



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC-S, MND-S, FF

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, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover their filing fee for this application from the tenants pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed the landlords served the tenants with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail. Both tenants confirmed that no documentary evidence was submitted. I accept the undisputed affirmed testimony of both parties and find that both parties have been properly served as per sections 88 and 89 of the Act. Neither party raised any service issues.

During the hearing both tenants confirmed that they each have separate and different mailing addresses. These addresses were confirmed by both tenants and the Residential Tenancy Branch File shall be updated.

Issue(s) to be Decided

Are the landlords entitled to a monetary order for damage, for money owed or compensation for damage or loss and recovery of the filing fee?

Are the landlords entitled to retain all or part of the security and pet damage deposits?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on December 1, 2016 on a fixed term until June 1, 2017 and then thereafter on a month-to-month basis as per the submitted copy of the signed tenancy agreement dated November 12, 2016. The monthly rent was \$1,100.00 payable on the 1st day of each month. A security deposit of \$550.00 and a pet damage deposit of \$550.00 were paid.

The landlords seek a clarified monetary claim of \$3,203.55 which consists of:

\$1,393.48	Estimated Cost for Carpet Replacement
\$353.49	Estimated Cost for Painting/Drywall Repairs
\$320.00	Estimated Cost for Cleaning
\$373.15	Estimated Cost for Replacement of Fridge Door
\$85.00	Estimated Cost for Replacement of Door
\$140.00	Estimated Cost for Handyman Services
\$550.00	Compensation, Loss of Rental Income ½ month (Dec1-14)
\$100.00	Estimated Cost for Hauling/Dumping Items left behind by tenants

These items total, \$3,315.12. The landlord provided no explanation as to the difference provided in the filed application and the monetary worksheet completed. As such, both parties were notified during the hearing that the landlord's monetary claim would be limited to the amount filed of \$3,203.55.

The landlords claim that the tenants vacated the rental unit leaving it dirty and with damage. The landlords have submitted 26 photographs of the rental unit after the tenant ended. The landlords noted that the rental unit was brand new upon start of this tenancy. The landlord also claimed that the tenants left the walls damaged requiring repair and painting. The landlords stated that 8 hours of labour were required at \$25.00 per hour for an estimated \$353.49, \$15.57 for drywall material and \$62.92 for paint, but that materials used were provided by the landlords' family member, no actual expenses

were incurred and no receipts provided. The landlords stated that 8 hours of cleaning were required at \$40 per hour totalling, \$320.00 was estimated. The landlords rely on the submitted photographs of the rental unit at the end of tenancy. The landlord seeks \$372.15 for the cost of replacing a damaged fridge door caused by the tenants. The landlords seek an estimated \$85.00 for repair of a door crack, but did not provide any details of the estimate. The landlords seek \$140.00 for handyman services (labour) to fix the closet door tracks and replace a sink plug. The landlord also seeks \$550.00 for compensation in the loss of rent for the period December 1 to 14. The landlord stated that the unit was being showed by the landlord in an effort to re-rent the unit as quickly as possible, but because of the damage/repairs, all the prospective tenants refused the tenancy. The landlord seeks \$100.00 for the estimated cost of garbage removal and dump fees. The landlords provided no evidence of details of this estimated cost.

The tenants disputed the landlord's claims stating that at the end of tenancy, the tenants had the carpet cleaned twice, the first attempt as unsuccessful and the second attempt cleaned "most", but left 1 stain. The tenants acknowledged that there were spot repairs required. The tenants argued that the landlord provided no proof of loss or damage. The tenants argued that repairs were made by the tenants, but confirmed that there were large holes left. The tenants argued that the holes left were the result of normal wear and tear. The tenants provided affirmed testimony that there was a crack door left that required replacement. The tenants argued that the closet doors came off due to wear and tear. The tenants stated that this issue was reported to the landlord, but that no action was taken.

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 claim, I accept the affirmed testimony of both parties and find that the landlord has established a claim for compensation. However, the landlords' claims are primarily estimated costs in which no invoices/receipts were provided. In most cases, the

landlord did not actual incur an expense. Although the tenants disputed the landlords' claims, the tenants have admitted that a stain and spot repairs were required in the carpet; that there were holes left in the walls requiring repair; a cracked door required replacement; and cleaning was required. As such, I find that the landlord has failed to establish a monetary claim has filed, but has provided sufficient evidence of a loss based primarily on the tenants' direct testimony. On this basis, I grant the landlord an arbitrary nominal award for \$1,360.00 as no invoices/receipts were submitted and the monetary claims were based upon estimates for things where no expenses were incurred. The landlords did provide sufficient evidence of damage and loss as per the submitted photographs and the direct testimony of both parties.

The landlords have established a total monetary claim of \$1,360.00. The landlords having been successful are also entitled to recovery of the \$100.00 filing fee. I authorize the landlord to retain the \$1,100.00 combined security and pet damage deposits in partial satisfaction of this claim.

Conclusion

The landlords are granted a monetary order for \$360.00

This order must be served upon the tenants. Should the tenants fail to comply with the order, the 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: March 26, 2019

Residential Tenancy Branch