



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, MNR, FF

Introduction

This hearing convened as a result of the Landlords' Application for Dispute Resolution wherein the Landlords requested a Monetary Order for unpaid rent, damage to the rental unit and recovery of the filing fee as well as authority to retain the Tenants' security deposit.

Only the Landlords appeared at the hearing. They gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Landlord, T.S., testified they served the Tenants with the Notice of Hearing and their Application on May 19, 2016 by registered mail. A copy of the registered mail tracking numbers for both packages is included on the unpublished cover page of this my decision. T.S. also confirmed that in the package she sent to the tenant T.M. she included the cheque for return of the security deposit which T.S. confirmed was cashed by T.M.

Under section 90 of the *Act* documents served by registered mail are deemed served five days later; accordingly, I find the Tenants were duly served and I proceeded in their absence.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Are the Landlords entitled to monetary compensation from the Tenants?
2. What should happen with the Tenants' security deposit?
3. Should the Landlord recover the filing fee?

Background and Evidence

Introduced in evidence was a copy of the residential tenancy agreement which indicated this tenancy was for a six month fixed term. The Landlord testified that monthly rent was payable in the amount of \$1,400.00 payable on the first of every month.

T.S. confirmed that the Tenants paid a security deposit in the amount of \$700.00 at the start of the tenancy. She confirmed that when the Tenants got cats, they paid a further \$700.00 in a pet damage deposit such that at the end of the Tenancy, she held a total of \$1,400 for both deposits. T.S. testified that the Landlords returned \$580.82 to the Tenants on May 19, 2016 with the Application for Dispute Resolution. As such, the Landlord continued to hold the sum of **\$819.18**.

The Landlord also included a copy of the Move in Condition Inspection Report which was completed on November 1, 2015. T.S. confirmed that they started to complete the Move out Condition Inspection Report on May 4, 2016 with the Tenant, T.M., but T.M. refused to sign the document or provide her forwarding address.

T.S. testified that on May 5, 2016 the Tenants provided their forwarding address.

The Landlord also prepared a Monetary Orders Worksheet wherein the sum of \$819.18 was claimed for the following:

Removal of Tenants couch	\$22.25
Replacement of the Lock set	\$61.58
Replacement of door	\$35.84
Putty to fix door	\$3.33
Mileage to and from dump	\$8.05
Landlord's time to clean and repair the rental unit	\$67.50
Fix oak hardwood floor entry and bedroom floor	\$20.36
Application fee	\$100.00
Unpaid rent for May (prorated for 10 days)	\$466.67
Custom cut of door	\$33.60

Total claimed	\$819.18
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T.S. testified that the Tenants intended to take their couch to the dump and were not able to do so prior to the end of the tenancy. She stated that it was also left outside for the bulk of their tenancy and that it was not sellable due to its condition.

T.S. further testified that the Tenant, T.M., refused to return one of the keys to the rental unit stating that she would not do so until the Landlord gave them their full security deposit. Accordingly, the Landlords changed the locks on the rental unit.

The Landlords also claimed mileage to dispose of the couch. T.S. testified that she did not claim for any time associated with this trip, and simply claimed the amount paid by the Government of Canada at 48 cents per km which she determined by research on the internet.

T.S. stated that there was a large fist sized hole in one of the interior doors and it was not fixable and therefore had to be replaced. She claimed compensation for the amounts associated with their attempts to fix the door with putty, as well as the cost to custom cut the door.

T.S. testified that the Tenants decided to separate, but they did not have a place to stay so they asked to stay a further month until they could find another place to live. The Landlords agreed but wanted to make sure that the Tenants signed a Mutual Agreement to End Tenancy effective May 31, 2016.

T.S. confirmed that despite asking to stay another month, the Tenants failed to pay rent for the month of May 2016.

T.S. further confirmed that they sought the sum of \$466.67 for unpaid rent for the 10 days of rent the rental unit was not rentable as a result of the Tenant's occupation as well as the cleaning and repair required by the condition in which it was left.

T.S. stated that they were able to re-rent the rental unit as of May 15, 2016.

T.S. confirmed that the Landlords wish to retain the balance of the security deposit in the amount of \$819.18.

Analysis

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Landlords have the burden of proof to prove their claim.

Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

The condition in which a Tenant should leave the rental unit at the end of the tenancy is defined in Part 2 of the *Act* as follows:

Leaving the rental unit at the end of a tenancy

37 (2) When a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

After careful consideration of the evidence before me, the undisputed testimony of the Landlords and on a balance of probabilities, I find as follows.

I find that the Landlords have proven their losses as claimed on the Monetary Orders Worksheet. A tenant is required to provide vacant possession of the rental unit at the end of the tenancy; they must move all of their personal possessions. I accept the Landlords evidence that the Tenants let a damaged couch which required disposal. Accordingly, I award the Landlords the amount claimed to dispose of the couch.

While mileage is generally not recoverable under the *Act*, I note the Landlords did not claim any time associated with disposing of the Tenants couch. The \$15.00 per hour amount they claim for repairing and cleaning is a reasonable sum and would have been recoverable had they claimed it in relating to the couch disposal. In the circumstances, I award them the \$8.05 claimed for mileage.

I accept the Landlords' evidence that the Tenants refused to return one of the keys to the rental unit, such that the replacement of the lock was necessary.

I find that the Landlords attempted to repair the door and in doing so attempted to mitigate their losses and minimize any claim against the Tenants. When the repair proved insufficient the door was replaced. I accept that the Tenants caused damage to the door, and the Landlords suffered a loss as claimed for the putty to fix the door, the cost of the replacement door as well as the cutting required to make the door fit.

I similarly accept the Landlords' evidence that the Tenants failed to clean and repair the rental unit, and leave it in the condition required by section 32 (reproduced above). The 3.5 hours claimed by the Landlord is reasonable, as is the \$15.00 per hour claim and I grant them recovery of the amounts claimed.

I accept the Landlords' evidence that the Tenants damaged the floor in the entry and bedroom and they are to be compensated the claimed amount.

I accept the Landlords evidence that the Tenants requested to stay until the end of May. I am also persuaded by the mutual agreement to end tenancy filed in evidence by the Landlords. Pursuant to this agreement, the Tenants were responsible for paying rent until the end of May 2016. Fortunately, the Landlords were able to re-rent the rental unit shortly after the Tenants vacated. I find the Landlords are entitled to the loss of rent claimed.

As the Landlords have been substantially successful, I find, pursuant to section 72 of the *Residential Tenancy Act* that they are entitled to recover the \$100.00 filing fee.

The Landlords are awarded the full amount of their claim as follows:

Removal of Tenants couch	\$22.25
Lock set	\$61.58
Replacement of door	\$35.84
Putty to fix door	\$3.33
Mileage to and from dump	\$8.05
Landlord's time to clean and repair the rental unit	\$67.50
Fix oak hardwood floor entry and bedroom floor	\$20.36
Application fee	\$100.00
Unpaid rent for May (prorated for 10 days)	\$466.67
Custom cut of door	\$33.60
Total awarded	\$819.18

I authorize the Landlords, pursuant to section 38 of the *Residential Tenancy Act*, to retain the balance of the Tenants' deposits towards the amount claimed. As these sums are equal, I make no further Monetary Order.

Conclusion

The Landlords are awarded the full amount of their claim for loss of rent, damage to the rental unit and recovery of the filing fee. The Landlords are entitled to retain the balance of the Tenants' deposits in the amount of \$819.18 as full and final satisfaction of the \$819.18 claimed.

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: November 17, 2016

Residential Tenancy Branch