



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding TOTAL CONCEPT DEVELOPMENTS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNSD, FF

Introduction

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

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

Both parties attended the hearing via conference call and provided affirmed testimony. The landlord's agent (the landlord) stated that both the tenants were served with the notice of hearing package(s) via Canada Post Registered Mail on December 2, 2015. The landlord also stated that her documentary evidence package was also provided to the tenants in the same package. The tenant, C.N. (the tenants) confirmed receipt of the notice of hearing package and the landlord's submitted documentary evidence in this manner. The tenants confirmed that they did not submit any documentary evidence. I accept the undisputed affirmed evidence of both parties and find that both parties have been properly served with the notice of hearing package and the submitted documentary evidence as per sections 88 and 89 of the Act. The tenants are both deemed to have received the packages as per section 90 of the Act 5 days later.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for damage to the unit and recovery of the filing fee?

Is the landlord entitled to retain all or part of the security deposit?

Background and Evidence

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

This tenancy began on July 24, 2014 on a fixed term tenancy ending on July 31, 2015 and then thereafter on a month-to-month basis as shown by the submitted copy of the signed tenancy agreement dated July 18, 2014. The monthly rent was \$1,850.00 payable on the 1st day of each month and a security deposit of \$925.00 was paid on July 24, 2014.

The landlord provided evidence that \$583.70 was already returned to the tenants and that the \$366.30 was being held in dispute.

The landlord provided evidence a condition inspection report for the move-out was scheduled for November 30, 2015 and left prior to completion.

The landlord seeks a monetary claim of \$366.30 which consists of:

\$286.30	Repairs to Damaged Blinds
\$50.00	Replacement Fee for unreturned FOB
\$5.00	Replacement cost for unreturned mailbox key
\$25.00	Landlord's time for meeting the blind repair company

The landlord stated that at the end of tenancy after the tenants had vacated the rental unit the landlord discovered a damaged blind as shown in the three photographs on page 26 of the landlord's submitted documentary evidence. The tenants confirmed that there was some warping, but that it only needed to be "pushed" back in. The landlord stated that the warping seems to be due to heat. The landlord stated that a Blind Company was called to repair the warped blind, but that the landlord was informed that the cost of repairing the blinds for approximately 6 hours was too expensive. The landlord stated that the cheaper option was to replace the entire blind. The landlord replaced the blind as shown on the submitted invoice from BC Blinds-in-Motion dated December 8, 2015. The landlord also stated that the blind technician made a notation on the invoice which states, "In my opinion after looking at the blind, it is not normal wear & tear. Damage is too severe."

The tenants also conceded the cost of replacing the FOB at \$50.00 and the replacement of a mailbox key at \$5.00.

The landlord also seeks recovery of \$25.00 for the cost of the landlord's time to make a trip to the rental property in order to meet the blind company. During the hearing, the landlord also indicated that she had to attend the rental unit on a second occasion to complete the condition inspection report for the move-out. The tenants disputed this portion of the landlord's claims stating that attending a condition inspection report was part of the landlord's normal duties.

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.

The landlord's agent has provided undisputed affirmed evidence that the rental unit was left with a damaged blind and that the tenants failed to return a FOB and mailbox key. The tenant disputed that the damaged blind could have been repaired by having it "pushed back in". The landlord has provided a copy of an invoice from the Blind Company which stated, "In my opinion after looking at the blind, it is not normal wear & tear. Damage is too severe." I find based upon this notation and the undisputed affirmed evidence of the landlord that a claim for replacement of the blinds has been established. The landlord has provided sufficient evidence to satisfy me that the blinds were damaged by the tenant and that it cost \$286.30 to replace them. As noted by the landlord this would have been the cheaper option instead of repairing the blinds. The landlord is entitled to this portion of the claim.

On the second and third items of claim by the landlord, the tenant, C.N. has conceded that a FOB and a mail key were not returned. The landlord has claimed \$50.00 for a replacement FOB and \$5.00 for replacement mail box key. As the tenants have conceded these portions of the claim, the landlord has established a monetary claim of \$55.00 for these portions of the application.

The landlord's claim of \$25.00 for her time to meet the tenants to complete a condition inspection report and to meet the blind company for an estimate is dismissed. I find that

the landlord has failed in this portion of her application as it a responsibility of the landlord as it is the tenant to complete a condition inspection report for the move-in or the move-out. I also find that the landlord has failed to provide sufficient details of any evidence in support of this portion of her claim.

The landlord has established a total monetary claim of \$341.30.

The landlord is also entitled to recovery of the \$50.00 filing fee.

Conclusion

I issue a monetary Order in the landlord's favour under the following terms, which allows the landlord an award for damages, less the held security deposit, plus the recovery of his filing fee

Item	Amount
Monetary Award for Damages	\$341.30
Less Balance Not Returned of Security Deposit	-366.30
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	\$25.00

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 19, 2016

Residential Tenancy Branch

