



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, MNDL-S, FFL

Introduction

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

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

Tenants BB and CB (collectively "the tenant") and landlords SA and ZA (collectively "the landlord") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

At the outset of the hearing, the tenants confirmed that they had received the landlords' application and evidence. As the tenants did not raise any issues regarding service of the application or evidence, I find that the tenants were duly served with these documents in accordance with sections 88 and 89 of the *Act*.

Preliminary Issue – Tenants' Evidence

Tenant CB testified that she served the tenants' evidence late. The landlords confirmed receipt of this package; however they claim that they did not receive this evidence package until November 15, 2018 and as such did not have sufficient time to review.

Rule 3.15 of the RTB *Rules of Procedure* establishes that the respondent's evidence must be received by the applicant not less than seven days before the hearing. The evidence package was confirmed received just five days prior to the hearing. For these reasons, I have not relied on the tenants' evidence package to form any part of my decision.

Preliminary Issue – Tenants' Application

Tenant CB testified that she filed an application for the return of the security deposit and this matter is scheduled to be heard at a later date. Tenant CB requested the tenants' application be heard with the landlords' application during this hearing. The landlords were not agreeable to the tenants request as they testified that they did not have an opportunity to adequately review the tenants' application or evidence.

Although the landlords were not agreeable to the tenants request to have their application heard during this hearing, I find that because the security deposit forms part of the landlords' application for damages, the tenants claim is inevitably addressed as part of this hearing. Despite this, I have not relied on the tenants' application evidence package as it would unfairly prejudice the landlords.

Issue(s) to be Decided

Are the landlords entitled to a monetary order for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act, Regulation* or tenancy agreement?

Are the landlords authorized to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested?

Are the landlords authorized to recover the filing fee for this application from the tenants?

Background and Evidence

As per the submitted tenancy agreement and testimony of the parties, the tenancy began on February 15, 2018 on a fixed term until August 31, 2018. Rent in the amount of \$1,450.00 was payable on the first of each month. The tenants remitted a security deposit in the amount of \$725.00 at the start of the tenancy, which the landlords still retain in trust. The parties agreed that a written inspection was conducted at move-in and a copy of the report was provided to the tenants.

On June 21, 2018 the tenants provided written notice to the landlords that they would vacate the rental unit by July 31, 2018. As part of this notice, the tenants provided the landlords with their forwarding address.

On July 30, 2018 at 7:00 p.m. the landlords and tenant BB inspected the unit. Tenant BB did not sign the inspection report or return the keys to the landlords. The parties both testified that the inspection on this date was not completed.

On July 31, 2018 the tenants claim they dropped off the unit keys to the landlords' residential mailbox. The landlords dispute this as they claim they did not recover any keys from their residential mailbox.

On July 31, 2018, the landlord contacted the tenants, offering them a second opportunity to complete the inspection by 10:00 a.m. August 1, 2018.

On August 1, 2018 it appears both parties attended the unit albeit at different times. Tenant BB testified that he attended the unit at 8:00 a.m. whereas landlord SA testified that he and a locksmith attended the unit at 9:00 a.m. As a result, the landlord issued and served a Notice of Final Opportunity to conduct the inspection at 11:30 a.m. on August 2, 2018. During the hearing, the tenants confirmed receipt of the Notice of Final Opportunity and testified that they did not attend the unit on August 2, 2018. The landlords attended the unit at 11:30 a.m. on August 2, 2018 and completed the inspection in the tenants' absence.

The landlords seek compensation in the amount of \$675.00, including the following;

Item	Amount
Interior Damages	\$216.00
Carpet	\$104.00
New Keys/Lock	\$94.00
Landscape Repair	\$100.00
Service Charge	\$61.00
Rent Refund x 2	\$100.00
Total Claim	\$675.00

The landlords also seek to recover the \$100.00 filing fee from the tenants and to retain all or a portion of the tenants' security deposit in satisfaction of the monetary order requested.

In reply, the tenants testified that the interior damage the landlords have referred to are not the result of their tenancy; these damages are pre-existing. The tenants acknowledged that they did not shampoo the carpets at move-out. The tenants testified that the carpet was in good condition and because their tenancy was under a year they were not required to shampoo the carpets. The tenants testified that they returned the unit keys to the landlords' residential mailbox and therefore should not be held liable for any locksmith fees. The tenants acknowledged that the front lawn sustained some damage during their move and are agreeable to paying compensation in the amount of \$100.00. The tenants testified that the service charge was in relation to a washer leak they reported to the landlords during their tenancy and the landlords attempt to recover this cost now is unfair. The tenants testified that they should not be held liable for two days rent as they had fully vacated by July 31, 2018 as per their notice.

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 this case, the onus is on the landlord to prove, on a balance of probabilities, 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 tenant 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.

Subsection 37(2) of the *Act* specifies that when a tenant vacates a rental unit, the tenant must leave the unit reasonably clean and undamaged except for reasonable wear and tear. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Regulation* or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

Based on the condition inspection reports, the photographs and the invoices before me, I find that the tenants left the rental unit contrary to section 37(2) of the *Act*. Accordingly, I find that the landlords are entitled to compensation in the amount of \$216.00 for interior damages.

Residential Tenancy Policy Guideline #1, establishes that after a year of tenancy, tenants are responsible for shampooing the carpets. The guideline also indicates that tenants will be held responsible for shampooing the carpets, regardless of the length of tenancy if the tenants deliberately or carelessly stained the carpet. Based on the submitted condition inspection reports and the photographs, I find that the carpet was carelessly stained as a result of this tenancy. Therefore I find that the landlords are entitled to recover the cost of shampooing the carpet in the invoiced amount of \$103.95.

Under Residential Tenancy Policy Guideline #1, tenants are obligated to return all keys at the end of the tenancy. In this case the parties have provided conflicting evidence that the keys were returned. I prefer the testimony of the landlords over that of the tenants. The landlords' testimony was consistent and congruent with the condition inspection report that noted keys were not found in the mailbox. The submitted invoice date corresponds to the date the landlord testified the lock was changed. Based on the above and on the balance of probabilities, I find the tenants did not return the keys. Accordingly, I find the landlords are entitled to recover the cost of new keys and a lock in the invoiced amount of \$94.28.

Based on the tenants' acknowledgement that they damaged the front lawn and are agreeable to pay compensation in the amount of \$100.00 for the repair; I award the landlords \$100.00 for landscape repair.

As per Residential Tenancy Policy Guideline #1, the landlord is responsible for repairs to appliances provided under the tenancy agreement unless the damage was caused by the deliberate actions or neglect of the tenant. The landlords seek to recover a service call charge that they incurred during the tenancy, as it is their position that the tenants falsely reported a leaking washer. I find the landlords have failed to establish that the tenants deliberately reported a leak they knew to be false. I question what the tenants would have to gain from such a report. Further, the invoice submitted by the landlords reads, "...washer did not leak at time of call.." This indicates to me, that a firm diagnosis on the cause of the reported leak was not established at the time of the service call. For these reasons, I dismiss the landlords claim in the amount of \$61.00, without leave to reapply.

Section 35 of the *Act*, requires the landlord and tenant to inspect the condition of the rental unit before a new tenant begins to occupy the rental unit. I am satisfied that the landlords had to delay the new tenants by two days in order to facilitate the move out inspection with the existing tenants. For this reason, I find the landlords are entitled to recover two days of rent in amount of \$93.54 ($\$1,450.00/31 = \46.77×2 days).

As the landlords were successful in this application, I find that the landlords are entitled to recover the \$100.00 filing fee for a total award of \$707.77.

Section 36 of the *Act* establishes that the tenant's right to the return of security deposit is extinguished if the landlord complied with section 35 of the *Act* by providing at least two opportunities for inspection and the tenant does not participate on either occasion. As evidenced by the tenants own testimony, the inspection on July 30, 2018 was not completed and they did not attend the August 2, 2018 inspection. Therefore I find that the tenants have extinguished their right to the return of the security deposit.

In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the security deposit in the total amount of \$725.00 in full satisfaction of the monetary award. The tenants are not entitled to the remaining \$17.23 of their security deposit as they have extinguished their right to the return of it.

Conclusion

I allow the landlords to retain the \$725.00 security deposit in full satisfaction of the monetary award.

Item	Amount
Interior Damages	\$216.00

Carpet	\$103.95
New Keys/Lock	\$94.28
Landscape Repair	\$100.00
Rent Refund x 2	\$93.54
Filing Fee	\$100.00
Total Award	\$707.77

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: November 21, 2018

Residential Tenancy Branch