



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, FFL

Introduction

This teleconference hearing was scheduled in response to an application by the Landlord under the *Residential Tenancy Act* (the “Act”) for monetary compensation for damages, to retain the security deposit towards compensation owed and for the recovery of the filing fee paid for the Application for Dispute Resolution.

An agent for the Landlord (the “Agent”) was present for the teleconference hearing, as were both Tenants. The Tenants confirmed receipt of the Notice of Dispute Resolution Proceeding package but stated that they did not receive any evidence from the Landlord. The evidence that was received from the Landlord at the Residential Tenancy Branch was reviewed with the Tenants and they confirmed that they did not have the documents.

As the Tenants’ forwarding address had not been provided, the Agent stated that the Tenants were each served with a package at their place of work. She stated that this included the Notice of Dispute Resolution Proceeding documents as well as a copy of the Landlord’s evidence.

However, without further evidence to confirm what was sent to the Tenants, I am not able to establish that the Tenants were served with a copy of the Landlord’s evidence as required by the *Residential Tenancy Branch Rules of Procedure*. As such, the Landlord’s evidence is not accepted and will not be included in this decision. The Tenants confirmed that they did not submit any evidence prior to the hearing. This decision will be based on the verbal testimony of both parties.

Issues to be Decided

Is the Landlord entitled to monetary compensation?

Should the Landlord be authorized to retain the security deposit and/or pet damage deposit towards any compensation owed?

Should the Landlord be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

The parties were in agreement that the tenancy began on June 1, 2018 and that monthly rent was \$1,950.00. The Tenants stated that the tenancy ended on February 1, 2018 while the Agent stated that the tenancy ended on March 1, 2018. The Tenants testified that one of them resided in the unit under a previous tenancy agreement with a different roommate and at the start of that tenancy paid \$900.00 for the security deposit and \$900.00 for a pet damage deposit, which was then transferred to this tenancy. The Agent testified that the Tenants paid \$925.00 for a pet damage deposit and \$925.00 for a security deposit.

The Landlord has applied for \$1,925.00 which the Agent stated includes two invoices paid for repairs and cleaning; one for \$950.00 and one in the amount of \$975.00.

The Agent testified that the Tenants and Landlord completed an inspection report at move-in and that a move-out inspection was arranged for February 28, 2019, which was the date that the tenancy was supposed to end. However, as the Tenants did not attend, the Agent stated that the move-out inspection was completed without them.

The parties were in agreement that the Tenants did not authorize any deductions from their deposits and also that no amount from either deposit has been returned. The parties also agreed that the Tenants have not provided a forwarding address.

The Agent stated that the Tenants left belongings at the rental unit which they never came back for. She also stated that repairs and cleaning were required throughout the unit but was unable to provide specific information about the repairs that were completed other than painting.

The Tenants stated that they participated in a move-in inspection but were never contacted about a move-out inspection. They disputed that there were repairs or cleaning needed in the rental unit and stated that it was difficult to respond to the claim for repairs without knowing what kind of repairs were done. The Tenants stated that the rental unit was not in good condition at the start of the tenancy.

Analysis

The Landlord applied for compensation in the amount of \$1,925.00. In order to determine if compensation is due, the *Residential Tenancy Policy Guideline 16: Compensation for Damage or Loss* outlines a four-part test as follows:

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

However, I find insufficient testimony and evidence to establish that the Landlord is entitled to compensation for repairs and/or cleaning. While Section 37 of the *Act* requires that a tenant leave the rental unit reasonably clean and undamaged at the end of the tenancy, I do not have evidence before me to confirm that the Tenants breached the *Act* by leaving the unit dirty or in need of repairs.

I also note that the Agent was unable to specify the repairs and cleaning required. The Tenants did not agree that they owed any money for cleaning and/or repairs. As stated by rule 6.6 of the *Residential Tenancy Act* the onus to prove a claim, on a balance of probabilities, is on the party making the claim. In this matter, I find that the Landlord did not meet the four-part test as I find that I cannot establish that the Tenants breached the *Act* and that the Landlord is entitled to compensation as a result.

Accordingly, I decline to award the Landlord any compensation for repairs or cleaning and also decline to award the recovery of the filing fee. The Landlord's application for compensation is dismissed, without leave to reapply.

Regarding the security deposit and pet damage deposit, I refer to Section 38(1) of the *Act* that states the following:

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

As the Tenants testified that they have not yet provided their forwarding address to the Landlord in writing, I find that the Landlord is within their right to hold onto the deposits. Should the Tenants provide the Landlord their forwarding address **in writing**, the Landlord has 15 days to comply with Section 38(1) as above. Should the Landlord not comply with Section 38(1), the Tenants may be entitled to the return of double their deposits, pursuant to Section 38(6). I also note Section 39 of the *Act* which states that a landlord may retain the deposits if a forwarding address is not provided within one year after the end of the tenancy.

Conclusion

The Application for Dispute Resolution 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: May 24, 2019

Residential Tenancy Branch