



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, MNSD, FF

Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* (the Act) 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 their filing fee for this application from the tenants pursuant to section 72.

The landlord, C.S. attended as agent for P.F (the landlords) on behalf of both landlords via conference call. The tenants did not attend or submit any documentary evidence. The landlords provided undisputed affirmed testimony that the tenants were both served with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on May 5, 2017. The landlords stated that an online search shows that the tenant, J.G. signed in receipt of both packages from Canada Post on May 18, 2017. I accepted the undisputed affirmed evidence of the landlords and find that the tenants have properly served the tenants with the notice of hearing package and the submitted documentary evidence as per sections 88 and 89 of the Act.

Issue(s) to be Decided

Are the landlords entitled to a monetary order for damage, for money owed or compensation for damage or loss and recovery of the filing fee?

Are the landlords entitled to retain all or part of the security deposit?

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 applicant's claim and my findings are set out below.

This tenancy began on September 3, 2016 on a fixed term tenancy ending on August 31, 2017 as shown by the submitted copy of the signed tenancy agreement dated September 25, 2016. The monthly rent was \$2,000.00 payable on the 1st day of each month. A security deposit of \$1,000.00 and a pet damage deposit of \$1,000.00 were paid on September 3, 2016. No condition inspection reports for the move-in or the move-out were completed by both parties.

The landlords seek an amended monetary claim of \$2,555.50 which consists of:

\$794.75	Estimated Damages/Repairs for handrail, stair trim and baseboards
\$434.10	General Repairs and Cleaning
\$205.87	Materials and Supplies for Repairs and cleaning
\$169.99	Replacement Lock
\$250.69	Fuel and Ferry Costs for Landlords travel to and from rental
\$600.00	Loss of Rental Income
\$100.00	Recovery of Filing Fee

The landlords claim that the tenants vacated the rental unit without providing proper notice to end the tenancy and breaching the fixed term tenancy prematurely. The landlords also claim that the tenants failed to clean the rental unit and left it with damaged. The landlords claim that upon being notified on March 2, 2017 the landlords immediately began advertising the rental unit available for April 1, 2017, but because of the short notice, the landlords were only able to re-rent the premises for April 1, 2017 at \$100.00 less than the breached tenancy agreement. The landlords have provided 18 photographs of the damages and required repairs as well as cleaning required to the rental unit, a copy of a completed condition inspection report for the move-in by both parties and a copy of incomplete condition inspection report for the move-out. The landlords also claim that because of the improper notice, the landlords suffered an expense (fuel and ferry costs) in travelling to the rental premises to facilitate repairs and cleaning without being able to pre-schedule the move-out process.

In support of this application the landlord has provided 54 pages of documentary evidence which consists of:

- Quote for Handrail, Stair trim and baseboard damage repairs
- Itemized listing of damages/repairs completed after the tenancy ended
- Itemized listing of receipts for materials/supplies for damages/repairs
- Receipt for replacement lock
- Receipt for fuel and ferry costs
- Copy of notice to tenancy from landlord re: loss of rental income
- Copy of signed tenancy agreement and addendums
- 18 Photographs documenting damage(s) to rental unit
- Copy of incomplete condition inspection report by 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 accept the undisputed affirmed evidence of the landlords and find that a claim has been established that the tenants failed to provide proper notice to end the tenancy and breached the fixed term tenancy agreement. The landlords suffered a loss in the difference of monthly rent for the 6 month period left on the tenancy agreement. I also find that the landlords have provided undisputed evidence that the tenants vacated the rental unit leaving it dirty and damaged requiring cleaning and repairs. As such, I find that the landlords have established the monetary claim as filed of \$2,555.50.

The landlords having been successful are entitled to recovery of the \$100.00 filing fee. I also authorize the landlords to retain the combined \$2,000.00 security and pet damage deposits in partial satisfaction of the claim. The landlords are granted a monetary order for \$655.50.

Conclusion

The landlords are granted a monetary order for \$655.50.

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

Residential Tenancy Branch