hardwood floor - repair	\$525.00
Baseboards - replacement	\$125.00
Cleaning	\$225.00
Bathtub surround	\$335.00
Travel expenses	\$140.00
TOTAL	\$5,237.56

Washing Machine – Gasket

The tenancy agreement included the provision of a washing machine. The landlord stated the gasket on the door of the washing machine was in good working condition when the tenancy began. When the tenancy ended, the landlord stated the gasket was not working and, therefore, the washing machine leaked.

The landlord did not submit a receipt; she submitted an estimate of the cost of the repair of the washing machine of \$276.00 (plus taxes). The landlord submitted photographs of the damaged gasket.

The tenant stated that the gasket in the washing machine needed replacing after normal use during a five-year tenancy. She denied she was responsible otherwise for this repair which was necessary through normal wear and tear.

Hardwood Floor

With respect to the hardwood floor, the landlord testified that it was in good condition at the start of the tenancy, having been previously refinished. At the end of the tenancy, the landlord testified that the floor was damaged in several areas, particularly in three areas of damage of approximately 12" x 5" where the finish had been peeled or worn away. The landlord submitted photographs of these damaged areas. The surrounding flooring appeared well-worn.

The landlord did not submit a receipt; she submitted an estimate of the cost of the repair of the flooring of \$525.00 plus taxes.

The tenant denied any responsibility for damage to the hardwood flooring during the tenancy. She stated that the hardwood flooring was covered by a carpet for the five years she lived there. She testified the flooring was in the same condition when she left as when she moved in, reasonable wear and tear excepted.

Bathtub Surround

The landlord testified that the bathtub surround was in good condition when the unit was rented; at the end of the tenancy, the bathtub surround was cracked. The landlord estimated cost of replacement at \$355.00. The landlord submitted photographs purporting to represent a crack in the bathtub surround.

The tenant denied the bathtub surround was cracked; if it was, the crack pre-dated the tenancy.

Baseboards

The landlord testified that the house had baseboards throughout in good condition at the start of the tenancy. She stated that when the tenancy ended, baseboards were damaged or missing. The landlord submitted photographs showing parts of the unit without baseboards.

The landlord did not submit a receipt for the repair or replacement of the baseboards; she submitted an estimate of \$125.00 plus taxes for the replacement.

The tenant denied any responsibility for damage to the hardwood flooring during the tenancy. She stated the baseboards were in the same condition when she left as when she moved in.

Cleaning

The landlord claimed \$225.00 for an estimated 15 hours of cleaning by herself and two other persons at \$15.00 an hour. The landlord submitted no receipts for this payment.

Regarding the interior of the house, the landlord testified that the tenant left the unit requiring considerable cleaning. She submitted photographs showing dirty walls, baseboards and windows.

Regarding the exterior of the unit, the landlord submitted photographs of the exterior showing dog feces on the deck. The landlord submitted a letter from a witness and photographs in support of her claim. The landlord stated there was considerable debris in the alley, in support of which she submitted photographs; she cleaned the debris and took it to the dump. The landlord stated in her written submissions, in part:

I had spent March 1 & 2 trying to clean up and repair what I could to give the realtor a better chance at selling it. My sister NP helped wash walls, door/window casings and baseboards while I filled the nail holes and the deep gouges in the baseboards/casing then finally painted. The walls still require painting due to wear and staining... There was garbage strewn all over the yard as well as beer cans and garbage under the deck.... Tree trimmings piled on the ground.... The front flower beds had been used as an ashtray. It took 5 hours for myself and 2 others to clean up the majority of the mess (including picking butts from the front flower bed). It was a full truck load of garbage.

The tenant acknowledged there was dog feces on the deck, explaining that due to heavy snowfall, the dogs used the deck. She said there was snow on the deck when she moved so she could not clean up the feces. The tenant submitted a letter from a property manager stating he had viewed the unit at the end of the tenancy and it was reasonably clean and in good condition, wear and tear excepted. The tenant acknowledged the landlord spent time cleaning but estimated eight hours would cover what had to be done.

Travel expenses

The landlord submitted receipts in support of a claim for travel expenses of \$140.00 from her home outside the province to the unit to attend to cleaning and damage.

The tenant denied responsibility for any of the landlord's travel expenses.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy agreement or the *Act*, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

The purpose of compensation is to put the person who incurred the damage or loss in the same position as if the damage or loss had not occurred. The person claiming compensation must establish **all** the following four points:

1. The existence of the damage or loss;
2. The damage or loss resulted directly from a violation – by the other party – of the *Act*, regulations, or tenancy agreement;
3. The actual monetary amount or value of the damage or loss; and
4. Everything reasonable was done to reduce or minimize (mitigate) the amount of the loss or damage as required under section 7(2) of the *Act*.

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

I will deal with each party's claims in turn.

Tenant's claims

Overpayment of rent

I find the tenant has not met the burden of proof on a balance of probabilities that she overpaid the rent at the beginning of the tenancy in 2014. I find it unlikely that the tenant would suddenly recall such an overpayment only after the tenancy ended. I find the landlord's evidence credible with respect to this claim, as supported by substantial financial documents.

I therefore dismiss the tenant's claim for reimbursement of an overpayment of rent without leave to reapply.

Return of Deposits

The parties agreed the landlord returned \$900.00 of the \$1,200.00 deposits and did not return the balance or file for dispute resolution within the fifteen-day period of the end of the tenancy. They agreed the tenant provided her forwarding address to the landlord prior to the tenancy ending on February 28, 2019.

The Act contains comprehensive provisions regarding security and pet damage deposits.

As stated in section 38 of the Act, the landlord is required to either return the tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit, 15 days after the later of the end of a tenancy and receipt of the tenant's forwarding address in writing.

Section 38 states as follows:

38 (1) 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.

If that does not occur, the landlord must pay a monetary award equivalent to double the value of the security deposit.

Section 38(6) states as follows:

(6) If a landlord does not comply with subsection (1), the landlord
(a) may not make a claim against the security deposit or any pet damage deposit, and
*(b) **must pay the tenant double the amount of the security deposit**, pet damage deposit, or both, as applicable*

However, this provision does not apply if the landlord has obtained the tenant's written permission to keep all or a portion of the security deposit pursuant to section 38(4)(a).

I find the landlord has not brought proceedings for compensation or an application for dispute resolution claiming against the security deposit for any outstanding rent or damage to the rental unit pursuant to section 38(1)(d) of the *Act*.

I find the tenant provided her forwarding address in writing pursuant to section 38(1)(b) on January 31, 2019 and did not provide consent to the landlord to keep any portion of the security deposit pursuant to section 38(4)(a).

Based on the above, the testimony and evidence, and on a balance of probabilities, I find the landlord is in breach of the *Act* by failing to return the security deposit or applying for dispute resolution as required.

I award the tenant a monetary order in the amount of **\$1,340.00**. The award to the tenant is summarized as follows:

ITEM	AMOUNT
Security Deposit	\$1,120.00
Double the Security Deposit	\$1,120.00
(Less partial payment)	(\$900.00)
Monetary Award Tenant	\$1,340.00

Landlord's Claims

When there is only disputed testimony, documentary evidence can add weight to shift the balance of probabilities in favour of the claimant seeking compensation. Because this is disputed testimony, and the tenant claimed reasonable wear and tear or that the damages pre-dated the tenancy and given the landlord's failure to submit a condition inspection report or photographs from the start of the tenancy, I find that the landlord failed to provide sufficient evidence to prove all claims except for cleaning.

The claims with respect to cleaning and travel expenses are addressed individually.

Cleaning

After listening to the testimony of the parties and viewing the evidence, I accept the landlord's evidence the tenant did not leave the unit reasonably clean. I accept the landlord's evidence supported by the photographs, that 15 hours cleaning took place and was necessary because of the condition of the unit at the end of the tenancy. I find

the landlord mitigated expenses by doing the cleaning herself with friends. I accept her claim of \$225.00 as reasonable compensation under this heading.

Travel Expenses

The landlord claimed reimbursement of the cost of travelling to the unit from out-of-province to administer the unit occupied by the tenant.

I understand the landlord's frustration with the administrative expenses associated with this tenancy. However, I find it is not the tenant's responsibility in this case to reimburse the landlord for the claimed expenses associated with the landlord's decision to live in a different geographical location.

I therefore find the landlord is not entitled to the claimed expenses under this heading.

Filing Fee

As each party has been partially successful in their claims, I do not make an award that either party be reimbursed for the filing fee.

Summary

In summary, I award the tenant **\$1,115.00** as follows:

ITEM	AMOUNT
Award to tenant – return of security deposit	\$1,340.00
(Less award to landlord – cleaning)	(\$225.00)
TOTAL AWARD TO TENANT	\$1,115.00

Conclusion

The tenant is provided with a monetary order in the amount of **\$1,115.00** 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: May 01, 2019

Residential Tenancy Branch