



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: FFL MNDCL-S MNDL-S

Introduction

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

- a monetary order for damage, monetary loss or money owed under the Act, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The tenants confirmed receipt of the landlord's application for dispute resolution hearing and evidence. In accordance with sections 88 and 89 of the Act, I find the tenants duly served with the landlord's application and evidence. The tenants did not submit any written evidence for this hearing.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation for money owed or losses?

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

Background and Evidence

This fixed term tenancy began on August 23, 2017, and ended on August 31, 2018. Monthly rent was set at \$2,600.00, payable on the first day of each month. The landlord collected a security deposit of \$1,300.00 which the landlord still holds.

The landlord is requesting monetary compensation as follows:

Unpaid Utilities	\$170.02
Cleaning & Damages	1,129.98
Total Monetary Award Requested	\$1,300.00

The landlord is requesting to retain the entire security deposit of \$1,300.00 in satisfaction of the losses associated with this tenancy. The landlord provided a utility statement in the amount of \$170.02 for unpaid utilities. The tenants testified that they had never received this utility bill, and that the amount owing should be pro-rated for the remaining rental period of 8 days.

The landlord is also claiming for \$1,129.98 for damage left by the tenants, as well as for cleaning. The landlord testified that the tenants did not complete the move-out inspection report as the tenants left. The landlord testified that the tenants did not maintain the home or the yard, including the garden plots. The landlord submitted photos, as well as receipt for carpet cleaning in the amount of \$257.25 dated September 8, 2018. The landlord also testified that the tenants failed to return keys, which included mail keys and 2 door keys.

Analysis

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

Section 37(2)(a) of the *Act* stipulates that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean, and undamaged condition except for reasonable wear and tear. I have reviewed the landlord's monetary claim for damages, and have taken in consideration of the evidentiary materials submitted by the landlord, as well as the sworn testimony of both parties.

I find that although the landlord provided photos, the photos alone do not sufficiently support that the tenants had caused the damage or loss. Furthermore, in the absence of receipts or invoices, other than the receipt for carpet cleaning, I am not satisfied that the landlord had supported the value of his losses claimed. On this basis, I dismiss the

landlord's monetary claim for damages without leave to reapply. As I find the landlord provided sufficient evidence to support that the carpets were not properly cleaned, I allow the landlord's monetary claim for \$257.25.

I find that that the landlord had provided sufficient evidence to support the unpaid utility bill, which came after the tenancy had already ended. As the utility statement is for a 70 day period with a reading done on September 8, 2018, 8 days after the tenancy had ended, I allow the landlord a monetary claim for a prorated amount of \$150.59 for the utilities used for 62 days of the 70 day period ($\$170.02/70 \text{ days} * 62 \text{ days}$)

The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. As the landlord was only partially successful in their application, I find that the landlord is entitled to recover half of the \$100.00 filing fee paid for this application.

The landlord continues to hold the tenants' security deposit of \$1,300.00. In accordance with the offsetting provisions of section 72 of the Act, I order the landlord to retain a portion of the tenant's security deposit in satisfaction of the monetary claim.

Conclusion

I allow the landlord a monetary award of \$457.84 for the losses associated with this tenancy as set out in the table below. As the landlord still is in possession of the tenants' security deposit, I allow the landlord to retain a portion in satisfaction of the monetary award. The remaining \$842.16 of the tenants' security deposit is to be returned to the tenants.

The tenant(s) are provided with a monetary order in the amount of \$842.16 and 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.

Security Deposit Held by Landlord	\$1,300.00
Unpaid Utilities (prorated for 62 days)	-150.59
Carpet Cleaning	-257.25
Half of Filing Fee	-50.00
Remaining Security Deposit to be Returned to Tenants	\$842.16

The remainder of the landlord's monetary claim 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: March 13, 2019

Residential Tenancy Branch