



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MNR, MNSD, MND

Introduction

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

- a monetary order for unpaid rent, damage to the 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 the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for its application from the tenant, pursuant to section 72.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

Preliminary Issue

At the outset of the hearing the landlord advised that he was withdrawing his claim for unpaid rent and that he was only seeking a monetary order for damages in the amount of \$1786.00 plus his \$100.00 filing fee. The landlord still wished to pursue the order allowing him to retain the deposit as well. The hearing proceeded and concluded on that basis.

Issue to be Decided

Is the landlord entitled to a monetary order as claimed?

Is the landlord entitled to retain a portion of the security deposit in partial satisfaction of the claim?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background, Evidence

The landlord's testimony is as follows. The tenancy began on March 15, 2013 and ended on July 31, 2016. The tenants were obligated to pay \$950.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$425.00 security deposit. The landlord testified that written condition inspection reports was done at move in and move out with the tenants. The landlord testified that the tenants made an inordinate amount of holes in the wall and left the unit very dirty. The landlord testified that the unit was constructed in 2009 but was only used for about 8 months prior to the tenants moving in. The landlord testified that the suite walls required patching, filling, sanding and painting. The landlord testified that the tenants also left some strange residue on the concrete floor. The landlord testified that the repairs and cleaning were completed on November 29, 2016.

The landlord is applying for the following:

1.	Cleaning and Painting and Repairs	\$1786.00
2.	Filing Fee	100.00
3.	Minus security deposit	-425.000
4.		
5.		
6.		
	Total	\$1461.00

The tenants gave the following testimony. CM adamantly disputes the landlords' entire claim. The CM testified that she was "flabbergasted and in shock" when the landlord advised her at the move out inspection of all the alleged deficiencies. CM testified that she really didn't know what he was talking about as she cleaned the unit very well, emptied it out and returned the keys as required. The tenants both testified that there is very minimal wear and tear and that the landlord has not provided evidence above that. The tenants both testified that due to the history with this landlord they feel he is "trying to punish us".

Analysis

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 arguments are reproduced here. The principal aspects of the landlord's claim and my findings around each are set out below.

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 parties could not agree to the condition of the unit at move out. The landlords' photos are of a very poor quality and items are indiscernible; they were not helpful. The tenants submitted clear photos that show the unit being in a clean and tidy state at

move out. In addition, the receipt the landlord has submitted lacks a clear and detailed breakdown of exactly what was done, the time to do it and the amount it cost. Based on the insufficient evidence before me, the landlord has not satisfied all four grounds as noted above; accordingly I dismiss his application in its entirety.

Conclusion

The landlords' application is dismissed in its entirety. The landlord is to return the \$425.00 security deposit to the tenants. I grant the landlord an order under section 67 for the balance due of \$425.00. This order may be filed in the Small Claims 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: February 20, 2017

Residential Tenancy Branch