



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HOYLAKE DEVELOPMENT HOLDINGS LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL-S, MNDL-S, FFL

Introduction

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

- a monetary order for unpaid rent and for damage to the rental unit, pursuant to section 67;
- authorization to retain the tenants' security and pet damage deposits (collectively "deposits"), pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The two tenants (male and female) did not attend this hearing, which lasted approximately 36 minutes. The landlord's agent ("landlord") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord stated that she was the resident manager and she had permission to represent the landlord company named in this application at this hearing. The landlord said that she had two colleagues present with her during the hearing for support, who were assisting her with answers, looking through paperwork and searching for documents. They did not testify at this hearing.

The landlord testified that she served the tenants with the landlord's application for dispute resolution hearing package on October 23, 2018, by way of registered mail. She provided two Canada Post tracking numbers verbally during the hearing. She said that she sent one to the forwarding address provided by the female tenant in the move-out condition inspection report on October 10, 2018, and the other to an address that she found on the male tenant's tenancy application one year prior. In accordance with sections 89 and 90 of the *Act*, I find that both tenants were deemed served with the landlord's application on October 28, 2018, five days after the registered mailing.

I find that the male tenant was not served at the address found by the landlord in his tenancy application but that he was served at the forwarding address provided by the female tenant in the move-out condition inspection report, as that was the only service address provided by both tenants when they vacated. The landlord provided a copy of the move-out condition inspection report with this application.

Issues to be Decided

Is the landlord entitled to a monetary order for unpaid rent and for damage to the rental unit?

Is the landlord entitled to retain the tenants' deposits?

Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

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

The landlord testified regarding the following facts. This tenancy began on July 1, 2017 for a fixed term ending on June 30, 2018. The tenants vacated the rental unit on October 10, 2018. Monthly rent of \$1,345.00 was payable on the first day of each month, as per the tenancy agreement. The landlord said that the rent was increased to \$1,398.00 pursuant to a Notice of Rent Increase, effective on September 1, 2018 ("NRI"). The landlord did not provide a copy of the NRI and did not know when it was served but claimed that three months' notice was given to the tenants. A security deposit of \$672.50 and a pet damage deposit of \$672.50 were paid by the tenants and the landlord continues to retain both deposits in full. Both parties signed a written tenancy agreement and a copy was provided for this hearing. Move-in and move-out condition inspections and reports were completed for this tenancy and copies were provided for this hearing. A written forwarding address was provided by the female tenant on the move-out condition inspection report on October 10, 2018. The landlord filed this application to retain the tenants' deposits on October 19, 2018.

The landlord seeks a monetary order of \$3,812.00 plus the \$100.00 application filing fee. The landlord seeks \$1,521.00 for unpaid rent and \$2,291.00 for damages and repairs.

The landlord seeks \$1,521.00 for unpaid rent, which includes \$1,398.00 for October 2018 rent and \$123.00 for outstanding rent and late fees dating back to April 2018. She said that the tenants provided notice by email on October 1, 2018 to vacate on October 10, 2018, so they did not give the required full months' notice. A copy of the email was not provided for this hearing. The landlord claimed that the tenants failed to pay rent of \$1,398.00 for October 2018 and she was unable to re-rent the unit until November 1, 2018. The landlord claimed that \$70.00 in late fees had been outstanding since April 2018 and the tenants carried a balance of \$123.00 in unpaid rent when they vacated.

The landlord seeks \$2,291.00 for damages and repairs to the rental unit. The landlord provided an estimate for \$2,291.00 plus taxes and said that \$2,291.00 was paid by the landlord but she did not know when it was paid or what method of payment was used. The landlord did not provide a receipt for the payment, claiming it was with the landlord's head office. She said that the tenants provided written permission on the move-out condition inspection report for the landlord to retain an amount "TBD" from their deposits for damages. She claimed that she added the amounts in after the female tenant signed the report, which totalled \$2,291.00. The landlord seeks \$425.00 for cleaning the unit, \$616.00 for construction materials, \$570.00 for kitchen cabinet doors, \$650.00 for labour including painting, and \$30.00 for demolition and abatement. The landlord submitted one photograph of a dryer with lint for this hearing. However, she claimed that she had 18 photographs in front of her during the hearing and she was not sure whether it was submitted by the landlord or why it was not, as I had only received the one photograph.

Analysis

During the hearing, the landlord was given ample time to go through her documents, find the relevant information and provide me with this information with the assistance of her two colleagues in the room with her. However, the landlord was unable to provide full breakdowns and information of the claimed repair work done.

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove a loss, the landlord 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 tenants 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 landlord followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

I award the landlord prorated rent of \$433.87 ($\$1,345.00/31 \text{ days} \times 10 \text{ days}$) for October 2018. I award only 10 days of rent from October 1 to 10, 2018, when the landlord said the tenants were still living in the rental unit. I have used the rent amount indicated in the parties' written tenancy agreement of \$1,345.00, as the landlord failed to prove a rent increase of \$1,398.00 by not providing the NRI or the details of such NRI and when it was served to the tenants.

I dismiss the remaining rent loss claim of \$964.13 for October 11 to 31, 2018 rent. Although the landlord said that she did not receive the tenant's notice to vacate until October 1, 2018, she did not provide a copy of this email for the hearing. I find that the landlord failed to provide advertisements for when and how she attempted to re-rent the unit, thereby mitigating her losses. I do not know when any advertisements were posted, what information was contained in the advertisements, how long the advertisements were posted for, how many inquiries were made, or how many showings were done for potential tenants.

I dismiss the landlord's claim for unpaid late fees and other rent charges of \$123.00 dating back to April 2018. The landlord only provided two pages of a lengthy tenancy agreement, which does not account for late fees, which she claimed were \$70.00, but did not give a breakdown for the entire \$123.00 in unpaid rent and late fees being claimed.

I dismiss the landlord's claim for repairs damages and repairs totalling \$2,291.00. I find that the tenants could not have properly agreed, with informed consent, for the landlord to retain \$2,291.00 from both deposits for damages. This amount was not written in the move-out condition inspection report, only "TBD" was included and then the numbers were written in later by the landlord.

The landlord failed part 3 of the above test by failing to provide a receipt for the amount of \$2,291.00 supposedly paid by the landlord. She said that a receipt existed with head office but this was not provided. She did not know the date that the amount was paid. The estimate of \$2,291.00 stated that taxes were in addition to the amount, but the landlord did not indicate if taxes were paid. When I asked the landlord for the number of workers used, the hourly rate for each worker, and details regarding each repair done, she was unable to provide all of this information. The landlord did not claim for painting but charged for the labour of painting in the estimate which was for \$650.00 for this portion. The landlord did not know what construction materials were being sought for the amount of \$616.00.

The landlord had ample time to obtain and provide the documents noted above, from the time her application was filed on October 19, 2018 until this hearing date of February 1, 2019, over three months later.

As the landlord was mainly unsuccessful in this application, I find that the landlord is not entitled to recover the \$100.00 filing fee from the tenants.

The landlord continues to hold the tenant's security and pet damage deposits totalling \$1,345.00. Over the period of this tenancy, no interest is payable on the tenants' deposits. I order the landlord to retain \$433.87 from the tenants' security deposit and returning the remainder from both deposits to the tenants. Since the landlord applied to retain both deposits, I must deal with its return to the tenants even without their application, as per Residential Tenancy Policy Guideline 17. Accordingly, I order the landlord to return \$911.13 from both deposits to the tenants within 15 days of receiving this decision. A monetary order in the amount of \$911.13 has been provided to the tenants with this decision.

Conclusion

I order the landlord to retain \$433.87 from the tenants' security deposit.

I issue a monetary Order in the tenants' favour in the amount of \$911.13 against the landlord. The landlord must be served with a copy of this Order as soon as possible. Should the landlord 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.

The remainder of the landlord's 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: February 01, 2019

Residential Tenancy Branch