



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This hearing dealt with the landlords' 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 their filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. The landlords stated that the tenants were served with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail. The tenants confirmed receipt of the landlords' notice of hearing package and the submitted documentary evidence. The tenants also submitted documentary evidence by mail to the landlords. The landlords confirmed receipt of the tenants' submitted documentary evidence. Both parties have attended and have confirmed receipt of the notice of hearing package and the submitted documentary evidence, I am satisfied that both parties have been properly served. As such, I find that both parties are deemed properly served as per section 90 of the Act.

Issue(s) to be Decided

Are the landlords entitled to a monetary order for damage to the unit, site or property and recovery of the filing fee?

Are the landlords 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 in July 2015 on a fixed term tenancy until August 1, 2015 as shown by the submitted copy of the signed tenancy agreement dated July 17, 2015. The monthly rent was \$1,600.00 payable on the 1st day of each month and a security deposit of \$800.00 was paid.

The landlord seeks a monetary claim of \$800.00. The landlord clarified that she bought a new refrigerator costing \$1,740.47 as the least onerous option to resolve the dispute over the damaged refrigerator door instead of replacing the damaged door for \$863.59. The tenants disputed the landlords' claim.

Both parties provided written submissions that the refrigerator was approximately 3 ½ years old. Both parties confirmed that the damage occurred to the refrigerator door during the tenancy as shown in the landlord's submitted copies of the condition inspection report for the move-in and the move-out. The tenants' claim that the damage occurred as a result of poor kitchen design in which the refrigerator door and the oven door could not both be opened at the same time. The Photograph on Page 5 of the landlords' photographic evidence shows the set-up of the refrigerator and oven. The tenants claim that this damage occurred through normal wear and tear and that they should not be held responsible. A review of the damaged refrigerator shows a dent in the middle of the door and a scratch on the lower left portion of the same door as shown on page 6 of the landlords' photographic 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 based upon the evidence of both parties that the tenants did cause the damage to the refrigerator door during the tenancy. Both parties acknowledged the refrigerator was not damaged at the beginning of the tenancy and that it was damaged at the end of the tenancy. The tenants provided written submissions that the damage occurred as a result of the tenants opening both the refrigerator and the oven doors at the same time. I reject the tenants' claim that the damage had occurred due to poor kitchen design. The kitchen may or may not be of poor design, but the refrigerator door and the oven door were opened by the tenants at the same time causing the damage. As such, I find that the tenants caused the damaged and that it was not the result of wear and tear.

Residential Tenancy Branch Policy Guideline #40, Use Life of Building Elements states in part that a refrigerator has a useful life of 15 years. Both parties agreed that the refrigerator was approximately 3 ½ years old at the end of the tenancy, leaving 11 ½ years of useful life.

The damage caused by the tenants was cosmetic. Both parties confirmed that the functionality of the refrigerator was unchanged. The landlords stated that a new refrigerator was purchased for expediency and as the least onerous process. Although the landlords researched the cost of replacing the refrigerator door they failed to do so and purchased a new one and sold the old one for \$350.00 online. The landlord has made a claim of \$800.00 which based upon the \$800.00 security deposit currently held by the landlord in trust. The landlords have failed to establish a claim for damages totalling \$800.00. However, the damage to the refrigerator door has reduced the value of the refrigerator and I will grant an arbitrary amount towards the loss of that value. I award the landlord an award of \$300.00.

The landlord has established monetary claim of \$300.00.

I find as the landlord having been only partially successful is entitled to recovery of ½ of the \$100.00 filing fee, \$50.00.

In offsetting this claim against the \$800.00 security deposit currently held by the landlord, I order that the landlord may retain \$300.00 of the \$800.00 held. The landlord is to return the remaining \$500.00 to the tenants.

Conclusion

The tenants are granted a monetary order for \$500.00.

This order must be served upon the tenants. Should the landlords 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: September 08, 2016

Residential Tenancy Branch