



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, FF

Introduction

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

- 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;
- a monetary order for damage to the rental unit pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing by conference call and gave affirmed testimony. The landlord stated that the tenants were served with the notice of hearing package by Canada Post Registered Mail. The landlord was unable to provide a date of service. The tenant confirmed receipt of the landlord's notice of hearing package by Canada Post Registered Mail. As both parties have attended and the tenant has confirmed receipt of the notice of hearing package, I am satisfied that both parties have been properly served. The tenant made no objections to the lack of a service date.

The landlord did not submit any documentary evidence. The tenant submitted a documentary evidence package, which the landlord has confirmed receipt of.

Preliminary Issue

The tenant provided written submissions requesting that the tenant's application be called forward and joined with the landlord's application as they both relate to overlapping issues relating to the security deposit. The landlord objected as he is in the process of submitting documentary evidence in response to the tenant's application. I find that it would be highly prejudicial to call ahead the tenant's application to be joined with the landlord's application as the landlord is in the process of providing documentary evidence to respond. As such, the tenant's request is denied. The tenants' hearing set for September 6, 2016 shall remain. This hearing shall proceed on the landlord's monetary claim only.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for damage and recovery of the filing fee?
Is the landlord entitled to retain all or part of the security deposit?

Background and Evidence

Both parties confirmed that there was no signed tenancy agreement for this furnished rental property. Both parties agreed that there was verbal tenancy agreement in which the tenancy began on October 1, 2014 on a month-to-month basis. The monthly rent was \$2,300.00 payable on the 1st day of each month and a security deposit of \$1,150.00 was paid at the beginning of the tenancy.

The landlord seeks a monetary claim of \$14,327.50 which consists of:

| | |
|------------|---|
| \$800.00 | Estimated Repair costs for damage to the master bedroom door. |
| \$200.00 | Patio Door stop Damage by pet. |
| \$500.00 | Drywall Damage (Repair/Repaint) |
| \$5,000.00 | Chipped Countertop (Replacement) |
| \$1,450.00 | Clean and remove garbage from Barn. |
| \$100.00 | Carpet Cleaning (dirty and stained) |
| \$160.00 | Clean Furniture (pet odors and fur) |
| \$1,200.00 | Replace Damaged Kitchen Table left outside. |
| \$150.00 | Replace Damaged Kitchen Chair left outside. |
| \$800.00 | Replace Damaged Coffee Table. |
| \$??? | Various parts of house were left dirty (General cleaning) |

The landlord's details of damage claim were incomplete. The visible details of damage claim total, \$10,360.00.

The landlord stated that the tenants vacated the rental unit on October 1, 2015 leaving the rental property damaged and dirty requiring extensive repairs and replacement of items.

The tenants dispute the claims of the landlords.

The landlords have not submitted any supporting evidence.

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.

I find on a balance of probabilities that I prefer the evidence of tenants over that of the landlords. The tenants have disputed the claims of the landlords, who have failed to provide any supporting evidence to prove the tenants caused damage/loss during the tenancy. The landlords did not complete a condition inspection report for the move-in or the move-out to show a comparison of the rental property before and after the tenancy began. The landlords have not provided any evidence that can verify the amounts claimed by the landlord (ie. invoices/receipts). The landlords have failed to prove that the tenants caused damage or loss.

Conclusion

The landlord's application is dismissed without leave to reapply.

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 05, 2016

Residential Tenancy Branch

