



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, FF

Introduction

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

- a monetary order for damage to the rental unit and for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants, pursuant to section 72.

The landlord and the two tenants attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 59 minutes in order to allow both parties to fully present their submissions.

The tenants confirmed receipt of the landlord's application for dispute resolution hearing package ("Application") and the landlord confirmed receipt of the tenants' written evidence package. In accordance with sections 88, 89 and 90 of the *Act*, I find that the tenants were duly served with the landlord's Application and the landlord was duly served with the tenants' written evidence package.

Issues to be Decided

Is the landlord entitled to a monetary award for damage to the rental unit and for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is the landlord entitled to recover the filing fee for this Application?

Background and Evidence

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

Both parties agreed to the following facts. This tenancy began on September 1, 2009 and ended on June 30, 2015. Monthly rent in the amount of \$2,090.00 was payable on the first day of each month. A security deposit of \$900.00 was paid by the tenants and the landlord was ordered to return this to the tenants in a previous hearing decision, the file numbers of which appear on the front page of this decision. Move-in and move-out condition inspection reports were completed for this tenancy. A copy of the written tenancy agreement was provided for this hearing.

The landlord initially sought a monetary order of \$4,157.00. At the hearing, the landlord reduced his claim to 3,394.80 plus the \$50.00 filing fee. The landlord specifically reduced his claims for painting from \$2,400.00 to \$1,717.80 and for the bathroom door adjustment from \$60.00 to \$30.00.

Analysis

Section 67 of the *Act* requires a party making a claim for damage or loss to prove the claim, on a balance of probabilities. In this case, to prove a loss, the landlord must satisfy the following four elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the tenants in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the landlord followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

I award the landlord \$30.00 for the bathroom door adjustment, as the tenants agreed to pay this amount and the landlord agreed to accept it despite his original claim of \$60.00 for this cost.

I award the landlord \$100.00 to replace the FOB key with the garage door opener. The tenants agreed that they did not return one FOB with the garage door opener to the landlord when they vacated. The tenants said that they purchased two smaller FOBs without the garage door opener because their one FOB with the garage door opener

was not working. However, the tenants did not notify the landlord about this problem when it happened, as required, and chose to incur a cost for two smaller FOBs at their own initiative. Both parties agreed that the cost of a replacement FOB with the garage door opener was \$100.00.

I dismiss the landlord's claims of \$200.00 to replace the leaking dishwasher and \$200.00 to fix the defective toilet, without leave to reapply. I find that the landlord failed to meet part 2 of the above test to show that the tenants caused this damage. The tenants said that there were no problems with the dishwasher or toilet when they vacated the rental unit, otherwise they would have reported it to the landlord as they ordinarily did for repairs. The landlord said that he discovered the problem with the dishwasher two days after the move-out condition inspection occurred with the tenants. The landlord's invoice for the toilet replacement is from December 2015, after the tenants left in June 2015. As a new tenant moved into the rental unit on August 1, 2015 and reported the toilet issues, it is unclear who caused the toilet problem, since the replacement was not done until months later.

I dismiss the landlord's claim of \$1,000.00 for a loss of rent for July 2015, without leave to reapply. The Arbitrator at the previous hearing dismissed the landlord's claim for July 2015 rent without leave to reapply. The landlord said that he is seeking this loss due to damages he had to repair at the rental unit, not his efforts to re-rent the unit as noted in the previous hearing. I find that the landlord was aware of the amount of time it took to make the repairs at the rental unit at the time of the previous hearing in November 2015, and that was the time to make his claim before the Arbitrator. Therefore, the July 2015 rent issue is *res judicata*, meaning it has already been decided by another Arbitrator and I cannot alter or overturn that finding.

I dismiss the landlord's claims of \$1,717.80 for interior painting at the rental unit, without leave to reapply. As per Residential Tenancy Policy Guideline 40, the useful life of interior paint is approximately four years. As this tenancy exceeded five years, I find that the landlord would be required to paint the inside of the rental unit in any event.

However, I award the landlord \$147.00 for purchasing paint to do repair patchwork at the rental unit. I find that the tenants caused excessive damage to the walls in the rental unit, as per Residential Tenancy Policy Guideline 1, and that the walls required repair work, not a full painting as noted above. The landlord provided coloured photographs of approximately 78 holes and dents in the walls that the tenants tried to inadequately patch themselves. The tenants agreed that they caused picture hook holes, push pin holes and other holes from fixtures in the walls. The landlord provided a receipt for the above purchase of paint.

As the landlord was mainly unsuccessful in this Application, I dismiss his claim to recover the \$50.00 filing fee without leave to reapply.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$277.00 against the tenant(s). The tenant(s) must be served with this Order as soon as possible. Should the tenant 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: June 29, 2016

Residential Tenancy Branch