



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HUNTER MCLEOD REALTY CORP.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNSD, FF

Introduction

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

- a monetary order for damage to the rental unit pursuant to section 67;
- authorization to retain all or a portion of the tenants' 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 tenant pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony that the landlord served the tenants with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on April 13, 2017. Both parties also confirmed that the tenant served the landlord with their submitted documentary evidence. I accept the undisputed affirmed evidence of both parties and find that both parties have been properly served as per sections 88 and 89 of the Act.

Preliminary Issue

A review of the tenants' evidence revealed a copy of a decision from the Residential Tenancy Branch (referenced on the title page) between these two parties regarding the security deposit. In that decision the arbitrator made a finding that the landlords had extinguished their right to the security deposit and had granted a monetary order to the tenants for return of double the security deposit. The landlord's agent (the landlords) confirmed this in direct testimony and has requested that the request to retain the security deposit (MNSD) be cancelled. The hearing shall proceed on the landlords' monetary claim for damages only.

Issue(s) to be Decided

Are the landlords entitled to a monetary order for damage 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 applicant's claim and my findings are set out below.

This tenancy began on February 1, 2013 on a month-to-month basis as shown by the submitted copy of the signed tenancy agreement dated January 13, 2013. The monthly rent began as \$900.00 payable on the 1st day of each month. A security deposit of \$390.00 was paid on July 7, 2009. Both parties confirmed that a condition inspection report for the move-in was completed, but that a move-out condition inspection was not completed.

The landlords seek a monetary claim of \$2,555.79 which consists of:

\$467.04	Repairs, Suite
\$200.00	Cleaning, Suite
\$1,500.00	Painting and Mudding
\$288.75	Repairs to Balcony Railing

The landlords provided written details stating that the tenants had vacated the rental unit on July 31, 2016 and that the landlord discovered the suite damaged and dirty. The damages included holes in the walls, extremely dirty appliances, stained carpet, cigarette burns in carpet, mold stains in washroom and damage to the deck railings.

In support of this claim the landlords have provided"

- Copies of 15 Photographs of the rental suite
- Copy of an invoice dated August 9, 2016 re: repairs to suite
- Copy of an invoice dated August 10, 2016 re: Tenant move-out cleaning
- Copy of a 2 page detailed summary and photographs of repairs to rental unit
- Copy of an invoice dated August 30, 2016 re: paint and repairs of damaged walls
- Copy of an invoice dated September 7, 2016 re: repair of damaged balcony railings

The landlords completed a condition inspection report for the move-out without the tenants on August 3, 2016 detailing the damages. The landlords also rely primarily on the submitted invoices for all the damages which were very detailed of what was required. The submitted invoices show

Detailed listing of repairs made.

Detailed summary of the state of the suite and the required cleaning.

Details of damaged walls does not reference any particular walls or how many holes.

Details of railing repairs.

The tenants disputed the landlords' claims stating that there was an existing moisture issue. The tenants also admitted that there were various nail holes from hanging items, but that they were of insignificant in size and could not be considered damage. The tenants had referred to the submitted photographic evidence provided which shows no damage at all on July 31, 2016. The tenants objected to the landlords claim for painting of the entire suite as there is no clear evidence of damage throughout the suite as shown in both the tenants and the landlord's photographs.

In support of the tenants' dispute the tenants have provided:

Copies of 10 photographs of the rental suite

A copy of a previous dispute resolution hearing decision (noted above)

Copies of telephone logs, text messages and emails with the landlord's agent

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.

In reviewing the evidence and submissions of both parties, I prefer the majority of evidence of the landlords over that of the tenants on a balance of probabilities. The landlords have provided as comparison a completed condition inspection report for the move-in and 21 photographs detailing the damages caused. In comparison the tenants have provided only 10 photographs which I was unable to compare directly to the claims of the damages claimed by the landlords. As such, I find that the landlord was successful on the followings claims totalling, \$955.79:

\$467.04	Repairs, Suite
\$200.00	Cleaning, Suite
\$288.75	Repairs to Balcony Railing

On the following item of claim of \$1,500.00, the landlords have failed to provide sufficient evidence to satisfy me of damages caused by the tenants. The landlords have relied solely on the submitted invoice for repair of holes and the cost for the painting of the entire suite. This was contrasted by the limited photographs provided by the tenants that clearly show no holes or apparent damage that would require repairs or painting.

Conclusion

The landlords are granted a monetary order for \$955.79.

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: January 3, 2018

Residential Tenancy Branch