



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DOLE ENTERPRISES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

OPC, MND, MNSD, FF

Introduction

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

- an order of possession for cause, pursuant to section 55;
- a monetary order for damage to the rental unit, pursuant to section 67;
- authorization to retain a portion of the tenants' security deposit in full satisfaction of the monetary award, pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants, pursuant to section 72.

The landlord's agent, DS ("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. The landlord confirmed that she was one of the directors of the landlord company named in this application and that she had authority to represent it as an agent at this hearing. This hearing lasted approximately 44 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.

The landlord confirmed that she could not see a CD of digital evidence provided to her by the tenants. The tenants confirmed that they did not ensure that the landlord could see this evidence prior to the hearing. Accordingly, as the tenants did not follow Rule 3.10 of the Residential Tenancy Branch *Rules of Procedure* to ensure that the landlord could see and hear the digital evidence prior to the hearing, I advised both parties that I was excluding the evidence and I did not consider it at the hearing or in my decision.

At the outset of the hearing, both parties confirmed that the tenants had already vacated the rental unit. The landlord confirmed that she did not require an order of possession.

Accordingly, the landlord's application for an order of possession is dismissed without leave to reapply.

Issues to be Decided

Is the landlord entitled to a monetary award for damage to the rental unit?

Is the landlord authorized to retain a portion of the tenants' security deposit in full satisfaction of the monetary award?

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 the 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 that this tenancy began on October 1, 2015 and ended on May 31, 2016. Both parties agreed that monthly rent in the amount of \$810.00 was payable on the first day of each month and a security deposit of \$410.00 was paid by the tenants and the landlord continues to retain this deposit. I note that this amount is in excess of half a month's rent and violates section 19 of the *Act*. A copy of the written tenancy agreement was provided for this hearing.

The landlord seeks a monetary order of \$280.00 for extracting a key and fixing the front door at the rental building, plus the \$100.00 filing fee for this Application.

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 \$95.00 for extracting the tenants' key from the front door of the rental building. The tenants provided an estimate quote for this amount with their written evidence. The tenants admitted that they used the wrong key, as their rental unit key broke off and got stuck inside the front door of the rental building. The tenants agreed that the landlord and her husband removed the key from the front door. The tenants disputed the invoice submitted by the landlord for \$280.00 because the landlord could not justify the cost. During the hearing, the landlord was unable to provide a specific breakdown for her invoice and I find that she failed to meet part 3 of the above test. The landlord said that she and her husband are not certified to fix locks, that they spent four hours repairing the problem, her husband had to drive 1.5 hours roundtrip and pay for gas, that they had to use tools and equipment that she could not describe, and that the key had to be removed but the hinges had to be fixed as well. The tenants said that they did not damage the whole door or prevent it from closing, as it was only the key that was stuck and then removed. I find that the landlord failed to meet parts 1 and 2 of the above test, as she did not provide sufficient documentary evidence that the door hinges were damaged or required fixing due to the tenants' conduct.

As the landlord was only partially successful in this Application, I find that it is not entitled to recover the \$100.00 filing fee from the tenants.

The landlord continues to hold the tenants' security deposit of \$410.00. Over the period of this tenancy, no interest is payable on the deposit. In accordance with the offsetting provision of section 72 of the *Act*, I allow the landlord to retain \$95.00 from the tenants' security deposit in full satisfaction of the monetary award provided to the landlord at this hearing. In accordance with Residential Tenancy Policy Guideline 17, I order the landlord to return the remainder of the tenants' security deposit in the amount of \$315.00 to the tenants.

Conclusion

I issue a monetary order in the tenants' favour in the amount of \$315.00 against the landlord. 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.

The remainder of 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: June 06, 2016

Residential Tenancy Branch