



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNDCL-S, FFL

Introduction

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

- a monetary order for damage to the rental unit and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, 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 "female tenant" did not attend this hearing. The male tenant ("tenant") and the landlord attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenant confirmed that he had permission to represent the female tenant as an agent at this hearing. This hearing lasted approximately 87 minutes.

The tenant confirmed receipt of the landlord's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that both tenants were duly served with the landlord's application.

Issues to be Decided

Is the landlord entitled to a monetary order for damage to the rental unit and for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is the landlord entitled to retain the tenants' deposits?

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

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 landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on March 24, 2018. Monthly rent in the amount of \$3,000.00 was payable on the 24th day of each month. A security deposit of \$1,500.00 and a pet damage deposit of \$1,500.00 were paid by the tenants and the landlord continues to retain both deposits. A written tenancy agreement was signed by both parties. No move-in condition inspection report was completed for this tenancy. A forwarding address was provided by the tenants to the landlords by way of text message on September 24, 2018, which the landlord received. The landlord did not have any written permission to keep any part of the tenants' deposits. The landlord filed this application to keep the deposits on October 3, 2018.

The tenant claimed that the tenants vacated the rental unit on August 22, 2018, when he returned the rental unit keys to the landlord's agent. The landlord claimed that she received the keys when she was back in town on August 28, 2018, so that is when the tenancy ended. The tenant claimed that a move-out condition inspection was completed by the landlord.

The landlord seeks a monetary order of \$5,570.35 plus the \$100.00 application filing fee from the tenants.

The landlord seeks \$100.80 for two broken wood vents, \$350.00 for utilities, \$400.00 for an Airbnb violation, \$250.00 for stolen wine, and \$141.75 for changing the locks to the rental unit. The tenant agreed to pay the above full amounts during the hearing.

The landlord seeks \$1,782.04 to replace a stove in the rental unit. She obtained a quote, which she provided, for this replacement but that it has not been done yet. She provided photographs of the stove. She said that the tenants scratched the front of the stove, and although it is 17 years old, the scratches cannot be repaired so it must be replaced. She said that new tenants moved into the rental unit from September 1 to December 1, 2018, after the tenants moved out and that they used the stove as it was in proper, working condition. She claimed that her mother now lives in the rental unit. The tenant agreed to pay \$100.00 for the scratches that he said were caused by his

mother while she was cleaning the stove when the tenants vacated the unit. He said that the landlord does not need to replace the stove for the scratches and it is in proper, working condition. He claimed that the stove is 17 years old anyway.

The landlord seeks \$1,180.76 to replace the kitchen counter, due to three burn marks caused by the tenants. She obtained a quote, which she provided, for this replacement, but it has not been done yet. She provided photographs and sketches of the damage. She said that the tenant obtained his own quotes to repair the damage. The tenant agreed to pay \$440.00 to repair the burn marks, during the hearing. He stated that a full replacement is not required, only a repair is. He explained that he does not know whether those burn marks were present when he moved in because there was no move-in inspection, but he believed the landlord when she said he caused them.

The landlord seeks \$315.00 to clean the rental unit. She provided an invoice, not a receipt for the cash she said she paid to the cleaner. She provided photographs of the rental unit condition after the tenants moved out. She said that it cost \$20.00 per hour for 15 hours for the cleaning and that the tenants left garbage and sticky items on the floor and walls, blood on the bedding, feces and urine in the toilet, and a smoke smell that had to be cleaned off the walls. The tenant agreed to pay \$215.00 during the hearing, stating that no professional cleaning was done by him when the tenants vacated. He claimed that there was no proper description of the cleaning on the invoice, that an excessive clean was done beyond what needed to be done.

The landlord seeks \$400.00 for "numerous repairs and materials." She provided an invoice, not a receipt for the above amount. She provided photographs of the damage. She claimed that there was drywall damage in the basement bathroom, furniture was broken, and the screen door on the porch was damaged. She explained that it cost \$50.00 per hour for 6 hours in labour, \$96.84 to fix the bathroom faucet, and \$3.16 for consummables including the glue, nuts and bolts. The tenant agreed to pay \$96.84 to fix the bathroom faucet because this is the only damage he knows that he caused. He explained that he does not know which damages were present when he moved in, since there was no move-in condition inspection or report.

The landlord seeks \$300.00 for two trips she said that she made to the rental unit from her home, with the police, in order to serve the tenants with a 1 Month Notice to End Tenancy for Cause ("1 Month Notice") in person. She did not provide receipts for these trips, indicating that she had credit card statements at home. The landlord seeks \$250.00 for lost wages of having to take one day off from work unpaid, in order to serve the above notice. She provided a copy of the 1 Month Notice. She did not provide

wage loss documents or paystubs to support this claim. She said this was over and above her monthly trip to the rental unit because she had to get the police involved due to the tenants posting her rental unit on the Airbnb website online. The landlord claimed that she did not get an agency to do this service for her because it would cost her more money than going personally. The landlord also seeks \$100.00 for management fees to post an online rental advertisement to re-rent the unit after the tenants vacated. She did not provide an invoice or receipt for this cost.

The tenant disputed the above costs, claiming that the landlord did not have to serve the tenants in person with the 1 Month Notice. He said that he did not know that the rental unit could not be rented out on Airbnb and as soon as he found out, he apologized to the landlord, took the advertisement off the Airbnb website and cancelled the stays of the customers. He claimed it was an honest mistake and he vacated pursuant to the notice with no trouble to the landlord. He said that he agreed to pay the landlord the above cost of \$400.00 despite having to pay for cancellation fees of cancelling the customer stays at the rental unit.

Analysis

Section 67 of the *Act* requires a party making a claim for damage or loss to prove the claim, on a balance of probabilities. In this case, to prove a loss, the landlord must satisfy the following four elements:

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*, *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 \$100.80 for the two broken wood vents, \$350.00 for the utilities, \$400.00 for the Airbnb violation, \$250.00 for the stolen wine, and \$141.75 for changing the locks to the unit. The tenant agreed to pay the above full amounts, sought by the landlord, during the hearing.

I award the landlord \$100.00 of the \$1,782.04 sought to replace the stove in the rental unit. The tenant agreed to pay the above amount during the hearing. I find that the landlord did not complete the above repair, she only provided an estimate rather than an invoice or receipt for work done, the landlord may not complete this repair in the

future, and she had new tenants move in to the unit after the damage was caused. I also note that there was no move-in condition inspection report to show the condition of the stove when the tenants moved in.

I award the landlord \$440.00 of the \$1,180.76 sought for the burn marks to the kitchen counter. The tenant agreed to pay the above amount during the hearing. I find that the landlord did not complete the above repair, she only provided an estimate rather than an invoice or receipt for work done, the landlord may not complete this repair in the future, and she had new tenants move in to the unit after the damage was caused. I also note that there was no move-in condition inspection report to show the condition of the kitchen counter when the tenants moved in.

I award the landlord \$215.00 of the \$315.00 sought to clean the rental unit. The tenant agreed to pay this amount during the hearing. The landlord only provided an invoice for the above amount, not a receipt to show that she paid cash, as claimed by her during the hearing.

I award the landlord \$96.84 for the repair of the bathroom faucet of the \$400.00 sought for the "numerous repairs and materials." The tenant agreed to pay the above amount during the hearing. The landlord only provided an invoice for \$400.00 but not a receipt to show that she paid this amount.

I dismiss the landlords' claim for \$300.00 for two trips to the rental unit in order to serve the 1 Month Notice to the tenants with the police, \$250.00 for lost wages for having to complete this service, and \$100.00 for management fees to relist the rental unit online. The tenant disputed these claims. The landlord failed to provide receipts, wage loss records and paystubs to demonstrate that she suffered the above losses.

As the landlord was only successful based on what the tenant agreed to pay during the hearing, I find that the landlord is not entitled to recover the \$100.00 filing fee from the tenants.

The landlord continues to hold the tenants' deposits totalling \$3,000.00. Over the period of this tenancy, no interest is payable on the deposits. I find that the tenants are not entitled to double the value of their deposits for extinguishment due the landlord's failure to complete a move-in condition inspection report, because she applied for other items besides damages, including wage loss and management fees. In accordance with the offsetting provisions of section 72 of the Act, I order the landlord to retain

\$2,094.39 from the tenants' deposits and return the remainder of \$905.61 to the tenants within 15 days of receipt of this decision. The tenants are provided with a monetary order in the amount of \$905.61.

Conclusion

I order the landlord to retain \$2,094.39 from the tenants' deposits totalling \$3,000.00 in full satisfaction of the monetary order.

The remainder of the landlord's application is dismissed without leave to reapply.

I issue a monetary order in the tenants' favour in the amount of \$905.61 against the landlord. The landlord must be served with 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.

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 04, 2019

Residential Tenancy Branch