



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL

Introduction

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

- An order for monetary compensation by claiming against the deposits for damages to the rental unit pursuant to ss. 38 and 67; and
- Return of its filing fee pursuant to s. 72.

D.J. and B.B. appeared as agents for the Landlord. B.D. and A.D. appeared as the Tenants.

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. The parties confirmed that they were not recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The Landlord’s agents advise that the Notice of Dispute Resolution was served via registered mail to the Tenants on December 22, 2021 and the Landlord’s evidence served via registered mail on June 22, 2022. The Tenants acknowledge receipt of the Landlord’s application and evidence. I find that the Landlord’s application and evidence were served in accordance with s. 89 of the *Act*.

The Tenants provided no documentary evidence.

Issues to be Decided

- 1) Is the Landlord entitled to compensation for damages to the rental unit?
- 2) Can the Landlord claim against the deposits?
- 3) Is the Landlord entitled to the return of its filing fee?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this decision.

The parties confirmed the following details with respect to the tenancy:

- The Tenants took occupancy of the rental unit on April 1, 2021.
- The Landlord obtained vacant possession of the rental unit on November 30, 2021.
- Rent of \$3,025.00 was payable on the first day of each month.
- The Landlord holds a security deposit of \$1,512.50 and a pet damage deposit of \$1,512.50 in trust for the Tenants.

A copy of the tenancy agreement, addendum, and pet agreement were put into evidence. A copy of the move-in inspection dated March 28, 2021 and the move-out inspection dated November 30, 2021 were also put into evidence.

In its application, the Landlord seeks an order of \$7,061.46. At the hearing, the Landlord's agents advanced a claim of \$7,440.00. The Landlord's agents acknowledge no amendment was filed as part of its application and argue that the revised amount is based on actual costs rather than the amount claimed, which was an estimate.

The Landlord alleges that on September 3, 2021 the Tenant had an altercation with guests at the rear lobby door to the residential property. The Tenant's guests are said to have kicked the door and thrown rocks at the glass. Video of the incident was put into evidence by the Landlord. Two videos were provided. The first shows three individuals fighting outside the residential property. The second shows one individual holding the door to the building closed while the other two were kicking the door, threw rocks at the door, and eventually broke the glass for the door.

The Tenants do not deny the incident occurred, acknowledged the other two individuals were guests, and simply disputed liability as they were uncertain who should be responsible for paying for the damage.

The Landlord provides invoices for the repair to the door and the glass. The first is for \$5,934.70, the second for \$760.73, and the third for 105.00. These invoices were for the

glass replacement, correcting the bent door frame, and the replacement of a graphic that had been applied to the previous glass door.

The Landlord also seeks additional amounts related to the condition of the rental unit itself after the Tenants had vacated. The agents advised that four walls required repair and paint due to holes. The Landlord's agents did not describe the holes in any detail though speculated there was a TV that had been mounted to one of the walls. The Landlord seeks \$300.00 for the wall repair based on an estimate of \$75.00 per wall. No receipts or invoices are provided for this amount.

The Landlord also seeks an additional \$40.00 for cleaning the rental unit. The agents drew my attention to clause 14 of the tenancy agreement addendum, which states the following:

The Tenant shall, at his/her own expense, have the Premises and carpets cleaned by professional cleaning companies prior to vacating the Premises. Receipts for such cleaning services must be submitted to the Landlord or Agent or the Tenant will be charged a cleaning fee.

They say no receipt for cleaning the rental unit was provided by the Tenants. They further indicate that the charge is based on 1 hour of cleaning time for one the Landlord's employees. No receipt is provided by the Landlord with respect to the amount claimed.

The Landlord also seeks \$200.00 for a pest control assessment. The agents highlighted clause 7 of the tenancy agreement pet agreement, which states:

If any pet resides/enters the Premises for any length of time, a flea inspection of the Premises for the presence of fleas **must** be completed by a professional pest control company, at the sole cost of the Tenant, upon or before the pet or the tenant vacates the Premises.

The agents advise that no assessment was provided by the Tenants. The Landlord provides an estimate of the pest control assessment and does not provide a receipt for this amount.

The Landlord's agents confirmed there is no liquidated damages clause within the tenancy agreement respecting the amounts claimed above.

The Tenants deny making holes in the walls and say that the rental unit was dirty when they moved in and that they cleaned it when they left.

The parties confirm the forwarding address was provided on November 30, 2021.

Analysis

The Landlord seeks compensation for damages they say were caused by the Tenants or their guests. They claim against the security deposit.

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.

Dealing first with the damage to the door, ss. 32(2) and 32(3) of the *Act* imposes an obligation on tenants to maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the residential property to which the tenant has access and to repair damage to the rental unit or common areas that are caused by their actions or neglect or by a person permitted on the residential property by the tenant.

Under the present circumstances, there is no dispute that the Tenants' guests damaged the rear door on September 3, 2021. The Tenants admit that the individuals in question were their guests, which is to say they permitted them to be on the residential property. I accept that the Tenant was not personally responsible for the damage to the door and it would appear based on the one video that the Tenant was attempting to keep the two individuals from entering the building. However, s. 32 is clear that the Tenants are responsible for damage caused by individuals they permit onto the property. In this

instance, there is no dispute these individuals were, at least initially, permitted onto the property by the Tenants. I find that the Tenants breached their obligation under s. 32 of the *Act* to repair damage to the common area caused by their guests.

I find that the Landlord has suffered financial loss as evidenced in the invoices and that the total cost of repairing the door is \$6,800.43 (\$5,934.70 + \$760.73 + \$105.00). The Landlord has made out its monetary claim in this respect.

Looking at the other amounts claimed, I note that the Landlord did not file an amendment to their claim and seeks an amount in excess of that listed in their Notice of Dispute Resolution. This is in contravention of the Rules of Procedure.

Further, the four-part test requires applicants to quantify their claims. In this instance, the Landlord provides no invoice or receipts for the amounts sought, being the \$300.00 for the drywall repair, \$200.00 for the pest assessment, and \$40.00 for the cleaning fee. Also, the amounts claimed for the pest assessment and cleaning fee are alleged to have been breaches of the tenancy agreement addendums. No liquidated damages clauses are said to be part of this tenancy.

It is the Landlord's claim and it bears the burden of proving it. Without considering the other aspects of the four-part test, I find that the Landlord has failed to quantify its claim with respect to the additional amounts claimed. They are simply estimates that are completely unsupported by evidence in the form of receipts or invoices. The balance of the Landlord's monetary claim is dismissed without leave to reapply.

The Landlord claims against the security deposit of \$1,512.50 and the pet damage deposit of \$1,512.50. 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. A landlord may not claim against the security deposit if the application is made outside of the 15-day window established by s. 38. 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.

Upon review of the information on file and in consideration of Rule 2.6 of the Rules of Procedure, I find that the Landlord filed its application on December 15, 2021. I find that

the Landlord filed its application on was the last day permitted to it under s. 38(1). The doubling provision of s. 38(6) does not apply.

The Landlord has established a monetary claim of \$6,800.43 and may retain the total deposits of \$3,025.00 in partial satisfaction of this amount.

Conclusion

The Landlord has established a monetary claim for damages in the amount of \$6,800.43 pursuant to s. 67 of the *Act*.

The doubling provision of s. 38(6) of the *Act* does not apply.

As the Landlord was largely successful in its application, I find that it is entitled to its filing fee. Pursuant to s. 72(1) of the *Act*, I order that the Tenants pay the Landlord's \$100.00 filing fee.

I make a total monetary order taking the following into account:

Item	Amount
Monetary claim for damages	\$6,800.43
Filing fee pursuant to s. 72(1)	\$100.00
Less the security deposit and pet damage deposit to be retained by the Landlord as per s. 72(2)	-\$3,025.00
TOTAL	\$3,875.43

Pursuant to s. 67 and 72 of the *Act*, I order that the Tenants pay **\$3,875.43** to the Landlord.

It is the Landlord's obligation to serve the monetary order on the Tenants. If the Tenants do not comply with the monetary order, it may be filed with 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: July 24, 2022

Residential Tenancy Branch