



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT LRE MNDCT MNSD OLC RR FFL MNDCL-S MNRL-S

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlord requested:

- a monetary order for unpaid rent or utilities, or for money owed or compensation for damage or loss pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants requested:

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38;
- a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to suspend or set conditions on the landlord’s right to enter the rental unit pursuant to section 70;
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- authorization to recover the filing fee for this application from the landlord 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.

Both parties confirmed receipt of each other’s applications for dispute resolution hearing package (“Applications”) and evidence. In accordance with sections 88 and 89 of the

Act, I find that both the landlord and tenants were duly served with the Applications and evidence.

At the outset of the hearing, the tenants indicated that they wished to withdraw their entire application, and requested leave to reapply. Accordingly, the tenants' entire application is cancelled, with liberty to reapply. I make no findings on the merits of the matter. Liberty to reapply is not an extension of any applicable limitation period.

The landlord also indicated that they wished to only continue with their application for cleaning and recovery of the filing fee, and withdraw the remainder of their claim with leave to reapply. Accordingly, the hearing proceeded in order to address the landlord's application for recovery of cleaning costs and the filing fee. The remaining portion of the landlord's application is cancelled, with liberty to reapply. I make no findings on the merits of the matter. Liberty to reapply is not an extension of any applicable limitation period.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation for 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 January 1, 2019, with monthly rent set at \$1,300.00. The landlord collected a security deposit in the amount of \$650.00, which he still holds. The tenants do not dispute the fact that this was a fixed term tenancy which was to end on December 31, 2019. The tenants moved out on April 30, 2019, prior to the end of this fixed term tenancy.

The landlord is seeking a monetary order equivalent to the value of the security deposit in satisfaction of the costs to clean the unit at the end of the tenancy. The landlord testified that the tenants had vacated the rental unit, but left their belongings behind. As a result, the landlord testified that he has been unable to show the rental unit to prospective tenants. The tenants do not dispute that they had left some belongings behind, but testified that they were unable to make arrangements with the landlord to do retrieve their belongings. The landlord submitted in his application that he felt \$650.00 was fair market value for the cost of cleaning a 2 bedroom rental unit. The landlord submitted photos to support his claim.

The tenants testified that the landlord failed to perform both a move-in and move-out inspection, and provide them with reports, as required by the Act. The tenants further testified that the previous tenants had failed to leave the rental unit in reasonably clean

condition, and had left items behind, which included garbage. The tenants testified that they had to clean the rental unit, which included oil stains and dirt, as well as throw out dirty items. The tenants provided photos and video footage to show the condition of the rental unit, which they felt reflected the poor condition of the rental unit when they had moved in.

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 or 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 landlord to prove, on a balance of probabilities, that the tenants had caused the landlord a monetary loss for their failure to leave the rental unit in reasonably clean condition.

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 except for reasonable wear and tear. Sections 23 and 35 of the *Act* require the landlord to perform both move-in and move-out inspections, and fill out condition inspection reports for both occasions. The consequence of not abiding by these sections of the *Act* is that “the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished”, as noted in sections 24(2) and 36(2) of the *Act*.

The tenants dispute the landlord’s monetary claim for cleaning. The tenants feel that the landlord’s testimony is not reflected in the evidence submitted by the landlord, and contradicted by their evidence showing the unit in less than satisfactory condition. As stated above, the burden of proof falls on the landlord to not only support that the tenants had contravened the *Act*, but that this contravention had caused the landlord to suffer the value of the loss claimed. I have considered the evidence submitted, and it was undisputed that the landlord had failed to comply with section 23 and 35 of the *Act* by failing to perform both move-in and move-out inspections, and provide copies of the reports to the tenants. These reports are important tools for ascertaining the condition of the rental unit at the beginning and end of the tenancy, especially in light of conflicting evidence and testimony as is the case here. As stated above, the consequence of failing to comply with these sections extinguishes the right of the landlord to claim

against the security deposit. It was undisputed that the landlord had failed to comply with sections 23 and 35 of the *Act*. Furthermore, I am not satisfied that the landlord has met the burden of proof to show that the tenants had failed to comply with the *Act*, and that this breach had caused the landlord a monetary loss equivalent to the damage deposit. For these reasons, I dismiss the landlord's monetary claim for cleaning without leave to reapply.

As the landlord was unsuccessful with his claim, his application to recover the filing fee is also dismissed without leave to reapply.

Conclusion

The landlord's monetary claim for cleaning and recovery of the filing fee are both dismissed without leave to reapply.

The tenants are provided with a Monetary Order in the amount of \$650.00 for the return of their security deposit, and the landlord(s) must be served with **this Order** as soon as possible. Should the landlord(s) 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.

The tenants' entire application is cancelled, with leave to reapply. The remaining portion of the landlord's application is cancelled, with leave to reapply. I make no findings on the merits of these matters. Liberty to reapply is not an extension of any applicable limitation period.

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 31, 2019

Residential Tenancy Branch