



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: FF MNR MNDC MNSD

Introduction

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

- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- a monetary order for damage to the unit, site, or property, money owed or compensation for loss under the Act, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72

SM, the LL's Power of Attorney ('PA'), testified on behalf of the landlord in this hearing, and had full authority to do so. Both parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The tenants confirmed receipt of the landlord's application for dispute resolution hearing package ("Application"). In accordance with section 89 of the Act, I find the tenants were duly served with the landlord's Application. Both parties confirmed receipt of each other's evidentiary materials, which were duly served in accordance with section 88 of the Act.

It came to my attention at the beginning of the hearing that a decision was already made regarding the return of the tenants' security deposit for this tenancy, after a hearing on February 27, 2017. The arbitrator noted in their decision that "the tenants are entitled to double the value of their security deposit in the amount of \$1,400.00". The landlord applied to retain this same deposit as part of this application, and I find that this current application is *res judicata* meaning the matter has already been conclusively decided and cannot be decided again. Accordingly, I dismiss the landlord's application for the retention of the tenants' security deposit.

It also came to my attention during the hearing that a hearing was held on April 10, 2017, when an Arbitrator heard the tenants' application for a monetary claim related to this same tenancy. The tenants were granted a Monetary Order for \$10,867.60, which the tenants stated has not been paid to them by the landlord. The landlord's PA indicated in the hearing that the landlords were still considering filing for a judicial review of that decision. I note that the landlord's application is unrelated to this previous decision, and the hearing proceeded as scheduled.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation for damage to the unit, site, or property, monetary loss, or money owed?

Is the landlord entitled to recover the filing fee for this application from the tenants pursuant to section 72 of the *Act*?

Background and Evidence

The landlord's PA testified regarding the following facts. This month-to-month tenancy began in November of 2014 and ended on August 1, 2016. Monthly rent was set at \$1,400.00, and the landlord collected a security deposit of \$700.00, which was ordered to be returned to the tenants as part of another decision following a hearing related to this same tenancy.

The landlord requested monetary compensation in the amount of \$8,047.25, as follows:

Professional Cleaning (16 hours)	\$396.00
LL's Assistant (19.25 hours of work on this dispute)	673.75
Repair Quote for Damaged Walls	6,877.50
Recovery of Filing Fee	100.00
Total Monetary Award Requested	\$8,047.25

The landlord did not perform a move-in inspection as they were unaware that one was required. The landlord's PA testified that both parties agreed that the tenants could move in on November 29, 2014 despite the fact that renovations were still taking place. The home was professionally cleaned on November 30, 2014. The tenants were given a \$400 discount off their rent for the first two months while the renovations were being completed to the upper portion of the 1970s log home, with the renovations completed by January 5, 2015. The landlord submitted in evidence a list of renovations completed, including "purchased and installed carpeting onto stairs". The landlord's evidence was that the walls were painted, new laminate floors and trim were installed, and new fixtures were installed in the bathrooms. The main floor still contained older carpet, appliances, and cupboards. The basement was finished in the last five years and "the walls and carpeting were in good repair".

The tenants were sent an email on June 29, 2016 that the move-out inspection would take place on August 4, 2016 at 9:00 a.m. The tenants moved out on August 1, 2016 and the keys were returned in the landlord's mail slot. The landlord's PA testified that the tenants did not attend the move-out inspection, and the PA performed the inspection on her own on August 4, 2016, and took photos which were submitted in evidence for this hearing. The landlord reviewed the photos that the PA took, and was not content with the condition of the home and property. The PA testified that the walls were not washed, and that the appliances were not cleaned. The PA testified that they had intended to do further renovations, which are now on hold due to the monetary claim awarded to the tenants on February 27, 2017 and April 10, 2017.

The landlord submitted a monetary claim for \$396.00 for cleaning after the move-out, which the landlord submitted was for 16 hours of work plus \$60 in gasoline costs for three days. The landlord submitted, in evidence, a work log by the cleaner for work completed on January 11, 12, and 16, 2017.

The landlord is claiming for 19.25 hours of work done by his assistant/Power of Attorney for assisting with this dispute resolution application. The total monetary claim is \$673.75 for her wages.

The landlord also submitted a quote to repair the damaged walls, in the sum of \$6,877.50 for repairs, which have yet to be completed.

The tenants testified that the damage to the walls, including the holes, were there upon move-in. The tenants testified that painting that was completed in 2013 was substandard, and that the nail heads were popping out. The tenants dispute the landlord's entire monetary claim stating that the damage was attributed to normal wear and tear, and pre-existing conditions before they had moved in. The tenants stated that they had cleaned the home upon move-out. The tenants submitted digital evidence containing photos of the suite upon move-in, and move-out, and dispute the fact that the home was left in unsatisfactory condition.

Analysis

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

Section 37(2)(a) of the *Act* stipulates that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. The tenants disputed the testimony of the landlord that they had damaged the walls, and failed to clean the home upon move-out. Although the landlord did provide a quote, the landlord did not provide any invoices for any repairs that were completed, or any receipts for materials used. Without any proper move-in or move-out inspection reports, I find that there is no way to determine what the pre-existing condition of the home was, particularly to the walls of a home built in the 1970s. I find that the landlord did not establish that there was sufficient damage caused by the tenants to justify the landlord's monetary claim for damages, especially considering that the landlord has yet to undertake any repairs since this tenancy had ended in August of 2016. Accordingly I dismiss the landlord's monetary claim for damage.

Both parties submitted photos to support their testimony. The landlord submitted a work log documenting the hours of cleaning completed by the landlord's cleaner including cleaning of the

floor, dishwasher, cupboards, living room, and bathroom. I accept the landlord's evidence and testimony to support the monetary claim for cleaning required upon move-out. Accordingly, the landlord is granted a monetary order for \$396.00.

Section 72 of the *Act* allows me to make an order allowing the applicant to recover the filing fee for this application, and I find that the landlord is entitled to recover the \$100.00 that was paid for the filing of this application.

I dismiss the landlord's application for recovery of the wages paid to his assistant in relation to this claim, as the only cost that parties may claim for with respect to an application for dispute resolution is the filing fee which has been awarded to the landlord. In making this determination, I also find the landlord did not establish how the tenants' failure to comply with the *Act* contributed to this monetary loss.

Conclusion

I issue a Monetary Order in the amount of \$496.00 in the landlord's favour, which allows a monetary award for the tenants' failure to comply with section 37(2)(a) the *Act*, and allows the landlord to recover the filing fee.

The landlord is provided with this Order in the above terms and the tenant(s) must be served with a copy of this Order as soon as possible. Should the tenant(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The remainder of the landlord's monetary application is dismissed.

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: July 11, 2017

Residential Tenancy Branch