



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, FF

Introduction

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

- a monetary order for unpaid rent and damage to the unit pursuant to section 67;
- authorization to obtain a retain all or a portion of the security deposit pursuant to section 38; and
- authorization to recover the filing fee for the application from the tenants pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The landlord was represented by its agent, AR (the "landlord"). The tenant LK confirmed he represented both named co-tenants.

As both parties were in attendance I confirmed there were no issues with service. Both parties confirmed that they had exchanged their documentary evidence. I find that pursuant to sections 88 and 89 of the Act, the tenants were duly served with the landlord's application for dispute resolution and the parties were duly served with their respective evidence.

There was a previous hearing under the file number on the first page of this decision conclusively dealing with the security deposit for this tenancy. I advised the parties that I have no jurisdiction to reconsider a matter that was the subject of a final decision by another Arbitrator appointed under the Act and dismissed the portion of the landlord's claim seeking to retain the security deposit for this tenancy.

At the At the outset of the hearing, the landlord made an application requesting to amend the monetary amount of the claim sought. The landlord indicated that there were arithmetic errors in calculating the amount claimed and that the actual amount sought is \$3,732.25. Pursuant to section 64(3)(c) of the *Act* and Rule 4.2 of the Rules of Procedure, as amending an arithmetic error can be reasonably anticipated, I allow the landlord to amend their application to increase the landlord's monetary claim from \$1,807.60 to \$3,732.25.

Issue(s) to be Decided

Is the landlord entitled to a monetary award as claimed?

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

Background and Evidence

The parties agreed on the following facts. This tenancy began in July, 2014 and ended on December 15, 2016. The monthly rent was \$850.00 payable on the 15th of each month.

The landlord testified that the landlord issued a Notice to End Tenancy in November. The tenants said that they needed additional time to locate new accommodations. The landlord said the parties agreed that the landlord would cancel the Notice to End Tenancy. The tenants subsequently gave notice to the landlord on November 23, 2016 to end the tenancy on December 15, 2016.

The landlord testified that the rental unit was left in a terrible state necessitating considerable repairs, cleaning and replacement of fixtures. The landlord said that because of the repairs required they were unable to find a new occupant for the rental unit until April, 2017. The landlord is claiming damages under the following heads:

Item	Amount
Rent for Dec 15, 2016 – Jan 15, 2017	\$850.00
Rent for Jan 15, 2017 – Feb 15, 2017	\$850.00
Carpet Cleaning	\$115.50
Blind Replacement and Repairs	\$981.75
Repair Shower	\$735.00
Cleaning Walls	\$200.00
TOTAL	\$3,732.25

The tenant denies that the rental unit was in a state of disrepair and testified that they cleaned the unit thoroughly before leaving. The parties agreed that no condition inspection was performed at the end of the tenancy.

Analysis

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the *Act*, regulations or a tenancy agreement. 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 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. The claimant also has a duty to take reasonable steps to mitigate their loss.

I accept the parties' evidence that the tenant gave notice on November 23, 2016 to end the tenancy on December 15, 2016. Pursuant to section 45(1) of the *Act*, a tenant may end a tenancy on a date no earlier than one month after the date landlord receives the notice and is the day before the day in the month that rent is payable. Accordingly, I find that by issuing notice on the 23rd of November, the effective date of the end of the tenancy was January 15, 2017. I find that the landlord suffered a loss due to the tenants' early end of tenancy. I do not find that the landlord has shown sufficient evidence to support a claim for anything more than the loss of rent for the last month. Therefore, I issue a monetary award in the landlord's favour in the amount of \$850.00 the equivalent of the rent for the period of December 15, 2016 to January 15, 2017.

I find that the landlord has not provided sufficient evidence in support of their full claim for damages. The landlord submitted into written evidence some invoices showing that the blinds and carpets in the rental unit required professional care. However, I find that there is insufficient evidence to show that the loss arose as a direct result of the tenants' violation of the *Act*, regulation or tenancy agreement.

In the absence of a condition inspection report prepared by the parties I find there is little evidence of the original condition of the rental unit. I find the photographs submitted by the landlord to be insufficient to show that there were damages in excess of the expected wear and tear caused by the tenants. The tenant testified that they left the rental unit in good condition and disputes the landlord's claim that major repairs were required. I find that a few invoices and some photographs are insufficient to show

that there was damage caused to the rental unit, and that damage arose as a direct result of the tenants' violation of the Act, regulation or tenancy agreement.

Consequently, I dismiss this portion of the landlord's claim.

As the landlord's claim was partially successful, I allow the landlord to recover a portion of the filing fee for this application in the amount of \$50.00.

Conclusion

I issue a Monetary Order in the landlord's favour in the amount of \$900.00 against the tenants. The landlord is provided with a Monetary Order in the above terms and the tenants must be served with this Order as soon as possible. Should the tenants 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.

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 21, 2017

Residential Tenancy Branch