



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, MNSD, FF, CNL, OLC

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- 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 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 his filing fee for this application from the tenant pursuant to section 72.

The tenants' applied for:

- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) pursuant to section 49;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. The tenants confirmed receipt of the landlord's notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on May 9, 2017. The landlord confirmed receipt of the tenants' notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on November 28, 2016. Neither party raised any issues regarding service of the hearing package or the submitted documentary evidence. As

both parties have attended and have confirmed receipt of the submitted documentary evidence, I am satisfied that both parties have been sufficiently served as per section 90 of the Act.

At the outset, both parties confirmed that the tenancy ended on August 1, 2016. The tenants confirmed that the request for an order cancelling the landlord's notice to end tenancy for landlord's use and the request for an order for the landlord to comply with the Act, Regulations or tenancy agreement were made in error and could be cancelled. As such, no further action is required for these two portions of the tenants' application. It was also clarified with both parties that the tenants' seek a monetary claim for compensation under section 49 of the Act for failing to occupy the rental premises as per the stated reason for ending the tenancy.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for damage, for money owed or compensation for damage or loss under the Act, regulations or tenancy agreement and recovery of the filing fee?
Is the landlord entitled to retain all or part of the security deposit?

Are the tenants entitled to a monetary order for money owed or compensation for damage or loss under the Act, regulations or tenancy agreement, for return of the security deposit and recovery of the filing fee?

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 both the tenant's claim and the landlord's cross claim and my findings around each are set out below.

Both parties confirmed that this tenancy began on September 1, 2012 on a month-to-month basis as per the signed tenancy agreement dated September 1, 2012. The month rent was \$1,350.00 payable on the 1st day of each month and that a \$675.00 security deposit was paid.

Both parties confirmed that this tenancy ended on August 1, 2016 and that no condition inspection reports for the move-in or the move-out were completed by both parties.

The landlord seeks a monetary claim of \$19,216.69 which consists of:

| | |
|------------|--|
| \$130.20 | Estimated Replacement Cost Damaged Screen Door and |
| | Estimated Replacement Cost Damaged Glass Door Handle |
| \$5,274.15 | Estimated Replacement Cost Damaged Deck Flooring |
| \$946.96 | Paint/Supplies |
| \$898.80 | Demolition/Removal Service for Flooring |
| \$104.75 | 2 Broken Shelves, Fridge/Freezer |

| | |
|------------|--|
| \$110.75 | Change Locks/ Bedroom Closet Door Hardware |
| \$6,283.11 | Replace Flooring |
| \$3,737.50 | Labour, Painting (105 hours)/Cleaning (44.5 hours) |
| \$912.50 | Labour, Cleaning Inside/Outside |
| \$262.52 | Labour, Garbage Removal, Yardwork (36.5 hours) |
| \$555.45 | Repairs, Drywall/Bathroom Cabinet Repair |

The landlord provided affirmed testimony that at the end of tenancy the landlord discovered that the tenants had left the rental unit damaged and dirty requiring the repair/replacement and clean-up of the rental property. The landlord clarified that the tenants vacated the rental property leaving a damaged screen door and a damaged sliding glass door handle; cigarette burns on the vinyl deck; unauthorized painting of the premises (living room, dining room, kitchen and cabinets) requiring re-painting by the landlord with neutral colors; disposal/removal of damaged carpeting; replacement of damaged shelves in refrigerator and freezer; replacement of front door lock and bedroom closet hardware; replacement of the flooring; re-painting (kitchen, dining room, living room and cabinets; cleaning inside and outside; garbage removal and yard repair; drywall repair and bathroom cabinet repair.

The landlord has submitted in support of his claims:

- A completed condition inspection report for move-out dated June 30, 2012 for previous tenants.

- A copy of an estimate dated December 23, 2016 noting "it is impossible to repair damaged vinyl due to this fact that it has been painted over..."

- 10 pages of receipts re: paint and supplies for repairs.

- A copy of an invoice dated August 29, 2016 for carpet removal

- A copy of an invoice dated January 20, 2017 for 3 shelves in the refrigerator and freezer.

- 11 pages of invoices from the landlords for cleaning/repair labour.

- A copy of an invoice dated September 6, 2016 for labour.

- 4 pages of receipts for yard waste disposal fee(s).

- 5 pages of Ferry ticket receipts for the landlords.

- 122 photographs of the rental property at the end of tenancy.

The landlord stated that the tenants' kids and dogs have damaged yard.

The tenants dispute the landlord's claims stating that all of the issues raised by the landlord were pre-existing damage present prior to the start of their tenancy.

The landlord relies upon a completed condition inspection report for the move-out on June 30, 2012 for his previous tenants. The landlord clarified that there was a 1 month "gap" between tenants where the rental property was vacant. I note that end of the previous tenancy of June 30, 2012 and the beginning of this tenancy which began on September 1, 2012 was 2 months.

The tenants seek a monetary claim of \$3,475.00 which consists of:

| | |
|------------|---|
| \$2,700.00 | Compensation for Failing to Comply with Sec. 51 |
| \$675.00 | Return of Security Deposit |
| \$100.00 | Recovery of Filing Fee |

The tenants raised paragraph 51(2) (b) in their submissions. Paragraph 51(2) (b) sets out that where a rental unit is not used for the state purpose for a period of at least six months the landlord must pay the tenant double the rent payable under the tenancy.

The tenants claims that the landlord has not used the rental property for the stated purpose for which in this case is that the rental unit was not occupied by the landlord or the landlord's close family member. The landlord disputes this claim stating that he and his family have moved-in to the rental space and have occupied shortly after the tenants had vacated the rental unit. The tenants stated that he viewed a rental ad dated November 25, 2016 advertising the space for rent. The landlord confirmed that an ad was placed, but that at no time was the property rented. The landlord stated that he had occupied the property for at least 4 months beginning August 1, 2016 and that the reason for advertising the property for rent was to "recoup" losses/expenses caused by damage from the tenants. The landlord reiterated that at no time was the property rented out after taking possession of the rental unit.

Both parties confirmed that the tenants have never provided their forwarding address in writing for the return of the security deposit to the landlord.

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 on a balance of probabilities that I prefer the evidence of the landlord over that of the tenants. The landlord has provided consistent direct testimony and evidence that supports his claim that the tenants vacated the rental property leaving it dirty and damaged. Although the landlord has failed to complete a condition inspection report for the move-in and the move-out with the tenants, the landlord relies upon a completed report from the previous tenants which

ended 2 months prior to this tenancy beginning. The landlord's material also refers to a typed statement by tenants of the downstairs suite dated March 7, 2017 which supports the landlord's claims that the upstairs tenants vacated the rental unit on August 1, 2016 requiring the landlord and his family to attend for an extended period of time to clean and repair the rental premises. The tenants admitted that they did paint the living room, dining room, kitchen and cabinets without the permission of the landlord. This caused the landlord the burden of cleaning, replacement/repairs for damage and painting these areas as well as discovering damage to the flooring and vinyl decking caused by burn marks. I find that this material in conjunction with the documentary evidence of the landlord establishes that the landlord has provided sufficient evidence that the tenants left the rental property dirty and damaged through undue care and attention. Although the landlord relies upon the estimated costs for the first three items of claim, I find that the amounts presented are reasonable. The tenants have disputed the accuracy of the amounts, but have not provided sufficient evidence that would make me question the amounts provided by the landlord in these estimates. I find that the landlord has established a claim for the \$19,216.69 as claimed. However, the landlord has failed to provide sufficient evidence on the useful life of these items of claim. I find based upon the evidence that is before me that the tenants be granted a credit based upon the known age of the tenancy agreements which began in 2011(6 years) and an approximation for the further general age of use for these items (a further 5 years). As such, I allow the tenants a general credit of 11 years to be applied across all items of claim. Based upon this approximation, I award the landlord a monetary claim of \$8,647.51.

I accept the undisputed affirmed testimony of both parties regarding the tenants' claim. Although the landlord did advertise the property for rent there is no evidence to show that the landlord did re-rent the unit. The landlord has provided undisputed affirmed testimony that he did advertise the unit, but did not at any time re-rent the property. As such, I find that the tenant has failed to establish a claim for compensation under section 51 of the Act. This portion of the tenants' application is dismissed.

Section 38 of the Act requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award pursuant to subsection 38(6) of the Act equivalent to the value of the security deposit.

In this case, both parties confirmed that the tenancy ended on August 1, 2016 and that the tenants have not provided their forwarding address in writing to the landlord. A review of the landlord's application for dispute shows that he applied for dispute to retain the security deposit on May 5, 2017. I find as such that the tenants have failed to comply with section 38 of the Act by providing their forwarding address in writing to the landlord and the tenants request for return of double the security deposit is dismissed.

The landlord has established a monetary claim of \$8,647.51.
The tenants' application is dismissed.

The landlord having been successful in his application is granted the recovery of the \$100.00 filing fee. I authorize the landlord to retain the \$675.00 security deposit in partial satisfaction of this claim.

Conclusion

The tenants' entire application is dismissed.
The landlord is granted a monetary order for \$8,072.51.

This order must be served upon the tenants. Should the tenants fail to comply with this 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: June 26, 2017

Residential Tenancy Branch