



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MND, MNSD

Introduction

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

- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for its application from the tenant, pursuant to section 72.

This hearing also dealt with the tenant's cross-application pursuant to the *Act* for:

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38; and
- authorization to recover the filing fee for its application from the tenant, 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 parties acknowledged receipt of evidence submitted by the other.

Issue to be Decided

Is the landlord entitled to a monetary award for unpaid rent and losses arising out of this tenancy?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

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

Are the tenants entitled to a monetary award for the return of a portion of their security deposits?

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

Background, Evidence

The landlord's testimony is as follows. The tenancy began on June 1, 2015 and ended on July 3, 2017. The tenants were obligated to pay \$1595.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$786.00 security deposit which the landlord holds in trust. The landlord testified that a written condition inspection report was done at move in but not at move out. The landlord testified that the tenants left the suite dirty and it required extra cleaning. The landlord testified that the tenants also did not trim the hedges and blackberry bush as noted in their tenancy agreement and she incurred costs to rectify that. The landlord testified that she had to rent a dumpster to remove all of the tenants' garbage and personal belongings left behind at the end of the tenancy. The landlord testified that the tenants removed and has not returned the carbon monoxide detector.

The landlord is applying for the following:

1.	Landscaping costs	\$250.00
2.	Suite Cleaning	300.00
3.	Dumpster	500.00
4.	Carbon monoxide detector	60.00
5.	Filing fee	100.00
6.		
	Total	\$1210.00

The tenants gave the following testimony. The tenants testified that they dispute the landlords' claim. The tenants testified that the landlord has not provided proof of the costs incurred. The tenants testified that they agree that they over held the unit for three days and are willing to pay for that amount. The tenants testified that the over holding didn't cause the landlord any hardship as she was commencing a large renovation and had access to the property and much of the suite.

Analysis

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 arguments are reproduced here. The principal aspects of the each party's claim and my findings around each are set out below.

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 provide **sufficient evidence of the following four factors**; the existence of the damage/loss, that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party, the applicant must also show that they followed section 7(2) of the *Act* by taking steps to mitigate or

minimize the loss or damage being claimed, and that if that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an

Landscaping - \$250.00.

The tenants dispute this claim. The tenants testified that they did maintain the yard. The tenants testified that the landlord advised them at move out that they did not have to take care of the blackberry bushes. The landlord testified that the tenants are responsible for trimming hedges and the blackberry bushes as it was part of the tenancy agreement. Residential Tenancy Policy Guideline 1 states that:

“The landlord is generally responsible for major projects, such as tree cutting and pruning and insect control”.

Based on the above, I find that the landlord is responsible for this cost and I therefore dismiss this portion of her application.

Suite Cleaning – 300.00

The landlord testified that she had to hire someone to clean the suite and that they spent three days cleaning. The tenants adamantly deny this claim. The tenants testified that the landlord took pictures before the tenants had done their cleaning and submitted them for this hearing. The tenants testified that unit was left clean and that the landlord did not conduct written condition inspection reports. I found the landlords submission that she had someone there for three days cleaning while the tenants were still in the unit unlikely. In addition, the landlord did not submit condition inspection reports to provide a “snapshot” of the condition of the unit at the start of the tenancy versus the end and any changes, if any. Furthermore, the landlord did not challenge or dispute the tenants’ submission that the photos she submitted for this hearing were taken prior to the tenants cleaning the suite. Based on the insufficient and disputing evidence before me, I dismiss this portion of the landlords’ application.

Dumpster and Carbon Monoxide Detector - \$560.00

The landlord testified that she had to rent a dumpster for \$500.00 to throw all the tenants garbage and belongings out that they left behind. The landlord testified that she had to buy a carbon monoxide detector for \$60.00 as the tenants had removed the existing one. The tenants dispute both of these claims. The tenants testified that the dumpster was for the landlords’ personal use as she was undertaking a renovation and that the unit never had a carbon monoxide detector. The landlord did not submit receipts for either of these claims. As outlined above, a party must satisfy all four factors when seeking a monetary award. Based on the insufficient evidence before me, I dismiss this portion of the landlords’ application.

The tenants testified that they agree that they over held the unit for three days and are agreeable to paying a pro-rated amount. $\$1595.00$ divided by 31 days for July = $\$51.45 \times 3$ days = $\$154.35$. The landlord is entitled to retain that amount from the deposit.

As neither party has been completely successful in their application, they must each bear the cost of the filing fee.

Conclusion

The landlord is entitled to retain $\$154.35$ from the security deposit. I grant the tenants an order under section 67 for the balance due of $\$631.65$. This order may be filed in the Small Claims 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 16, 2018

Residential Tenancy Branch