



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes 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 recover their filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing by conference call and gave testimony, confirmed receipt of the notice of hearing package and the submitted documentary evidence. I find as such that both parties have been properly served as per sections 89 of the Act.

At the outset of the hearing, both parties confirmed that the landlord had amended the monetary claim lowering it to \$1,425.00 for money owed or compensation for damage or loss and recovery of the filing fee.

During the hearing both parties indicated that although they both did not make an application for the security deposit, both parties would like an order to resolve the outcome of the \$625.00 security deposit.

At the outset it was clarified with both parties that the landlord's claim for \$102.54 for postage costs and \$10.67 for photographs were considered litigation costs. Section 72 of the Act addresses **Director's orders: fees and monetary order**. With the exception of the filing fee for an application for dispute resolution, the Act does not provide for the award of costs associated with litigation to either party to a dispute. Accordingly, the Landlord's claims for recovery of litigation costs (Postage and photographs) are dismissed.

Issue(s) to be Decided

Are the landlords entitled to a monetary order for money owed or compensation for damage or loss and recovery of the filing fee?

Are the landlords entitled to retain the security deposit?

Are the tenants entitled to a monetary order for the return of the security deposit?

Background and Evidence

This tenancy began on May 1, 2014 on a fixed term tenancy ending on April 30, 2015 and then thereafter on a month to month basis. The monthly rent was \$1,250.00 and a security deposit of \$625.00 was paid. No condition inspections or reports for the move-in or the move-out were completed.

Both parties confirmed that the tenant gave notice to end the tenancy prematurely on August 29, 2014 by email to vacate the rental on September 30, 2014. The landlord received the tenant's forwarding address in writing by email on September 28, 2014. The landlord stated that they were diligent in attempting to find a new tenant after receiving the tenant's notice to vacate the rental prematurely. The male landlord stated that he did not advertise the rental property in newspaper ads, but instead put up a sign, posted ads on the internet and asked for referrals from various people. The tenant, A.M. confirmed that no newspaper ads were made and has provided copies of local advertisements for August, September and October 2014, which show no postings by the landlord. The tenant, A.M., confirmed in her direct testimony that the landlords held three viewings for prospective tenants on September 10, 15 and 20, but was unsuccessful. The landlord stated that he had found a new tenant in the first week of October to move in for November 1, 2014. The tenant disputed this claim stating that she drove past the rental property several times in late September and saw the lights on and two cars parked in the driveway. The landlord stated that he left the lights on in the rental and had allowed the new tenants to begin moving their things in on October 31st.

The landlords seek a monetary claim of \$1,425.00 which consists of;

- \$1,250.00 for the loss of rental income (October 2014);
- \$175.00 for general cleaning costs;
- \$14.34 for recovery of hydro costs (during October 2014); and
- \$31.24 for replacement of missing lightbulbs from the rental unit.

The tenants disputed the claims of the landlords and testified that the rental unit was cleaned prior to vacating the rental and that no lightbulbs were missing.

The landlords have submitted copies of receipts for \$175.00 from a cleaning company for general move-out cleaning costs, an invoice from Hydro for \$14.34 in billed electrical charges for October, a receipt for \$31.25 for the replacement of 9 missing lightbulbs. The landlord has relied upon 9 submitted photographs which show some smudges on the dishwasher, a dirty toilet, a cat litter box, a dirty cupboard, a dirty refrigerator and a dirty mirror in the bathroom.

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 loss of rental income, left the rental unit dirty requiring cleaning, replaced of missing lightbulbs that were taken by the tenant and recovery of the hydro costs.

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

On the landlord's claim of loss of rental income, I find on a balance of probabilities that the landlords have established a claim. Both parties have confirmed that the tenant breached the fixed term tenancy by ending it prematurely on September 28, 2014 as opposed to the agreed date of April 30, 2015.

Residential Tenancy Branch Policy Guideline #5 states that the Legislation requires the party seeking damages to show that reasonable efforts were made to reduce or prevent the loss claimed.

I accept that the landlord made reasonable efforts to mitigate any possible losses by immediately attempting to re-rent the premises. This is supported by the tenant's evidence that three showings were made in September 2014 and that the landlord was ultimately successful in re-renting the premises in early October for November 1, 2014. On this basis, I find that the landlord has established a claim for loss of rental income of \$1,250.00.

On the landlord's claim of compensation for \$175.00 for cleaning, \$14.34 for unpaid hydro costs and \$31.25 for the replacement of missing lightbulbs, I find that the landlord is only partially successful on a balance of probabilities. The landlords have provided copies of all invoices/receipts for the claimed costs. The landlords have failed to complete a condition inspection report for the move-in or the move-out and have thus failed to provide conclusive evidence of the state of the rental unit before and after the tenancy began for comparison. However, the landlords have submitted photographs showing some smudges on the dishwasher, a dirty toilet, a cat litter box, a dirty cupboard, a dirty refrigerator and a dirty mirror in the bathroom that clearly show that the premises required some cleaning. I find that the landlord's evidence does not justify a full cleaning of the premises as claimed by the submitted invoice and the submitted photographs. On this basis, I find that the landlords have not provided sufficient evidence to establish a claim for the full \$175.00 cleaning charge, but are entitled to a nominal award of \$75.00 which would be equal to 3 hours of cleaning.

The tenants made no comments on the landlords' claim for unpaid hydro. As such, I find that as this portion of the claim is unchallenged by the tenants and the landlords have provided justification in the form of hydro invoices for the period in question, the landlords are successful in this portion of the claim.

On the landlords' claim for recovery of missing lightbulbs for \$31.25, the tenants have disputed that there were any missing lightbulbs at the end of the tenancy. The landlord relies solely on the submitted copy of the receipt paid for lightbulbs. I find on a balance of probabilities that the landlord has failed to provide sufficient evidence to satisfy me that there were any missing lightbulbs at the end of tenancy. This portion of the landlord's claim is dismissed.

The landlords have established a total monetary claim of \$1,339.34, consisting of \$1,250.00 for loss rental income, \$75.00 for cleaning and \$14.34 for hydro charges. The landlords are also entitled to recovery of the \$50.00 filing fee.

Although neither party has made an application for the security deposit, both parties have requested a finding concerning the outcome of the \$625.00 security deposit. As such, I order that the landlord may retain the \$625.00 security deposit in partial satisfaction of the claim and I grant the landlord a monetary order under section 67 for the balance due of \$764.34.

Conclusion

The landlords are granted a monetary order for \$764.34. The landlords may retain the \$625.00 security deposit in partial satisfaction of their claim. The landlords must serve a copy of the monetary order upon the tenants. Should the tenants fail to comply with the order, the 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: April 8, 2015

Residential Tenancy Branch

