



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, FFL

Introduction

On September 20, 2018, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) requesting a Monetary Order for damages, to apply the security deposit to the claim, and to recover the cost of the filing fee. The matter was set for a participatory hearing via conference call.

The Landlord attended the conference call hearing; however, the Tenants did not attend at any time during the 53-minute hearing. The Landlord testified that he personally served the Tenants with the Notice of Hearing by sending two separate packages via registered mail on September 21, 2018. The Landlord provided tracking numbers and stated that both of the packages were picked up by the Tenants. I find that the Tenants have been duly served with the Notice of Hearing in accordance with Section 89 the Act.

Rule 7.3 of the *Residential Tenancy Branch Rules of Procedure* states if a party or their agent fails to attend a hearing, the Arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the Application, with or without leave to re-apply.

As the Tenants did not call into the conference, the hearing was conducted in their absence and the Application was considered along with the affirmed testimony and evidence as presented by the Landlord.

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

Should the Landlord receive a Monetary Order for damages, in accordance with Section 67 of the Act?

Should the Landlord be authorized to apply the security deposit to the claim, in accordance with Sections 38 and 72 of the Act?

Should the Landlord be compensated for the cost of the filing fee, in accordance with Section 72 of the Act?

Background and Evidence

The Landlord provided the following undisputed evidence:

The six-month, fixed term tenancy began on March 1, 2018 and ended on August 31, 2018. The monthly rent was \$1,700.00 and the Landlord collected and still holds a security deposit in the amount of \$850.00.

The Landlord testified that he conducted a move-in inspection report with one of the Tenants on March 4, 2018 and completed a written report. He stated that he communicated with the Tenants about conducting a move-out inspection report on August 31, 2018; however, the Tenants had left the rental unit prior to the Landlord getting home from work. The Landlord texted the Tenants on August 31, 2018 and the Tenants didn't reply until September 5, 2018; the Tenants indicated that they left the keys in the rental unit and asked about the return of their security deposit.

The Landlord stated that on September 8, 2018, he communicated with the Tenants about the cleaning costs that he had incurred and sent the Tenants a cheque totaling \$336.46; the remaining balance of their security deposit. Soon after, the Landlord received a letter from the Tenants, dated September 18, 2018, saying that the Tenants wanted their security deposit returned in full and that a cheque was to be sent to their forwarding addresses. The Landlord stated that the Tenants did not cash the \$336.46 cheque.

The Landlord testified that the Tenants left the rental unit in a condition that required further cleaning. The Landlord provided a revised monetary work order to document his claim. The monetary work order was part of the Landlord's amendment package that he stated he served to the Tenants via registered mail on December 18, 2018.

The Landlord stated that he had to clean the rental unit as new tenants were arriving. The Landlord said that the Tenants left garbage overflowing the garbage cans, food

products in the cupboards and dirt in the cabinets and drawers. The Landlord provided pictures of floors, carpets and appliances to support his claim that the rental unit required further cleaning. The Landlord conducted some research with local cleaning companies and is requesting compensation for 9.5 hours at \$35.00/hr to pick up supplies and to clean the rental unit, for a total of \$332.50.

The Landlord has claimed \$105.00 for 3 hours of his time to file this dispute and the Amendment.

The Landlord has claimed \$52.50 for 1.5 hours of this time to order from and drive to Costco to pick up photos.

The Landlord has claimed \$20.00 for fuel.

The Landlord stated he spent \$101.64 at Home Depot for cleaning supplies; however, said that he still has some of the supplies left over and that he is only claiming \$75.00.

The Landlord provided a receipt for \$22.00 in dumping fees in relation to the garbage, recycling and food items that the Tenants left behind.

The Landlord testified that he is on a septic system with a sump pump. At the beginning of the tenancy, he explained to the Tenants that only organic items can be flushed down the toilet and not such things as tampons, diapers or wipes. The Landlord stated that the toilet and septic system worked fine until the end of June 2018 when the Tenants texted him that the toilet was leaking and not draining.

The Landlord responded and had to have a company empty the septic system and a plumber access and assess the sump pump. The Landlord said that plumber advised him that the sump pump had been jammed by a tampon, therefore blockages occurred, and the toilet backed-up and leaked. The plumber fixed the issue; however, did not bill the Landlord for the work. The Landlord provided a receipt from the company that emptied the septic system and is claiming compensation in the amount of \$121.54.

The Landlord has claimed \$52.20 for costs related to the registered mail he had to send to the Tenants.

Analysis

Firstly, I will consider whether the Landlord is authorized to apply the security deposit to a claim of damages to the rental unit. Sections 23, 24, 35 and 36 of the Act speak to

the requirements for condition inspection reports and the extinguishment of rights to claim against the security deposit. I find that the Landlord showed diligence in participating in the inspections and completing written reports. I find that the Landlord is authorized to make a claim against the security deposit in regard to damages to the rental unit and property.

Section 7(1) of the Act establishes that a Tenant who does not comply with the Act, the Regulations or the Tenancy Agreement must compensate the Landlord for damage or loss that results from that failure to comply.

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 the responsible party to pay compensation to the other party. In order to claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof. The Applicant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the Tenancy Agreement or a contravention of the Act on the part of the other party. Once that has been established, the Applicant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I accept the Landlord's undisputed testimony that the rental unit required further cleaning after the Tenants vacated the unit. Section 37 of the Act states that when the Tenants vacate the rental unit, the Tenants must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear. I find the Tenants breached Section 37 of the Act and as such, find that the Landlord has established a monetary claim in the amount of \$332.50.

The Landlord stated that he had to purchase cleaning supplies to clean the rental unit and submitted an invoice to support the costs that he incurred. I find that the Landlord has established a monetary claim in the amount of \$75.00.

The Landlord provided an invoice and stated that he had to pay a fee for dumping the garbage and food left behind by the Tenants. I find the Landlord has established a monetary claim in the amount of \$22.00.

The Landlord provided undisputed evidence about the septic and plumbing system working from the beginning of the tenancy in March 2018 through to the end of June 2018. The Landlord stated that he incurred costs to have the septic system pumped and that the plumber advised that the sump pump had been jammed due to a tampon that had been flushed. Without any contrary evidence, I find that the Tenants are responsible for the damages that the Landlord incurred, and that the Landlord has

established a monetary claim for the costs to have the septic tank pumped out, for a total of \$121.54.

The Landlord has claimed monetary losses and included his time and fuel costs; however, I find that the Landlord has failed to prove that these expenses were a direct result of the Tenants' breach of the Tenancy Agreement or the Act versus his choice to apply for Dispute Resolution and/or some of the regular expenses incurred in the role of Landlord. I decline to award the Landlord compensation for his time to file Residential Tenancy Branch paperwork, to pick up photos or for fuel for his truck.

The final portion of the Landlord's Application concerns printing fees and costs associated with registered mail. My abilities to award compensation are restricted by Section 67 of the Act which are described above and limited to claims where damage or loss has stemmed directly from a violation of the Tenancy Agreement or a contravention of the Act on the part of the other party. I therefore have no ability to return the costs associated with preparation for a hearing and decline to award the Landlord a return of registered mail fees.

I find that the Landlord was successful with his Application and award the Landlord \$100.00 in compensation for the filing fee.

The Landlord has established a monetary claim, in the amount of \$651.04, which includes \$551.04 in damages and the \$100.00 in compensation for the filing fee for this Application for Dispute Resolution. Pursuant to section 72(2) of the Act, I authorize the Landlord to keep a portion of the Tenants' security deposit of \$850.00, in full satisfaction of the Landlord's monetary claim.

Based on these determinations, I order the Landlord to return the balance of the security deposit to the Tenants in the amount of \$198.96.

Item	Amount
Cleaning of rental unit	\$332.50
Cleaning supplies	75.00
Disposal fees	22.00
Septic System pump-out	121.54
Filing Fee	100.00
Total monetary claim	\$651.04
Security Deposit applied to claim	-850.00
Balance of security deposit for return to Tenants	\$198.96

Conclusion

The Landlord has established a monetary claim in the amount of \$651.04 and is authorized to apply the security deposit against this claim.

I order the Landlord to return the balance of the security deposit, in the amount of \$198.96, to the Tenants within 15 days of receiving this Decision. If the Landlord fails to return the balance of the security deposit within 15 days, he is at risk of having to pay double this amount upon Application for Dispute Resolution by the Tenants.

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 22, 2019

Residential Tenancy Branch