



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MND, MNDC, MNSD, FF

Introduction

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

- an order of possession for cause pursuant to section 55;
- a monetary order for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants did not participate in the conference call hearing, which lasted approximately 15 minutes. The landlord's two agent's (collectively the "landlord") attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlords confirmed they were agents of the landlord named in this application, and had authority to speak on his behalf.

The landlord testified that on November 15, 2016 the landlord forwarded the application for dispute resolution hearing package via registered mail to the forwarding address provided by the tenants. The landlord provided a Canada Post receipt and tracking number as proof of service. Based on the testimony of the landlord and in accordance with sections 89 and 90 of the *Act*, I find that the tenants have been deemed served with the application on November 20, 2016, the fifth day after its registered mailing.

At the outset of the hearing the landlord testified that the tenants vacated the rental unit on October 31, 2016. Consequently, the order of possession is no longer required and this portion of the landlord's application is dismissed without leave to reapply.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is the landlord authorized to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested?

Is the landlord authorized to recover the filing fee for this application from the tenants?

Background and Evidence

As per the submitted tenancy agreement and testimony of the landlord, the tenancy began on July 1, 2016 on a fixed term until June 30, 2017. The tenants were served a 1 Month Notice to End Tenancy for Cause ("1 Month Notice") and vacated October 31, 2016. Rent in the amount of \$2,800.00 was payable on the first of each month. The tenants remitted a security deposit in the amount of \$1,400.00 at the start of the tenancy, which the landlord still retains.

The landlord testified that she was seeking \$2,830.00, specifically \$2,200.00 for strata penalties/by law violations and \$630.00 for cleaning and repairs. The landlord has submitted a strata issued statement of outstanding penalties and an invoice for the cleaning and repairs.

The landlord is also seeking to recover the \$100.00 filing fee paid for this application from the tenants.

Analysis

Under section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove a loss, the applicant must satisfy the test prescribed by section 7 of the *Act*. The applicant must prove a loss actually exists and prove the loss happened solely because of the actions of the respondent in violation to the *Act*. The applicant must also verify the loss with receipts and the applicant must show how they mitigated or what reasonable efforts they made to minimize the claimed loss.

Based on the undisputed testimony of the landlord and the statement of outstanding penalties, I find the landlord is entitled to recover damages in the amount of \$2,200.00.

In the absence of submitted condition inspection reports establishing the condition of the rental unit at the start and end of tenancy, I cannot find the tenants responsible for the invoiced amount of \$630.00. For this reason I dismiss this portion of the landlord's monetary claim.

As the landlord was partially successful in this application, I find that the landlord is entitled to recover \$50.00 of the \$100.00 filing fee for a total award of \$2,250.00.

In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the security deposit in the total amount of \$1,400.00 in partial satisfaction of the monetary award and I grant an order for the **balance due \$850.00**.

Conclusion

The landlord's application for an order of possession for cause is dismissed without leave to reapply.

I issue a monetary order in the landlord's favour in the amount of **\$850.00** against the tenants.

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: January 23, 2017

Residential Tenancy Branch