



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, MNDL-S, FFL

Introduction

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

- a monetary order for unpaid rent, utilities and for damage to the rental unit, pursuant to section 67;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The two landlords, landlord JW ("landlord") and "landlord MD" (collectively "landlords"), the tenant, the tenant's support person, and the tenant's advocate attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 119 minutes. The landlords spoke for the majority of the hearing time.

The two landlords are sisters. "Witness SW" testified on behalf of the landlords and is the daughter of the landlord. The witness was excluded from the outset of the hearing and called back later during the hearing after both parties testified. Both parties had equal opportunities to question the witness. The tenant's support person did not testify at this hearing. The tenant confirmed that her advocate had permission to speak on her behalf at this hearing.

The tenant's advocate confirmed receipt of the landlords' application for dispute resolution hearing package and the landlord confirmed receipt of the tenant's evidence package. In accordance with sections 88, 89 and 90 of the *Act*, I find that the tenant was duly served with the landlords' application and both landlords were duly served with the tenant's evidence package.

The tenant's advocate stated that she could not access the landlords' second USB drive of digital evidence. She said that she did not let the landlords know because they told her to cease and desist from contacting them. The parties spoke at length about a separate ongoing Court action that they have regarding alleged harassment. The tenant's advocate claimed that the evidence was late as it was sent by registered mail on May 17, 2019, and received by the tenant on May 21, 2019. The landlord stated that it was responsive evidence so it was not late. She claimed that she did not submit an RTB-43 form for "Digital Evidence Details," as required by Rules 3.10.1 to 3.10.4 of the RTB *Rules of Procedure*, nor did she confirm that the tenant had playback equipment and could see and hear the digital evidence. I notified both parties that I could not consider the landlords' second USB drive of digital evidence because they did not comply with Rule 3.10.5 of the RTB *Rules of Procedure* in ensuring that the tenant had playback equipment and could access the evidence, nor did they provide the required digital evidence details form.

Preliminary Issue – Inappropriate Behaviour by the Landlords and Witness SW during the Hearing

Rule 6.10 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* states the following:

6.10 Interruptions and inappropriate behaviour at the dispute resolution hearing

Disrupting the hearing will not be permitted. The arbitrator may give directions to any person in attendance at a hearing who is rude or hostile or acts inappropriately. A person who does not comply with the arbitrator's direction may be excluded from the dispute resolution hearing and the arbitrator may proceed in the absence of that excluded party.

Throughout the conference, the two landlords interrupted me, talked at the same time as me, and argued with me. They were hostile towards me and laughed when I asked them questions and made statements. The two landlords and witness SW were upset when I asked witness SW to move to a quieter area when she first called into the conference, as there was a lot of noise in the background since she was in a public area.

I cautioned both landlords multiple times to stop interrupting me and acting inappropriately towards me. I notified them that my role as an Arbitrator required me to maintain control of the conference, ensure that only one person was speaking at a time,

and confirm that all parties speak respectfully and provide testimony when it is their turn to speak. I asked them to allow me to speak so that I could effectively conduct the hearing. I notified them that I would give them a chance to speak and present their case, as well as respond to questions.

The hearing took longer because of the disruptive behaviour of the two landlords. The behaviour of the two landlords improved as the hearing went on. I allowed the two landlords to attend the full hearing, in order to provide them with a full opportunity to present their application and respond to the tenant's questions and comments.

I caution the two landlords and witness SW to not engage in the same inappropriate and disruptive behaviour at any future hearings at the RTB, as this behaviour will not be tolerated and they may be excluded from future hearings. In that event, a decision will be made in the absence of the landlords.

Issues to be Decided

Are the landlords entitled to a monetary order for unpaid rent, utilities and for damage to the rental unit?

Are the landlords entitled to retain the tenant's security deposit?

Are the landlords entitled to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties and witness SW, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the landlords' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on February 1, 2017 and ended on January 15, 2019. Monthly rent in the amount of \$1,200.00 was payable on the first day of each month. A security deposit of \$600.00 was paid by the tenant and the landlords continue to retain this deposit. A written tenancy agreement was signed by both parties. A move-in condition inspection report was completed for this tenancy. The tenant provided a written forwarding address to the landlords on February 6, 2019, by way of registered mail, which the landlords received on February 11, 2019. The landlords did not have any written permission to keep any part of the tenant's security

deposit. The landlords filed this application to keep the security deposit on February 22, 2019.

The landlord claimed that a move-out condition inspection report was completed for this tenancy; the tenant disputed this.

The landlords seek a monetary order of \$862.50 plus the \$100.00 application filing fee. The landlords provided invoices, letters, photographs, and other evidence to support their claims. The tenant also provided photographs, a written response and other evidence to support her submissions.

The landlords seek \$130.00 in dump fees, stating that they had to hire someone to remove the garbage and other items left behind by the tenant in the rental unit. They provided the first handwritten statement, dated February 15, 2019, from the contractor they said completed the work. The landlords provided a second statement, dated April 10, 2019, with the contractor's name and address with a signature. The second statement further indicated that the contractor would be out of town as of April 12, 2019 for a period of three months and could only be contacted after that period of time.

The tenant disputes the dump fee costs, stating that the rental unit was not abandoned, that the furniture inside the rental unit was the landlords so it was left behind for them, and that she is not responsible for the disposal costs.

The landlords seek \$120.00 to clean the refrigerator and stove and for a paint touch-up. The landlords produced a signed invoice, dated January 28, 2019, for \$120.00. The invoice indicates a handwritten note that it was paid in cash. The contractor did not appear at this hearing. Witness SW stated that she cleaned the refrigerator and stove at the rental unit and that this contractor helped her in between waiting for the paint to dry, in order to get the work done efficiently and because it was a large task.

The landlords seek \$412.50 for general cleaning, washing the walls and waxing the floor. The landlords provided an invoice but not a receipt for this cost. Witness SW testified that she cleaned the rental unit, which was very dirty. She explained that she cleaned the kitchen cupboards, the stick, greasy, filmy floors, and stripped and waxed the floors. She stated that the unit looked like it had not been cleaned in months and the tenant likely did not maintain cleanliness during her tenancy. She said that she cleaned the food inside the refrigerator as well as the stove. She testified that she did not have her invoice in front of her, she could produce it at a later time, she agreed with

whatever was in the invoice, and she could not recall if she cleaned in January or February 2019. She did not confirm a date or method of payment.

The tenant disputes the landlords' cleaning and painting costs, stating that no instructions for cleaning, including waxing the floor, were given by the landlords before the tenant moved out. The tenant stated that she tried to return to the rental unit to clean but she could not get in touch with the landlords. The landlords disputed this, stating that the tenant still had the keys to the rental unit and said she would come back to clean, including leaving a note to this effect which they provided for this hearing, so she did not need to contact the landlords to do so.

The landlords seek \$200.00 for unpaid rent and utilities. During the hearing, the tenant agreed that she owed this amount and to pay this cost to the landlords.

Analysis

Section 67 of the *Act* requires a party making a claim for damage or loss to prove the claim, on a balance of probabilities. In this case, to prove a loss, the landlords must satisfy the following four elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the tenant in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the landlords followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

I award the landlords \$200.00 for unpaid rent and utilities. The tenant agreed to pay this amount during the hearing.

I award the landlords \$206.25, which is half the cost of the \$412.50 that they charged for general cleaning, washing the walls and waxing the floor. The landlords provided an invoice for this cost. The tenant confirmed that she did not finish cleaning the rental unit when she vacated and that she intended to go back and finish but did not do so. The landlords produced a note from the tenant, which the tenant confirmed she wrote, indicating that the tenant still had the keys to the unit and she would return to finish cleaning. Witness SW testified that she completed the above work in the rental unit, although she could not confirm the details of the invoice, as she did not have it in front

of her, nor could she confirm whether she did the work in January or February 2019. For the above reasons, I have only awarded half the amount of the invoice, as I find it is a reasonable amount for the work completed.

On a balance of probabilities and for the reasons stated below, I dismiss the remainder of the landlords' application without leave to reapply.

I dismiss the landlords' claim for \$130.00 for dump fees, without leave to reapply. The tenant disputed this cost. The landlords did not provide an invoice or receipt for this amount. The person who completed this work did not appear at this hearing and stated that he was busy for three months as of April 12, 2019, so he could only be reached after that time. The landlords produced two written statements, one from February 15, 2019 and one from April 10, 2019. The first statement was unsigned, did not indicate the name of the contractor or the company that completed the work, or if and when he was paid by the landlords for the work. The second statement included another tenant, unrelated to this proceeding or this rental unit, and the damages in that other unit. This second statement did not indicate if or when anything was paid by the landlords or the amount of dump fees.

I dismiss the landlords' claim for \$120.00 to clean the refrigerator and stove and complete a paint touch-up at the rental unit, without leave to reapply. The tenant disputed this cost. The contractor who completed this work and issued the invoice did not appear at this hearing to testify as to why he and witness SW were both required to clean the same refrigerator and stove and he charged separately for it, or when he was paid cash by the landlords for the work he did. I have included general cleaning in the above amount awarded to the landlords of \$206.25.

As the landlords were not fully successful in this application, I find that they are not entitled to recover the \$100.00 filing fee from the tenant.

I find that the landlords continue to hold the tenant's security deposit of \$600.00. I find that the tenant is not entitled to double the value of her deposit because the landlords applied on February 22, 2019, to retain the deposit against unpaid rent and utilities, not only damages, within 15 days of receiving the tenant's forwarding address on February 11, 2019. The landlords' right to claim against the deposit for only damages was extinguished for failure to provide the tenant with the proper RTB form for a final opportunity to conduct a move-out condition inspection.

Over the period of this tenancy, no interest is payable on the tenant's security deposit. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlords to retain \$406.25 from the tenant's security deposit of \$600.00 and return the remainder of \$193.75 to the tenant within 15 days of receipt of this decision. The tenant is provided with a monetary order in the amount of \$193.75 against the landlords.

Conclusion

I order the landlords to retain \$406.25 from the tenant's security deposit of \$600.00 in full satisfaction of the monetary order.

The remainder of the landlords' application is dismissed without leave to reapply.

I issue a monetary order in the tenant's favour in the amount of \$193.75 against the landlords. The landlords must be served with this Order as soon as possible. Should the landlords 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.

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: June 10, 2019

Residential Tenancy Branch