



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL MNDL-S, MNRL

Introduction

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

- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*,
- authorization to recover the filing fee for this application from the tenants.

Although I left the teleconference bridge open until 1:50PM in order for all participants to call in for the scheduled hearing at 1:30PM, only the landlords participated in the hearing.

Landlord "KT" provided all testimony on behalf of the landlords and the singular "landlord" will be used throughout this decision. The landlord was given a full opportunity to be heard and present affirmed testimony.

The landlord testified she received the tenants' forwarding address through text or email on approximately September 3, 2018. The landlord testified the Application for Dispute Resolution and evidentiary package was sent to the tenants by way of registered mail on September 6, 2018 and provided me with the Canada Post Tracking Number. In accordance with sections 88, 89 and 90 of the *Act*, I find that the tenants were deemed served with the Application and evidentiary package on September 11, 2017, the fifth day after its registered mailing.

Residential Tenancy Branch Rules of Procedure 7.3 provides me the authority to carry out the hearing in the absence of the respondents.

Preliminary Matters

In the application one of the tenants' names was misspelled; I have amended the application to correct the tenant's name (Rules of Procedure 4.2).

The landlord testified that although the Residential Tenancy Agreement submitted into evidence does not name KT and LW as the landlords, they became the landlords on

July 1, 2017 when they took possession of the rental unit, by purchasing the property, which had been occupied by the tenants since October 1, 2016. I accept the landlord's undisputed claim that they purchased the rental unit and she and LW are the landlords.

Issues to be Decided

- Are the landlords entitled to compensation for unpaid rent pursuant to Sections 26, 45, and 67 of the *Act*?
- Are the landlords entitled to retain the tenant's security deposit in partial satisfaction of compensation they are owed for damages by the tenants pursuant to Section 38 of the *Act*?
- Are the landlords entitled to monetary compensation for damage to the rental unit by the tenants pursuant to Sections 37 and 67 of the *Act*?
- Are the landlords entitled to recover the \$100.00 filing fee for this application from the tenant, pursuant to Section 72 of the *Act*?

Background and Evidence

The landlord submitted into evidence a tenancy agreement showing the tenancy began on October 1, 2016 as a month to month tenancy for \$950.00 month; rent was due on the first day of the month. The landlord testified the rent had been increased; at the time the tenancy ended, the tenant was paying \$1,050.00 per month. The landlord holds the tenants' \$475.00 security deposit in trust.

On August 12, 2018, the tenants gave written notice by email of their intent to vacate on August 26, 2018. They provided a forwarding address to the landlords on approximately September 3, 2018 after the landlord indicated she would return to them their security deposit if they provided a forwarding address. The landlord could not remember if the forwarding address was provided by text message or email. This is the address the landlords used to serve the hearing package and evidence.

A move-in condition report dated October 1, 2016 was entered into evidence. There are no move-out conditions recorded on the report. The landlord testified that by text message, they asked the tenants a number of times for an opportunity to complete a move-out inspection but the tenants did not ever provide them with a time to do it.

I questioned the landlord as to whether or not the tenants refused to complete a move-out inspection; the landlord testified that the tenants did not refuse to do an inspection, the tenants just didn't set up a time with the landlord to complete the inspection.

The landlord testified she did not provide the tenants with a written request to complete an inspection at a specific time on a specific date. She testified this was because the tenants were vague about when exactly they would be finished moving out. The landlord testified she did not complete a move-out inspection report in the absence of the tenants.

The landlord testified that on August 12, 2018 she advertised the rental unit on a popular website for rentals in her small town; from experience she knows that this is the best place to advertise rentals. She advertised for occupancy on September 1, 2018 and obtained new tenants effective October 1, 2018. The rental unit was advertised for \$1,350.00 per month, \$300.00 more than what the tenants were paying. The landlord testified this in line with market conditions for rentals in their town.

The landlord testified she suffered a financial loss for the month of September 2018 and wants to be compensated in the amount of \$1,050.00 for lost rental revenue.

The landlord testified that the unit was not left in a condition for immediate re-rental and she wants to be compensated for out-of-pocket expenses to bring the unit into good condition. Below is her account of damage caused by the tenants:

- Carpet – request for \$200.00 in compensation

The landlord testified that even after steam-cleaning, she could not get the smell of garbage out of the carpet in the hallway; she suspected fluid from a bag of garbage had leaked into the carpet. The photograph submitted into evidence (Carpetdirt (ADA01883-A6DD-47D1-ABB0-E9A088AB921B).png (3.09 MB)) is not *prima facie* evidence of damage and I asked the landlord to explain how the carpet was damaged aside from the smell. The landlord testified carpet was stained and there were marks from where the furniture had been. The landlord estimates the carpet was approximately 10-15 years old. The landlord removed the carpet and replaced it. The landlord did not submit any receipts into evidence to substantiate the cost of steam cleaning or replacing the carpet.

- Stove – request for \$500.00 in compensation

The landlord realized the glass was missing from the oven door of the stove the first time they showed the unit to prospective new tenants. The side of the stove was also dented. The landlord estimated the stove was 10 years old. The landlord testified she replaced the stove with a second-hand stove at a cost of \$250.00 and spent approximately \$75.00 to rent a truck and purchase fuel to bring the stove to the rental unit from a neighbouring town. Although the landlord submitted into evidence a photograph with the title “Stovedamage (6677D425-075D-4165-A2B4-0E9D78326FBD).png (3.31 MB)” the photograph is of a couch and bed. The landlord did not submit photographs of the stove or receipts for the purchase of a new stove and the cost of the rental truck and fuel.

- Shelf – request for \$300.00 in compensation

The landlord testified there was a shelf unit affixed to the wall when the landlords purchased the rental unit; although it was part of the rental unit's furnishing, the tenants removed it. There is no reference to a shelf unit in the tenancy agreement. A photograph of a shelf unit on sale with major retailer for \$504.00 was submitted into evidence for an estimate of the value of the missing wall unit. The landlord testified she sourced another shelf for \$150.00 and installed it. The landlord did not submit a receipt into evidence.

- Dining room set – request for \$50.00 in compensation for two chairs

The landlord testified the rental unit furnishing included a table and four chairs which were definitely not new when the landlords purchased the rental unit. After the tenants left there were only two chairs. There is no reference to dining room chairs in the tenancy agreement, but a dining table is listed. The landlord did not replace the chairs and decided to leave the set as-is with only two chairs. For an estimate of the value of the chairs, the landlord submitted into evidence an advertisement from a buy and sell site in another province showing different kinds of used chairs and stools being available for purchase for \$30.00 or best offer.

- Couch and love seat – request for \$200.00 in compensation

The landlord testified the couch and love seat were relatively new when the rental unit was purchased and there was no obvious wear and tear to the leather fabric. After the tenants moved out, there were rips in the leather and the stuffing was coming out. Instead of replacing the set, they put it in the garbage and decided not to provide a couch and love seat to new tenants. The landlords submitted into evidence a photo of the couch before the tenants vacated "Couchlovebefore (8372CEF2-0D63-483F-A934-AE8164D47023).png (3.59 MB)", but did not submit any photograph of the couch after the tenants vacated. For an estimate of the value of the couch and loveseat, the landlords submitted into evidence a copy of an advertisement from a buy and sell site showing a couch and loveseat for \$350.00.

- Light – request for \$25.00 in compensation

The landlord testified all light fixtures had shades when the rental unit was purchased. One of the lights was missing its shade and the fixture had to be replaced after the tenants moved out. They did not submit a receipt into evidence. A photograph of a light shade on sale with major retailer for \$29.99 was submitted into evidence for an estimate of the value of the shade.

Analysis

- Rent for September 2018

Tenants are required to notify the landlord of the end of the tenancy not earlier than one month after the date the landlord receives the notice, The *Act* states:

- 45 (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that
- (a) is not earlier than one month after the date the landlord receives the notice, and
 - (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

The tenants gave notice on August 12, 2018; according to the provisions of the *Act*, the effective end of this tenancy is September 30, 2018 and the tenants are obligated to pay rent for the month of September 2018.

- Compensation for damages or loss

In considering whether or not compensation is appropriate, an arbitrator determines whether:

- a party to the tenancy agreement has failed to comply with the *Act*, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss. (Reference: Residential Tenancy Branch's 'Policy Guideline 16 Compensation for Damage of Loss')

The *Act* requires a tenant to leave the rental unit leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear (Section 37(2)). The landlord presented undisputed testimony that the rental unit was left damaged, beyond reasonable wear and tear.

- Carpet

The photograph submitted into evidence is not compelling as damage, e.g., stains, are not evident. I am not satisfied the landlord has established there was damage to the carpet that would warrant additional cleaning or replacement. I find the photographic evidence does not provide any indication of damage beyond wear and tear for a carpet that is 10 to 15 years old. In addition, the landlord has failed to provide any evidence to establish the value of any costs for carpet cleaning and/or replacement. I dismiss the landlord's application for compensation for damage to the carpet.

- Stove

There is no photograph of the damage to the stove. I accept the landlord's undisputed testimony that the stove needed to be replaced as a result of damage by the tenants and value of the loss was \$325.00.

- Shelf

There is no photograph of "before and after" of the wall unit and its replacement. I accept the landlord's undisputed testimony that the shelf unit was part of the unit's furnishings and had a value of \$150.00.

- Chairs

The tenancy agreement does not list dining room chairs but I accept the landlord's undisputed testimony that there were four chairs with the table. For the loss of two chairs that were not new, I award the landlord \$50.00.

- Couch and love seat

The couch is listed as furnishings in the tenancy agreement. There is no evidence aside from the landlord's testimony that the tenants' damage to the couch and love seat was so severe that the furniture had to be thrown away. The photographs in evidence do show a couch in good condition at the time the landlords purchased the rental unit and I award the landlord the amount requested for this loss, \$200.00.

- Light

There is no photograph of "before and after" of the damaged light. The condition inspection report does not indicate any light shades are missing. I accepted the landlord's undisputed testimony the light needed to be replaced and had a value of \$25.00.

- Security deposit

The landlord extinguished its right to retain the tenants' security deposit to claim damages claim against it because the landlord did not provide the tenants with a final opportunity for a move-out condition inspection nor did the landlord complete the inspection itself and provide the report to the tenants. The *Act* states (emphasis added in bold):

- 35 (1) The landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit
- (a) on or after the day the tenant ceases to occupy the rental unit, or
 - (b) on another mutually agreed day.

(2) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.

(3) The landlord must complete a condition inspection report in accordance with the regulations.

(4) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.

(5) The landlord may make the inspection and complete and sign the report without the tenant if

(a) the landlord has complied with subsection (2) and the tenant does not participate on either occasion, or

(b) the tenant has abandoned the rental unit.

Consequences for tenant and landlord if report requirements not met

36 (1) The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if

(a) the landlord complied with section 35 (2) *[2 opportunities for inspection]*, and

(b) the tenant has not participated on either occasion.

(2) Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

(a) does not comply with section 35 (2) *[2 opportunities for inspection]*,

(b) having complied with section 35 (2), does not participate on either occasion, or

(c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

I find that because the landlord did not meet its legal obligation to complete a move-out condition inspection report, the landlord had no authority to retain the tenants' security deposit in anticipation of filing for arbitration to retain the deposit as compensation for damage. The *Act* states:

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of
(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing, the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

....

- (6) If a landlord does not comply with subsection (1), the landlord
- (a) may not make a claim against the security deposit or any pet damage deposit, and
 - (b) **must pay the tenant double the amount of the security deposit**, pet damage deposit, or both, as applicable.

I accept that the landlord received the tenants' forwarding address in writing by text or email. As a result of retaining the tenants' security deposit without completing a move-out condition inspection report, the landlord owes the tenants double the value of their security deposit, namely \$950.00.

Conclusion

I find the landlord is entitled to monetary compensation pursuant to section 67 in the amount of \$1,900.00 comprising \$1,050.00 in rent owed, \$750.00 in compensation for damage or loss and \$100.00 to recover the application filing fee.

I order the landlord may deduct double the amount of the security deposit and interest held in the amount of \$950.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$950.00**.

This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court

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: January 16, 2019

Residential Tenancy Branch