



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL MNDCL-S MNDL-S MNRL-S

Introduction

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

- a monetary order for damage to the rental unit pursuant to section 67;
- an application to retain the tenants' security deposit pursuant to section 38 of the *Act*; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

Both parties attended the hearing with the landlords being represented by I.L.L. (the "landlord") and the tenants being represented by L.A. (the "tenant"). All parties present were given a full opportunity to present their testimony, explain their evidence and cross-examine one another.

The tenants confirmed receipt of the landlords' application for dispute and evidentiary package. The tenants are found to have been duly served in accordance with sections 88 & 89 of the *Act*.

Issue(s) to be Decided

Can the landlords recover a monetary award, including a return of the filing fee?

Are the landlords able to retain the tenants' security deposit?

Background and Evidence

The parties explained monthly rent was \$700.00 and the landlord confirmed a security deposit of \$350.00 which was paid at the outset of the tenancy, continues to be held in trust.

The landlords have applied for a monetary award of \$2,255.15. The landlords explained this amount represented unpaid rent for October 2018, repairs and cleaning which were allegedly required following the tenants departure, an unpaid Hydro charge and the replacement of door knobs.

As part of their evidentiary package the landlords supplied several photos which purported to depict the state of the property following the tenants' departure. The landlords explained they had to pay two persons to remediate the property back to an acceptable state and they argued they lost out on rent for October 2018 because of the poor state in which the property was allegedly left. The landlords described a large amount of garbage and debris which was left on the property and they explained the repairs which were required in the home. These include the painting of walls, washing of drapes and cleaning of carpets. The expenses for which the landlords sought compensation related to cleaning supplies, the replacement of door knobs (which were allegedly changed without their consent) and the costs associated with removing items to the civic dump.

The tenants disputed all portions of the landlords application save for the costs associated with the Hydro charge. The tenants alleged they were given permission to remain on the property following the conclusion of the tenancy and they said they spent many hours cleaning the property.

Analysis

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 that 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 claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlords to prove their entitlement to a claim for a monetary award.

The landlords have applied for a monetary award of \$2,255.15 representing expenses related to cleaning of the property, loss of rent for October 2018 and other costs associated with labour and repairing damages.

Residential Tenancy Policy Guideline #16 provides direction on compensation. It states as follows:

In order to determine whether compensation is due, the arbitrator may determine whether –

- 1) a party to the tenancy agreement has failed to comply with the *Act*, regulation or tenancy agreement;
- 2) loss or damage has resulted from this non-compliance;
- 3) the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- 4) the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Following a review of the evidence submitted by the landlord and after having considered the testimony of all parties present to the hearing, I find the landlords have failed to provide sufficient evidence to prove the amount of or value of damage or loss. At the hearing the landlords made reference to some receipts purporting to show the expenses related to their claim; however, the landlords failed to provide any receipts in support of their claimed expenses.

Policy Guideline #16 notes, “an arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward... *nominal damages* are a minimal award [that may be granted] where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.”

I find an award of nominal damages would be more appropriate in this circumstance. Section 37 of the *Act* says, “when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear”, while section 31(2) & (3) of the *Act* say, “A tenant must not change locks or other means that give access to common areas of residential property unless the landlord consents to the change. A tenant must not change a lock or other means that give access to his or her rental unit unless the landlord agrees in writing to, or the director has ordered, the change.” Based on the testimony of the parties and a review of the photos submitted into evidence by the landlord, I find the property was not left in a manner that could be considered “reasonably clean” and I find the tenants did not have permission in writing

from the landlords to change the locks. For these reasons I grant the landlords a nominal award of \$500.00.

During the hearing the tenants acknowledged being responsible for the outstanding Hydro costs. I therefore award the landlords the outstanding amount due for Hydro of \$44.00.

As the landlords were partially successful in their application they may recover the \$100.00 filing fee from the tenants.

Using the offsetting provisions contained in section 72 of the *Act*, the landlords may apply the tenants' security deposit in its entirety against the monetary award granted.

Conclusion

Pursuant to sections 67 & 72 of the *Act*, I grant the landlords a Monetary Order of \$290.00 as follows:

ITEM	AMOUNT
Nominal Damages	\$500.00
Unpaid Hydro	44.00
Return of Filing Fee	100.00
Less Security Deposit	(-350.00)
TOTAL =	\$290.00

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 27, 2019

Residential Tenancy Branch