



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNRL-s, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) and an Amendment to an Application for Dispute Resolution (the “Amendment”) that were filed by the Landlord under the *Residential Tenancy Act* (the “Act”), seeking monetary compensation for unpaid rent, damage to the rental unit, and recovery of the filing fee, as well as authorization to withhold all or a portion of the security deposit.

The hearing was convened by telephone conference call and was attended by the Landlord, who provided affirmed testimony. The Tenants did not attend. The Landlord was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”) state that the respondent must be served with a copy of the Application and Notice of Hearing. As the Tenants did not attend the hearing, I confirmed service of these documents as explained below.

The Landlord testified that she sent the Application and the Notice of Hearing to each of the Tenants individually by registered mail on January 18, 2018, at the forwarding address provided to her by the Tenants at the end of the tenancy. In support of this testimony the Landlord provided me with the registered mail tracking numbers. With the consent of the Landlord I logged into the mail service provider’s website and verified that both of the registered mail packages were received on January 24, 2018. As a result, I find the Tenants were served the above noted documents on January 24, 2018.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Rules of Procedure; however, I refer only to the relevant facts and issues in this decision.
At the request of the Landlord, copies of this decision and any orders issued in her favor will be mailed to her at the mailing address provided in the hearing.

Preliminary Matters

Preliminary Matter #1

On January 18, 2018, the Landlord filed an Amendment with the Branch reducing the amount of the monetary claim to \$840.75 and stating that only the Tenants T.M. and J.S. are respondents in this matter. The Landlord also stated that she wished to add a related claim for damage and cleaning, however no details regarding this claim were provided and no monetary amount was listed for these claims in the Amendment. The Landlord testified that she sent the Amendment to the each of the Tenants individually by registered mail on July 30, 2018, at the Tenants' forwarding address and provided me with the registered mail tracking numbers.

With the consent of the Landlord I logged into the mail service provider's website and verified that although both of the registered mail packages were sent as described above, neither package has been claimed. Despite the foregoing, section 90 of the *Act* states that documents sent by registered mail are deemed to be received five days later, unless they are received on an earlier date. Based on the above, and as the Tenants did not appear in the hearing to provide any testimony or evidence in relation to service of the Amendment, I therefore find that the Amendment was deemed served on each of the Tenants on August 4, 2018, in compliance with section 90 of the *Act*, regardless of the fact that they never picked it up. As a result, the Application was amended to reflect only T.M. and J.S. as respondents and to reduce the monetary claim amount to \$840.75.

Preliminary Matter #2

Although the Landlord stated in the above noted Amendment that she wished to amend her claim to include costs for cleaning and repairs and submitted documentary evidence showing \$1,212.75 in cleaning and repair costs, these costs were not detailed in the above noted Amendment. In fact, the Landlord actually reduced the amount of her monetary claim in the Amendment instead of increasing it to include the above noted \$1,212.75 in additional cleaning and repair costs. As a result, I find that the Landlord has not amended her Application to include \$1,212.75 in cleaning and repair costs. The Landlord remains at liberty to file a new application seeking compensation for these costs, should she wish to do so.

Based on the above the hearing therefore proceeded based on the Landlord's claim for \$840.75 in rent and damages, plus recovery of the filing fee.

Issue(s) to be Decided

Is the Landlord entitled to \$220.00 in unpaid rent?

Is the Landlord entitled to \$620.75 for unreturned keys, remotes, and damage to the rental unit?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The Landlord testified that the tenancy began on March 1, 2017, and ended on January 3, 2018, when the Tenants moved out. The Landlord stated that rent in the amount of \$2,200.00 was due on the first day of each month, and that a security deposit in the amount of \$1,100.00 was paid by the Tenants, which she still holds. The Landlord stated that the Tenants did not return the keys to the rental unit as required by the *Act* at the end of the tenancy and that as a result, she had to have new locks installed at a cost of \$395.00. The Landlord stated that the Tenants also damaged part of the garage door and failed to return two garage door remotes resulting in repair and replacement costs of \$225.75. In support of her claim the Landlord provided receipts for the above noted costs from the service providers.

Further to this the Landlord also sought \$220.00 in unpaid rent for January 1, 2018 – January 3, 2018, and \$100.00 for recovery of the filing fee.

The Landlord stated that the move-in condition inspection was completed without the Tenants as they advised her that they were too busy to do one. The Landlord stated that the move-out condition inspection was also completed in the Tenant's absence as they failed to attend in compliance with the notices of inspection and in fact called the police regarding the service of these notices. A copy of the condition inspection report at move-in and move-out was submitted by the Landlord in the documentary evidence before me for my consideration.

Analysis

Section 37 of the *Act* states that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged, except for reasonable wear and tear, and give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property. As a result, I find that the Tenants were required to provide the Landlord with the keys and the garage remotes at the end of the tenancy and to leave the rental unit clean and undamaged, except for reasonable wear and tear.

I accept the Landlord's undisputed testimony that the Tenant's damaged a portion of the garage door and failed to return the keys and garage door remotes at the end of the tenancy in compliance with section 37 of the *Act*. Section 7 of the *Act* states that if a landlord or tenant does not comply with the *Act*, regulation, or the tenancy agreement, the non-complying party must compensate the other for any damage or loss that results. I have already found above that the Tenants breached section 37 of the *Act* and as there is no evidence to the contrary, I accept the Landlord's undisputed testimony and documentary evidence that the Tenant's owe \$620.75 for repairs to the garage door, the installation of new locks, and the replacement of keys and garage door remotes.

I also accept the Landlord's undisputed testimony that the Tenants owe \$220.00 in unpaid rent for January 1, 2018 – January 3, 2018. As the Landlord was successful in her Application, I also find that she is entitled to recovery of the \$100.00 filing fee pursuant to section 72 of the *Act*

Based on the above, I find that the Landlord is entitled to retain \$940.75 from the security deposit paid by the Tenants. Pursuant to Residential Tenancy Branch Policy Guideline #17, I also order the remaining balance of \$159.25 to be returned to the Tenants at the forwarding address provided by them within 15 days of the date of this decision.

I believe this decision to have been rendered within 30 days after the conclusion of the proceedings in accordance with section 77(1)(d) of the *Act* and the *Interpretation Act*. In the event that this is incorrect, I note that section 77(2) of the *Act* states that the director does not lose authority in a dispute resolution proceeding, nor is the validity of the decision affected, if it is given after the 30 day period in subsection (1)(d).

Conclusion

The Landlord is entitled to retain \$940.75 from the \$1,100.00 security deposit paid by the Tenants, the remaining balance of which is to be returned to the Tenants at their forwarding address within 15 days of the date of this decision.

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 17, 2018

Residential Tenancy Branch