



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, FFL

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution filed under the *Residential Tenancy Act* (the "*Act*"), made on July 13, 2018. The Landlord applied for a monetary order for damages or compensation under the *Act*, permission to retain the security deposit, and to recover the filing fee paid for the application. The matter was set for a conference call.

Both the Tenant and the Landlord attended the hearing and were each affirmed to be truthful in their testimony. The Tenant and the Agent were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issues to be Decided

- Is the Landlord entitled to a monetary order for damages or compensation under the *Act*?
- Is the Landlord entitled to retain the security deposit in partial satisfaction of the claim?
- Is the Landlord entitled to recover the filing fee for this application?

Background and Evidence

Both parties testified that the tenancy began on May 1, 2018, as a month to month tenancy. Rent in the amount of \$3695.00 was to be paid by the first day of each month and at the outset of the tenancy, the Tenant paid a \$1847.50 security deposit. The Landlord provided a copy of the tenancy agreement into documentary evidence.

Both parties also testified that the Tenants ended their tenancy on June 26, 2018, when they moved out of the rental unit. The Landlord testified that the move-in and move out inspections had been conducted for this tenancy, however only the move-in inspection had been completed as a written document and that she had not submitted it into documentary evidence.

The Landlord testified that she soon as she found out the Tenants would be moving out she started looking for a new renter to take over the unit. However, she was able to find a new renter to take over the rental unit for August 1, 2018. The Landlord testified that she suffered a loss of rental income of July 2018 and she claiming to recover the rent form July 16 to July 30, 2018, in the amount of \$1847.50, due to the Tenants ending their tenancy without notice.

The Tenants agreed that they ended their tenancy early. The Tenants testified that they thought that had a verbal agreement with the Landlord that the Landlord could keep their security deposit, in the amount of \$1847.50, as a half month rent compensation for a mutual agreement to ending their tenancy early.

The Landlord testified that she did not agree to the Tenant's ending their tenancy early and that she had wanted to recover the full months' rent for July 2018, but that she had only claimed for half as she thought the Tenants had forfeited their security deposit, so she only claimed for a half of the month of rent.

The Tenant testified that they had verbally agreed to the Landlord keeping the security, but that they had offered that as a mutual agreement to the Landlord allowing them to end the tenancy early.

The Landlord also testified that the Tenants had left a large hole in the wall in the rental unit, that needed to be repaired at the end of tenancy. The Landlord testified that it had cost her \$210.00 to have the hole repaired. The Landlord submitted a copy of a receipt into documentary evidence for the amount requested.

The Tenants testified that there was a small hole in the wall at the end of tenancy but that it wasn't that large that it would not have cost \$210.00 to repair. The Tenants also testified that they had to repair several small holes in the wall of the rental unit at the beginning of tenancy and that they felt leaving small hole, which was just normal wear and tear, for the Landlord to fix when they left was only fair.

The Landlord testified that the Tenants had not returned the visitor parking pass at the end of tenancy and that it had cost her \$50.00 to have the pass replaced. The Landlord submitted a copy of a receipt to replace the visitor parking pass into documentary evidence.

The Tenants agreed that they did not return the visitor parking pass at the end of tenancy and that they agree that they owe the Landlord \$50.00 to have the pass replaced.

The Landlord testified that the Tenants did not clean the rental unit properly at the end of tenancy and that she had to pay a cleaning at a cost of \$190.00, to come in and completed the required cleaning. The Landlord submitted a copy of a receipt to have the additional cleaning completed into documentary evidence.

The Tenants disagreed that the rental unit was returned dirty. The Tenants testified that they had paid to have a cleaner come in after they moved out to completely clean the rental unit.

Analysis

Based on the evidence before me, the testimony of the Landlords, and on a balance of probabilities that:

I accept the agreed upon testimony of the parties to this dispute, and I award the Landlord her claimed amount of \$1847.50 for lost rental income for July 2018 and \$50.00 in the recovery of her costs to have the visitor parking pass replaced. I also accept the agreed upon testimony of the parties that the Landlord has permission from the Tenants to retain the security deposit as partial satisfaction for this award.

As for the Landlord's claim for \$190.00 in additoanl cleaning costs, section 37 of the *Act* requires that a tenant return the rental unit reasonably clean at the end of the tenancy. However, I find that the parties, in this case, offered conflicting verbal testimony regarding the cleanliness of the rental unit at the end of the tenancy. In cases where two

parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

I note that the Landlords did not provide a move-in/move-out inspection report into documentary evidence. The move-in/move-out inspection report is an official document that represents the condition of the rental unit at the beginning and the end of a tenancy and is a required document pursuant to section 23 and 35 of the *Act*. I also find that the Landlord has not submitted any documentary evidence to support her claim that the rental unit required additional cleaning at the end of tenancy into these proceedings. In the absence of evidence to support her claim, I find that the Landlord has not provided sufficient documentary evidence to show that she suffered a loss due to the condition of the rental unit at the end of the tenancy. Therefore, I decline to award the Landlord the return of the cleaning cost of \$190.00.

Additionally, the Landlord's claim for \$210.00 to recover the cost to repair a hole the Tenants left in a wall of the rental unit. Although there was some agreement during the hearing that the Tenants left a hole in the wall of the rental unit I find that the parties, in this case, offered conflicting verbal testimony regarding the size and nature of the hole and the condition of the rental unit at the being of this tenancy. Again, in cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

I again I note the absence of a move-in/move-out inspection report for this tenancy or any documentary evidence to support the Landlords claim that the Tenants damage to the rental unit and that the hole was not just normal wear and tear. I find that the Landlord has not provided sufficient documentary evidence to show that the Tenants damaged the rental unit during their tenancy. Therefore, I decline to award the Landlord the return of her cost to repair the wall in the amount of \$210.00.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. As the Landlord was only partially successful in her application and it was determined that the Landlord breached the *Act* during this tenancy, I decline to award the Landlord the recovery of her \$100.00 filing fee.

I grant the Landlord a monetary order in the amount of \$50.00; consisting of \$1,847.50 of rent for July 2018, and \$50.00 for the replacement of the visitor parking pass less the \$1,847.50 security deposit the Landlord is holding for this tenancy.

Conclusion

I find for the Landlords under sections 67 and 72 of the Act. I grant the Landlords a **Monetary Order** in the amount of **\$50.00**. The Landlords are provided with this Order in the above terms, and the Tenant must be served with this Order as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and 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 9, 2019

Residential Tenancy Branch