



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNDC, MNSD, FF

Introduction

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

- a monetary order for unpaid rent, 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 tenant pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed receipt of the notice of hearing package and the 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.

Issue(s) to be Decided

Are the landlords entitled to a monetary order for damage, for unpaid rent/utilities, 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.

Both parties agreed that this tenancy began on October 1, 2016 on a fixed term tenancy ending on September 30, 2017. The monthly rent was \$2,800.00 payable on the 1st day of each month. A security deposit of \$1,400.00 and a pet damage deposit of \$1,400.00 were paid. A condition inspection report for the move-in was completed, but a condition inspection report was not completed for the move-out. No signed tenancy agreement was provided.

The landlords seek a monetary claim of \$4,315.00 which consists of:

\$72.50	Travel Expense, BC Ferries
\$72.50	Travel Expense, BC Ferries
\$16.70	Travel Expense, BC Ferries
\$3.75	Parking, Accommodations
\$46.14	Meals
\$12.78	Meals
\$16.32	Meals
\$231.00	Accommodations
\$4,246.16	Estimated Repair Costs, Floor
\$4,717.85	Total

It was clarified with both parties that although the landlord provided the above listed items of claim totalling, \$4,717.85, yet provided a total monetary claim of \$5,101.27, the landlords' monetary claim would be limited to the amount filed as \$4,315.00.

The landlords have not provided any further details for unpaid rent or utilities. In support of these claims, the landlord has submitted copies of various receipts for travel, meals and accommodation. The landlord has also provided an estimated contract dated July 11, 2017 for refinishing of the flooring for \$4,246.16.

The landlord claims that the tenants breached the fixed term tenancy by pre-maturely ending it on June 30, 2017. Upon moving out, the landlord claims that the tenants failed to clean the rental premises (home, yard, garden work and removing garden waste). The landlord stated that he incurred travel and accommodation expenses associated with obtaining a new tenant and ending the tenancy.

The landlord seeks compensation for damaged hard wood (Fir) flooring in the entry way and the living room while the tenants were moving their piano out of the home with a pallet jack. The landlord also noted that the flooring in the family room was also damaged by the tenant.

The tenants dispute the landlords' claims, excepting responsibility only for the damaged flooring in the entryway. The tenants confirmed that there were scratches throughout the flooring at the start of their tenancy. The tenants argued that they had helped the landlord find a new tenant's tenancy which began on July 1, 2017 and shows that the landlord did not suffer any losses for renting or the tenants' ending of the fixed term tenancy pre-maturely. The tenants also argued that they should not be responsible for the landlords' travel costs because they live out of town.

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 this case, the landlord claims that they suffered a loss/expense due to the tenants pre-maturely ending the tenancy by incurring travel costs associated to ending the tenancy and to find a new tenant. The tenants have argued that the landlords' travel costs should not be attributed to them as it is the landlord's choice to live out of town from the rental premises. I find that the landlords with the assistance of the tenants found and confirmed a new tenancy to begin on July 1, 2017. The tenants cannot be found liable for costs associated for travel to and from the rental premises to obtain a new tenant. As such, these portions of the landlords' claim are dismissed.

The onus or burden of proof lies with the party who is making the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support their claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

On the landlords' remaining sole item for claim of Estimated Flooring Repair Costs of \$4,246.16, I find based upon the tenants' affirmed testimony that they caused damage to the entry way flooring area only. The landlord has failed to provide sufficient evidence that the tenants caused damage to the flooring area throughout the living room and dining room areas which the landlord stated required refinishing. I note that in the condition inspection report for the move-in which was completed by both parties that various notations were made with marks on the flooring (marks from walking dog). I note in referring to the landlords' photographs of the flooring (living room) and the tenants' 4 photographs (entry way and living room) that I am unable to determine the extent of the markings on the floor due to the clarity and lighting of the photographs. I can only say with certainty that the entry way flooring was marked as confirmed by the tenants. On this basis, I find that the landlord has been unable to establish a claim for refinishing of the entire floor. However, based upon the entry way photographs and the tenants' confirmation of damage to the flooring in the entry way, I grant an arbitrary nominal award to the landlord for \$500.00 as I was unable to determine the cost of damage to the entry way based upon the landlord's estimate.

Having been successful in the application for dispute, I order that the landlord is entitled to recovery of the \$100.00 filing fee.

The landlord has established a total monetary claim of \$600.00.

During the hearing it was determined that the landlord had held the \$1,000.00 pet damage deposit and had returned the \$1,400.00 security deposit to the tenants.

As such, I authorize the landlord to retain \$600.00 from the currently held pet deposit and order the return of the remaining balance of \$400.00 to the tenants forthwith.

Conclusion

The tenants are granted a monetary order for \$400.00.

This order must be served upon the landlords. Should the landlords 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: February 2, 2018

Residential Tenancy Branch