



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, FFL

Introduction

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

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

The two landlords (male and female) and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 89 minutes, of which approximately 60 minutes were used by the landlords to make submissions and approximately 20 minutes were used by the tenant to make submissions.

The tenant confirmed receipt of the landlords' application for dispute resolution hearing package and the landlords confirmed receipt of the tenant's written evidence package. In accordance with sections 88, 89 and 90 of the *Act*, I find that the tenant was duly served with the landlords' application and the landlords were duly served with the tenant's written evidence package.

The tenant stated that she did not receive the landlords' four photographs of blood on the wall. The female landlord ("landlord") indicated that she emailed it to the tenant. I notified the landlords that I could not consider these four photographs because the tenant did not receive it and they were served improperly, as email is not permitted by section 88 of the *Act*.

At the outset of the hearing, both parties confirmed that they had a previous hearing at the Residential Tenancy Branch ("RTB") where the tenant was awarded a monetary order of double the value of her security deposit. I notified both parties that since the tenant's security deposit had already been dealt with, I could not consider the landlords' application to retain it. This portion of the landlord's application is dismissed without leave to reapply.

Issues to be Decided

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

Are the landlords entitled to recover the filing fee for this application from the tenant?

Background and Evidence

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

Both parties agreed to the following facts. This tenancy began on November 17, 2015 with the former landlord. The landlords purchased the rental unit on December 1, 2016 and continued the tenant's tenancy without signing a new written tenancy agreement. The tenant signed a written tenancy agreement with the previous landlord only. The tenancy ended on March 31, 2017. Monthly rent in the amount of \$2,000.00 was payable on the first day of each month.

The landlords seek a monetary order of \$3,593.41 for various damages to the rental unit plus the \$100.00 application filing fee.

According to the landlords' monetary order worksheet, they seek \$155.45 for carpet cleaning, \$15.00 for cleaning, \$189.00 for a clogged drain, \$2.41 for shelf support, \$44.78 for a wall rack, \$24.875 for dishwasher repair, \$4.48 for tape, \$886.80 for paint materials and labour, \$369.26 for painting, toilet valve repair and range hood repair, \$31.45 for a wand release and hose, \$180.60 to realign sensors, \$480.00 to paint the suite and repair, \$40.09 for the paint gun sprayer, \$127.68 for paint, \$15.00 for the disposal, \$75.03 for the toilet seat, \$11.27 for a bulb, \$5.56 for a tie, \$24.61 for an LED bulb, \$9.17 for a shelf support, \$69.55 for a smoke detector, \$8.04 for shelf support,

\$93.39 for LED bulbs, \$22.39 for light bulbs, \$8.58 for bulbs, \$14.88 for bulbs, \$17.23 for an aerator/valve, \$127.99 for LED bulbs, \$7.94 for a halogen bulb, \$93.46 for combo alarm toilet balls, \$2.29 for a dowel, and \$22.00 for disposal.

Analysis

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

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*, *Residential Tenancy 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 landlords followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

The landlords did not provide a Notice of Final Opportunity to Conduct a Move-Out Condition Inspection to the tenant. The tenant claimed that she was sick when the landlords proposed the first move-out condition inspection date and the landlords did not provide the above form or an alternative date to her. Therefore, the tenant did not have an opportunity to participate in a move-out condition inspection and report with the landlords.

The landlords submitted their own move-out condition inspection report which they conducted unilaterally. They indicated a number of damages but when asked to explain these damages for which the tenant was responsible at the end of the report on page 3, the landlords simply indicated "the damage was in excess of \$3,593.41 (receipts can be provided)." They did not describe the damages or indicate the cost or estimate of such repairs.

I find that the landlords failed to prove the condition at the start of the tenancy or when they purchased the rental unit and assumed the tenancy. They did not provide photographs of the unit or a move-in condition inspection report when they purchased it, simply indicating at the hearing that the house was in good condition and there were no damages. They only provided seven photographs, claiming that they were taken after

the tenant moved out, of which five of the flooring photographs were zoomed in to such an extent that you cannot see the context or the room where it is being taken.

Conversely, the tenant provided numerous photographs of the rental unit, claiming that they were taken on March 28, 2018, when she was vacating the rental unit, showing the condition of the unit in a good, clean condition. The tenant's photographs do not show the gouges to the flooring, as shown in the landlords' zoomed-in photographs, and showed the lights illuminated in most of the photographs, which the tenant confirmed were still operational, disputing the landlords' claims that most of the light bulbs were burned out when the tenant vacated.

The landlords referenced various receipts and invoices that they had in front of them during the hearing, but not all were submitted as evidence to the RTB. During the hearing, the landlords withdrew two claims, including \$64.96 of the \$93.46 claimed for the combo alarm toilet balls and the carpet cleaning of \$155.45. These two claims are dismissed without leave to reapply.

Many of the documents submitted by the landlords for the hearing were invoices rather than receipts to show payment for the work done. Some of the invoices were dated for October 2017, after the landlords personally moved into the rental unit, as pointed out by the tenant during the hearing.

On a balance of probabilities and for the reasons stated above, I dismiss the landlord's entire application for \$3,593.41 without leave to reapply. The landlord failed part 3 of the above test by failing to provide receipts (only invoices with a balance due) for many of the repairs that were allegedly paid by them. The landlords had ample time to do so from the time this application was filed on July 30, 2018 and this hearing date of November 30, 2018, four months later. I also find that the items for which the landlords did provide receipts, including but not limited to the light bulbs and shelf supports, were effectively disputed by the tenant's testimony and photographs. I accept the tenant's testimony that she left the rental unit in a clean condition, with lights illuminated properly, no damages beyond reasonable wear and tear, and no repairs required.

As the landlords were unsuccessful in this application, I find that they are not entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

The landlords' entire 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: December 05, 2018

Residential Tenancy Branch