



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding QUALEX-LANDMARK RESIDENCES INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNDC, MNSD, FF

Introduction

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

- a monetary order for damage to the rental unit and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenants' security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The two tenants did not attend this hearing, which lasted approximately 21 minutes. The landlord's agent ("landlord") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that he had authority to represent the landlord company named in this application, as an agent at this hearing.

The landlord testified that he served the two tenants each with a copy of the landlord's application for dispute resolution hearing package on September 14, 2017. The landlord provided two Canada Post tracking numbers verbally during the hearing. He stated that the mail was sent to the tenants' forwarding address which was provided by them in the move-out condition inspection report at the end of the tenancy on August 31, 2017. The landlord provided a copy of this report. In accordance with sections 89 and 90 of the *Act*, I find that both tenants were deemed served with the landlord's application on September 19, 2017, five days after their registered mailings.

Issues to be Decided

Is the landlord entitled to a monetary order for damage to the rental unit and for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is the landlord entitled to retain the tenants' security deposit?

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

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the landlord, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The landlord testified regarding the following facts. This tenancy began on July 1, 2016 and ended on August 31, 2017. Monthly rent in the amount of \$2,750.00 was payable on the first day of each month. A security deposit of \$1,350.00 was paid by the tenants and the landlord continues to retain the deposit in full. Both parties signed a written tenancy agreement and a copy was provided for this hearing. Move-in and move-out condition inspections and reports were completed for this tenancy and copies were provided for this hearing. No written permission was provided by the tenants to the landlord to keep any amount from their security deposit. The landlord's application to retain the deposit was filed on September 14, 2017.

The landlord seeks to retain \$899.85 from the tenants' security deposit plus the \$100.00 filing fee paid for this application.

The landlord seeks \$899.85 to replace a refrigerator door in the rental unit, due to a dent. The landlord said that the tenants caused this damage and failed to pay for it when they vacated the rental unit. The landlord noted the dent on the move-out condition inspection report, where the tenants responded by stating: "the price is unjustful for a small, shallow dent that is approximately 1.2 cm." The tenants did not sign the report and indicated "do not agree" where the landlord indicated it wanted \$899.85 for the dent damage.

The landlord provided a quotation, dated September 6, 2017, for the \$899.85. The landlord provided a photograph of the dent. He stated that since the rental building is a premium luxury rental building, which was constructed in 2016 and new when the tenants moved in, the landlord wanted to maintain the quality of the appliances. He said that no one inspected the dent, he only sent a photograph to the supplier. He claimed that the supplier could not repair the dent but the door had to be replaced. The landlord

provided the above quotation to replace the door but said that it had not been done yet because the landlord was waiting for this hearing and decision.

The landlord testified that the dent, which was located on the main door in the middle-left side, did not affect the use or function of the refrigerator, which was in proper working order. He maintained that a new tenant moved into the unit in January 2018 and was using the refrigerator but was told that the door would be replaced in any event.

Analysis

Burden of Proof

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim on a balance of probabilities. In this case, to prove a loss, the landlord must satisfy the following four elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the tenants in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the landlord followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

I dismiss the landlords' claim for \$899.85 to replace the refrigerator door in the rental unit, without leave to reapply. The landlord failed to provide a receipt for this claim. The landlord only provided a quotation but did not have the replacement done, despite the fact that he said it would be done for the new tenant in the unit, regardless of this decision. The dent is minor and required a close-up photograph submitted by the landlord, because it was so small. The landlord failed to provide documentary or witness evidence to confirm that the dent could not be repaired but required the replacement of the entire door. The landlord confirmed that the dent did not impact the use or function of the refrigerator, which has been used by the new tenant in the unit since January 2018.

As the landlord was unsuccessful in this application, I find that it is not entitled to recover the \$100.00 filing fee paid for this application.

The landlord continues to hold the tenants' security deposit, totalling \$1,350.00. No interest is payable on the deposit during the period of this tenancy. As per Residential Tenancy Policy Guideline 17, since the landlord applied to retain the deposit, I am also required to deal with its return to the tenants even though they have not filed an application. Accordingly, I order the landlord to return the tenants' entire security deposit of \$1,350.00, to the tenants within 15 days of receiving this decision.

Conclusion

The landlord's entire application is dismissed without leave to reapply.

I order the landlord to return the tenants' entire security deposit of \$1,350.00, to the tenants within 15 days of receiving this decision.

I issue a monetary order in the tenants' favour in the amount of \$1,350.00 against the landlord. The landlord must be served with this Order as soon as possible. Should the landlord 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: April 06, 2018

Residential Tenancy Branch