



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNDC

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, made on February 15, 2018 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage to the unit, site, or property;
- a monetary order for money owed or compensation for damage or loss; and
- an order granting recovery of the filing fee.

The Landlord attended the hearing and was assisted in translation by Y.Y., her daughter and advocate. The Tenants attended the hearing and were assisted in translation by W.Z. Also in attendance as a witness for the Tenants was a friend. All in attendance provided affirmed testimony.

On behalf of the Landlord, Y.Y. testified the Application package and documentary evidence were served on the Tenants by regular mail. The Tenants acknowledged receipt. Pursuant to section 71 of the *Act*, I find the Landlord's Application package was sufficiently served for the purposes of the *Act*.

On behalf the Tenants, W.Z. was unable to confirm how the Tenants' documentary evidence was served on the Landlord. Y.Y. denied having received the Tenants' documentary evidence. I find the Tenants' documentary evidence was not served in accordance with the Rules of Procedure. It has not been considered in this Decision.

The parties were provided with a full opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Landlord entitled to a monetary order for damage to the rental unit?
2. Is the Landlord entitled to a monetary order for money owed or compensation for damage or loss?
3. Is the Landlord entitled to an order granting recovery of the filing fee?

Background and Evidence

As a brief background, in a decision dated March 23, 2018, an arbitrator concluded that rent during the tenancy was \$2,950.00 per month. The arbitrator determined that although the Tenants had pre-paid rent to August 31, 2017, the Landlord breached section 28 and 44 of the *Act* by locking the Tenants out of their rental unit on or about July 1, 2017. In the decision, the Tenants were granted a monetary order for \$6,200.00, which was comprised of \$5,900.00 as a refund of rent, \$200.00 for the return of the security deposit, and \$100.00 in recovery of the filing fee paid. The file number of the related decision is included above for ease of reference.

The Landlord's current claim was summarized in a Monetary Order Worksheet, dated February 15, 2018. First, the Landlord claimed \$100.00 to clean the rental unit (4 hours x \$25.00/hour).

Second, the Landlord claimed \$900.00 for the cost to paint the rental unit. A hand-written estimate was submitted in support.

Third, the Landlord claimed \$213.19 for money paid to a handyman for repairs in the rental unit. A photograph of damage to a bathroom cabinet was submitted in support.

Fourth, the Landlord claimed \$400.00 for penalties she had to pay to the strata because the Tenants refused to sign a Form K document. In support, the Landlord submitted receipts for payments to the strata in the amount claimed.

In reply, W.Z. advised that the Tenants moved among several properties belonging to the Landlord and didn't feel they needed to sign the document.

Fifth, the Landlord claimed \$130.20 to rekey and \$638.40 to replace locks to the rental unit. According to Y.Y., the Tenants intentionally damaged the locks to the rental unit. Y.Y. also testified the Tenants threatened to cause further damage if the Landlord did not refund money to the Tenants. Hand-written invoices for \$130.20 and \$638.40 were submitted in support. The invoices were dated July 1 and 3, 2017, respectively.

In reply, W.Z. denied having damaged the locks.

Seventh, the Landlord claimed \$1,315.65 to rekey the building. According to Y.Y., the strata was aware of difficulties the Landlord was having with the Tenants and found it appropriate to re-key the locks of all common doors to the building. A letter from the strata to the Landlord, dated July 26, 2017, was submitted into evidence. It stated suggested this action was taken because of "a potentially serious security breach" by the Tenants. The cost was passed from the strata to the Landlord.

Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

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 for in sections 7 and 67 of the *Act*. 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 case, the burden of proof is on the Landlord to prove the existence of the damage or 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 Landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord did what was reasonable to minimize the damage or losses that were incurred.

With respect to the Landlord's claims \$100.00 to clean the rental unit, \$900.00 to paint the rental unit, and \$213.19 to make minor repairs to the rental unit, I repeat the arbitrator's findings set out in the decision dated March 23, 2018. Specifically, the arbitrator found that the Landlord had breached sections 28 and 44 of the *Act* by changing the locks to the rental unit without warning before the end of the tenancy. Having done so, I find the Landlord also denied the Tenants the opportunity to clean, paint, and make repairs to the rental unit. These aspects of the Landlord's claim are dismissed.

With respect to the Landlord's claim for \$400.00 to recover penalties imposed by the strata, I find there is insufficient evidence before me to conclude Tenants were obligated to sign the Form K document as suggested by the Landlord. I was not referred to any provision of the *Act* or regulation which suggests tenants are required to do so. This aspect of the Landlord's claim is dismissed.

With respect to the Landlord's claims to have locks to the rental unit re-keyed and replaced, I find there is insufficient evidence before me that the Tenants caused damage to the locks. I also note the invoices were dated July 1 and 3, 2017, and that is more likely than not that these changes had the effect of denying the Tenants entry to the rental unit, as described above. These aspects of the Landlord's claim are dismissed.

With respect to the Landlord's claim for \$1,315.65 for the cost to the strata of re-keying all common locks at the rental property, I find there is insufficient evidence before me to conclude the cost should be borne by the Tenants simply because of a potential threat. This aspect of the Landlord's claim is dismissed.

In light of my findings above, the Landlord's Application is dismissed, without leave to reapply.

Conclusion

The Landlord's Application is dismissed, without leave to reapply.

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: September 14, 2018

Residential Tenancy Branch