



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MND MNR MNSD FF

Introduction

This hearing was convened as a result of the landlords' application for dispute resolution seeking remedy under the *Residential Tenancy Act* (the "Act"). The landlords applied for an order of possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, for damage to the unit, site or property, for authorization to retain all or part of the tenants' security deposit, and to recover the cost of the filing fee.

The landlords and tenant C.D. appeared at the teleconference hearing and gave affirmed testimony. Tenant C.D. (the "tenant") stated that he was representing both tenants at the hearing. During the hearing the parties were given the opportunity to provide their evidence orally. A summary of the evidence is provided below and includes only that which is relevant to the hearing.

Neither party raised any concerns regarding the service of documentary evidence. The tenant confirmed that the tenants received and reviewed the landlords' documentary evidence prior to the hearing. The tenant also confirmed that they did not submit documentary evidence in response to the landlords' application.

Preliminary and Procedural Matter

At the outset of the hearing, the landlords requested to withdraw their request for an order of possession as the tenants vacated the rental unit on January 17, 2016. Accordingly, the landlord's were permitted to withdraw their request for an order of possession as the landlords have already obtained possession of the rental unit back from the tenants. Therefore, an order of possession will not be considered in this Decision.

Issues to be Decided

- Are the landlords entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenants' security deposit under the *Act*?

Background and Evidence

The landlords submitted a copy of the tenancy agreement in evidence. A fixed term tenancy began on July 1, 2015 and was scheduled to end on June 30, 2016. The tenants' monthly rent was \$1,475.00 per month and was due on the first day of each month. The tenants paid a security deposit of \$737.50 at the start of the tenancy which the landlords continue to hold.

The landlords' monetary claim is comprised of the following:

ITEM DESCRIPTION	AMOUNT CLAIMED
Item 1. Reconnection of furnace	\$183.75
Item 2. Replace light fixture	\$113.35
Item 3. Recovery of the cost of the filing fee	\$100.00
Item 4. Loss of January 2016 rent	\$1,475.00
TOTAL	\$1,872.10

Regarding item 1, the landlords testified that they incurred a cost of \$183.75 to reconnect the furnace as the tenants' failed to pay utilities. The tenant testified that the utilities had been paid and did not agree with the landlords' claim. The landlords did not submit documents from the gas company confirming the amount owing, if any, and did not submit a copy of the condition inspection report to support that the gas had been shut off in the rental unit. There were no invoices submitted to support the amount of \$183.75 as claimed by the landlords.

Regarding item 2, the landlords have claimed \$113.35 for the cost of a new glass lens for a light and the labour to install it. The tenant confirmed that he removed the glass lens and did not put it back where it belonged. The invoice submitted supports the amount of \$113.35 as claimed.

Regarding item 3, the parties referred to a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated January 6, 2016 (the “10 Day Notice”). The tenant confirmed that he received the 10 Day Notice and did not dispute it or pay the rent for January 2016.

Analysis

Based on the testimony of the parties provided during the hearing, the documentary evidence and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the landlords to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the tenants. Once that has been established, the landlords must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the landlords did what was reasonable to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Item 1 – As mentioned above, the landlords failed to provide supporting documentary evidence to support the amount claimed and the parties disputed whether the gas utility bill was paid. As the landlords have the onus of proof to prove their claim, I find the landlords have failed to meet the burden of proof for this portion of their claim.

Therefore, I **dismiss** this portion of the landlords' claim **without leave to reapply** due to insufficient evidence.

Item 2 – I have considered the tenant's testimony that he removed the glass lens and did not replace it. Therefore, I find the landlords have met the burden of proof as the invoice submitted matches the amount claimed and the tenants failed to replace the glass lens. As a result, I grant the landlords **\$113.35** as claimed for this portion of their claim.

Item 3 – I find the tenants breached section 26 of the *Act* which requires that rent be paid on the day that is due in accordance with the tenancy agreement. The fact that the tenancy ended based on an undisputed 10 Day Notice does not change the fact that the tenants failed to pay January 2016 rent. Therefore, I find the landlords have met the burden of proof and I grant the landlords **\$1,475.00** for unpaid January 2016 rent.

As the landlords' application was mostly successful, I grant the landlords the recovery of the cost of the filing fee in the amount of **\$100.00**.

I find that the landlords have established a total monetary claim in the amount of **\$1,688.35** pursuant to section 67 of the *Act* comprised of \$113.35 for item 2, \$1,475.00 for item 3, plus \$100.00 for the recovery of the cost of the filing fee.

I **authorize** the landlords to retain the tenants' full security deposit of \$737.50 which has accrued \$0.00 in interest, in partial satisfaction of the landlords' monetary claim. I grant the landlords a monetary order pursuant to section 67 of the *Act* for the balance owing by the tenants to the landlords in the amount of **\$950.85**.

Conclusion

The landlords' claim is mostly successful.

The landlords have established a total monetary claim in the amount of \$1,688.35 and have been authorized to retain the tenants' full security of \$737.50. The landlords are granted a monetary order in the amount of for the balance owing by the tenants to the landlords in the amount of \$950.85 pursuant to section 67 of the *Act*. The monetary order must be served on the tenants and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: October 3, 2016

Residential Tenancy Branch