



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDLS, MNRLS, MNDCLS, FFL

Introduction

This hearing was convened as a result of the landlords' Application for Dispute Resolution ("application") under the *Residential Tenancy Act* ("Act") for a monetary order for damage to the unit, site or property, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, for unpaid rent or utilities, for authorization to retain all or part of the tenants' security deposit, and to recover the cost of the filing fee.

The landlords attended the teleconference hearing and gave affirmed testimony. During the hearing the landlords were given the opportunity to provide their evidence orally. A summary of the evidence is provided below and includes only that which is relevant to the hearing.

As the tenants did not attend the teleconference hearing, service of the Notice of a Dispute Resolution Hearing ("Notice of Hearing"), application, and documentary evidence were considered. The landlords testified that the Notice of Hearing, application and documentary evidence were served on the tenants separately by one registered mail package addressed to each tenant on April 27, 2018 to the mailing address provided in writing on the tenants' written forwarding address letter the landlords' stated was dated April 15, 2018. Two registered mail tracking numbers were provided by the landlords verbally which have been included on the cover page of this decision for ease of reference. According to the online registered mail tracking website, the tenants did not pick up either registered mail package which resulted in both packages being returned to sender. Based on the above, I find the tenants were served five days after April 27, 2018 pursuant to section 90 of the *Act* which states that documents served by registered mail are deemed served five days after they are mailed. I find the tenants were deemed served on May 2, 2018 accordingly. Consequently, the hearing proceeded without the tenants present.

Preliminary and Procedural Matter

The landlords requested that the decision be sent by regular mail instead of email. As a result, the landlords and the tenants will be sent this decision by regular mail.

Issues to be Decided

- Are the landlords entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen with the tenants' security deposit under the *Act*?
- Are the landlords entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

The landlords did not have a written tenancy agreement. In a previous decision, the landlords obtained an order of possession; however, testified that when they contacted a bailiff company the wait was at least three weeks and made the decision instead to change the locks to the rental unit as of April 5, 2018 without a Writ of Possession and hiring a bailiff. The landlords stated that they knew what they did was not correct however due to health issues including what the female landlord indicated was an elevated heart rate of over 200, they made the decision to evict the tenants themselves than to end up in the hospital or worse. The file number of that previous decision ("previous decision") has been included on the cover page of this decision for ease of reference.

The landlords' monetary claim for \$3,740.00 contained what the landlords' confirmed was a mathematical error and actually totals \$3,090.00 comprised as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Removing tenants' belongings (8 hours)	\$240.00
2. Cleaning (10 hours)	\$300.00
3. Light bulbs (11)	\$150.00
4. Light fixture (\$300) and electrician to install (\$200)	\$500.00
5. Painting bedroom (\$300) plus paint (\$50)	\$350.00
6. Monetary loss	\$200.00
7. Loss of rent for April 2018	\$1,350.00

TOTAL	\$3,090.00
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Regarding item 1, the landlords have claimed \$240.00 for eight hours to remove the tenants' belongings that the landlords stated were considered garbage and worth less than \$500.00 in accordance with the *Regulation*. The landlords were advised that this item was being dismissed in full due to the landlords' actions. I find that the tenants were prevented from removing their belongings due to the landlords changing the locks to the rental unit on April 5, 2018 without authority from an arbitrator to do so, given that the rental unit had not been abandoned and without having obtained a Writ of Possession and hired a bailiff to legally remove the tenants' belongings. As a result, I find the landlords have failed to meet the burden of proof which will be discussed further below.

Regarding item 2, and in keeping with item 1 above, the \$300.00 amount for cleaning claimed by the landlords was dismissed in full without leave to reapply during the hearing as I find the landlords' actions by changing the locks to the rental unit prevented the tenants from cleaning the rental unit and from complying with section 37 of the *Act*. Therefore, I find the landlords have failed to meet the burden of proof which will be discussed further below.

Regarding items 3, 4 and 5, and in keeping with items 1 and 2 above, I dismiss each of these items as they all relate to work that the tenants could have done before their locks were changed by the landlords without authority to do so. Therefore, I find the landlords' actions prevented the tenants from changing the lightbulbs in the rental unit before vacating, from repairing an alleged broken light fixture and from repainting the bedroom prior to vacating the rental unit. I find the landlords have failed to meet the burden of proof for items 3, 4 and 5, which will be discussed further below.

Regarding item 6, the landlords were unable to describe the "monetary loss" of \$200.00 they have claimed for as they failed to provide sufficient particulars of what the "monetary loss" of \$200.00 was being claimed for. Therefore, this portion of the landlords' claim was dismissed without leave to reapply and will be address further below.

Regarding item 7, the landlords have claimed \$1,350.00 for loss of April 2018 rent as the tenants continued to occupy the rental unit into April 2018 without paying any money for use and occupancy according to the landlord. The landlords are also seeking the

recovery of the cost of the filing fee in the amount of \$100.00 which will be addressed later in this decision.

Analysis

Based on the undisputed documentary evidence and undisputed testimony of the agents, and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the landlords to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the tenants. Once that has been established, the landlords must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the landlords did what is reasonable to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

As the tenants were served with the Notice of Hearing, Application and documentary evidence and did not attend the hearing, I consider this matter to be unopposed by the tenants. I have considered; however, that the landlords failed to follow the legal process for evicting tenants after receiving an order of possession and as a result, I have dismissed items 1 to 5 inclusive accordingly.

Items 1 to 5 – As indicated above, when the landlords made the decision to not obtain a Writ of Possession and hire a bailiff to forcibly remove the tenants and their

belongings, I find the landlords' actions prevented the tenants from complying with the *Act* to remove their personal items, clean the rental unit, repaint the bedroom if and as necessary, change any burned out lightbulbs, and to repair any broken light fixtures, if any. Therefore, I find the landlords' actions has resulted in the dismissal of items 1 to 5 inclusive as I find the tenants were unable to comply with the *Act* as soon as the landlords changed the locks without authority to do so thereby preventing lawful access to the rental unit by the tenants. Consequently, I dismiss items 1 to 5 as I find the landlords have failed to prove part one of the test for damages or loss due to the landlords' own actions. I note that this is not a penalty to the landlords, rather a direct result of the landlords' actions by not following the proper steps in evicting their tenants by making the decision not to apply for a Writ of Possession and hire a bailiff to remove the tenants and their belongings.

In addition to the above, I note that section 7 of the *Act* applies and states:

Liability for not complying with this Act or a tenancy agreement

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

[My emphasis added]

Given the above, I find the landlords failed to comply with section 7 of the *Act* by changing the locks to the rental unit without authority to do so, which I find failed to allow the tenants time to remove their personal items, clean the rental unit, repaint as necessary, repair any damages, if any, and to replace any burned out lightbulbs for example. Therefore, I find the landlords failed to do what is reasonable to minimize their damage or loss for items 1 to 5 also.

Item 6 – I find the landlords have failed to comply with section 59(2)(b) of the *Act* which requires that applicants provide full particulars of their claim. I find the landlords failed to explain sufficiently in their application and were unable to provide any further details during the hearing what the amount of \$200.00 for item 6 related to. Therefore, I find the landlords have failed to meet the burden of proof and that item 6 is dismissed without leave to reapply due to insufficient particulars and evidence.

Item 7 – I accept the landlords' undisputed testimony that monthly rent was \$1,350.00 per month and was due on the first day of each month. I also accept the landlords' undisputed testimony that the tenants continued to occupy the rental unit until April 5, 2018 without paying the landlords money for use and occupancy for the month of April 2018. Therefore, I find the tenants have breached section 26 of the *Act* by failing to pay for use and occupancy for April 2018 and therefore owe the landlords **\$1,350.00** as claimed for item 7.

Given that the landlords' claim was partially successful, I grant the landlords the recovery of the cost of the filing fee pursuant to section 72 of the *Act* in the amount of **\$100.00**.

I find the landlords have established as total monetary claim of **\$1,450.00** comprised of \$1,350.00 for item 7, plus the \$100.00 filing fee.

The landlords continue to hold a security deposit of \$650.00 which has accrued \$0.00 in interest since the start of the tenancy. I authorize the landlords to retain the tenants' full security deposit of \$650.00 pursuant to section 72 of the *Act* in partial satisfaction of the landlords' monetary claim. Based on the above, I grant the landlords a monetary order pursuant to section 67 of the *Act*, for the amount owing by the tenants to the landlords in the amount of **\$800.00**.

The landlords are cautioned to comply with section 12 of the *Act* in the future which requires that all tenancy agreements since January 1, 2004 be in writing. The landlords are also cautioned not to change the locks of the rental unit without authorization in the future and to comply with section 7 of the *Act*.

The tenants are cautioned to comply with section 26 of the *Act* in the future.

Conclusion

The landlords' application is partially successful.

Both parties have been cautioned as indicated above.

The landlords have established a total monetary claim of \$1,450.00 as described above. The landlords have been authorized to retain the tenants' security deposit of \$650.00 pursuant to section 72 of the *Act* in partial satisfaction of the landlords' monetary claim. The landlords are granted a monetary order pursuant to section 67 of the *Act*, for the amount owing by the tenants to the landlords in the amount of \$800.00.

Should the landlords require enforcement of the monetary order the landlords must first serve the tenants with the monetary order and may enforce the monetary order in the Provincial Court (Small Claims Division).

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: July 9, 2018

Residential Tenancy Branch