



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL

Introduction

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

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

The two landlords (male and female) and the two tenants (male and female) 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 29 minutes.

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

I explained the hearing and settlement process to both parties. Both parties affirmed that they wanted to proceed with this hearing, they did not want to settle this claim, there were no objections to any evidence, and neither party requested an adjournment.

Issues to be Decided

Are the landlords entitled to a monetary order for damage to the rental unit?

Are the landlords entitled to retain the tenants' 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 evidence and testimony of both parties, 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 September 1, 2018 and ended on March 1, 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 tenants and the landlords continue to retain the deposit in full. A written tenancy agreement was signed by both parties. The rental unit is a basement suite. A move-in condition inspection report was completed for this tenancy but a move-out condition inspection report was not. The landlords did not have written permission to keep any part of the security deposit. The tenants provided a written forwarding address in a letter that was left in the landlords' mailbox and received on February 24, 2019. The landlords' application to retain the tenants' security deposit was made on February 24, 2019.

The landlords seek a monetary order of \$551.25 plus the \$100.00 application filing fee. The landlords claimed that they had to pay \$551.25 to repair the basement suite sewage sump pump on an emergency basis because it stopped working and the sewage was backing up onto the flooring. They explained that there are two separate pumps, one for the upstairs suite and one for the basement suite. They stated that they had to call the repair company, the plumber had to break the seal on the pump, and the plumber located a "fibrous large mass" that was covered in "gunk" that was stuck in the pump. The landlords maintained that the plumber told them verbally, but not in writing, that the damage was caused by the tenants, it came from their basement suite, and there was no other way the damage was caused. The landlords produced an invoice and a credit card receipt for the above amount, claiming that they asked the tenants for payment, but they refused. They also provided photographs of the damaged areas.

The tenants dispute the landlords' claim. They stated that they did not cause any damage to the sump pump, they did not flush any improper items down the toilet, and they hardly had any guests over at their rental unit. They claimed that they showed the landlords' invoice and photographs to two other certified plumbers and they were told

that it was impossible to say that the pump obstruction was the fault of the tenants, that it came from their rental unit, and even if it did come from their unit, that it was caused during their brief six month tenancy. The tenants produced two letters for this hearing, signed by both plumbers, with their contact information, confirming the above.

The landlords claimed that they did not contact the tenants' plumbers. They also stated that the tenants did not come to see the damage or the repair while it was occurring, choosing instead to take a shower during this time. The tenants maintained that the landlords told them that they did not know who caused the damage. The tenants also stated that they did not discuss this damage with the landlords. They maintained that the landlords just filed an application, asking to retain their security deposit for the damage.

Analysis

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicants to establish 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 tenants 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 find that the landlords failed part 2 of the above test. I find that they failed to show that the damage caused in the sump pump was due to the tenants' actions or negligence and that it occurred during their short six month tenancy. I find that the landlords failed to provide written documentation from their plumber who repaired the pump, that the tenants caused the damage during their tenancy or that the damage came from the basement suite. This was not indicated on the plumber's invoice, which talks about the repair. The landlords' plumber did not appear at this hearing to provide witness testimony or to confirm his invoice.

I find that the tenants provided two written letters, from two separate plumbers, that questions the landlords' allegations that the tenants caused the damage during their tenancy. The plumbers reference the photographs and invoice from the landlords, in stating that even if the damage did come from the basement suite, which they question, that it cannot be definitively tied to the tenants' short tenancy. They talk about different ways that the pump can become clogged and that the clog could date as far back as when the house was built or because of wear and tear. The landlords did not contact the tenants' two plumbers, nor did they request to cross-examine them at this hearing.

Since the landlords were unsuccessful in this application, I find that they are not entitled to recover the \$100.00 application filing fee from the tenants.

Security Deposit

Section 38 of the *Act* requires the landlords to either return the tenants' security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenants' provision of a forwarding address in writing. If that does not occur, the landlords are required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the deposit. However, this provision does not apply if the landlords have obtained the tenants' written authorization to retain all or a portion of the deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenants to pay to the landlords, which remains unpaid at the end of the tenancy (section 38(3)(b)).

The tenancy ended on March 1, 2019. The tenants provided the landlords with a written forwarding address on February 24, 2019. The tenants did not give the landlords written permission to retain any amount from their security deposit. The landlords did not return the full deposit to the tenants. The landlords filed an application for dispute resolution to claim against the deposit on February 24, 2019. However, the landlords' right to claim against the deposit for damages was extinguished for failure to complete the move-out condition inspection report, as required by sections 35 and 36 of the *Act*. The landlords applied for damages in this application.

The landlords continue to hold the tenants' security deposit of \$600.00. Over the period of this tenancy, no interest is payable on the deposit. As per section 38(6) of the *Act* and Residential Tenancy Policy Guideline 17, I find that the tenants are entitled to double the value of their security deposit of \$600.00, totalling \$1,200.00.

As per Residential Tenancy Policy Guideline 17, although the tenants did not apply for the return of their security deposit or the doubling, they did not waive their right to the doubling and I am required to deal with the return of the deposit since the landlords applied to retain the deposit.

Conclusion

The landlords' entire application is dismissed without leave to reapply.

I issue a monetary order in the tenants' favour in the amount of \$1,200.00 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 14, 2019

Residential Tenancy Branch