



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL, MNDL, MNDCL-S, FFL

Introduction

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

- a monetary order for unpaid rent, for damage to the rental unit and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenants' security and pet damage deposits (collectively "deposits"), pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord 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 92 minutes.

The hearing began at 1:30 p.m. and ended at 3:02 p.m. The male tenant left the hearing at approximately 2:39 p.m. The male tenant confirmed that the female tenant had permission to speak on his behalf in his absence (collectively "tenants").

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

Issues to be Decided

Is the landlord entitled to a monetary order for unpaid rent, for damage to rental unit, and for compensation for damage or loss under the *Act, Regulation* or tenancy agreement?

Is the landlord entitled to retain the tenants' deposits?

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

Background and Evidence

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

Both parties agreed to the following facts. This tenancy began on May 1, 2018 for a fixed term of one year ending on April 30, 2019. The tenants vacated the rental unit on February 19, 2019. Monthly rent of \$2,200.00 was payable on the first day of each month. A security deposit of \$1,100.00 and a pet damage deposit of \$500.00 were paid by the tenants and the landlord continues to retain both deposits. Both parties signed a written tenancy agreement. Move-in and move-out condition inspection reports were completed for this tenancy. The tenants provided a written forwarding address in a letter that the landlord received on February 22, 2019. The landlord filed this application to retain the tenants' deposits on March 8, 2019.

The tenants stated that they gave the landlord written permission to keep \$110.00 from their deposits towards water utility charges, while the landlord claimed that it was \$210.00 as noted on the move-out condition inspection report. The tenants claimed that the landlord altered information on the move-out report after the tenants signed it and disagreed with it. The tenants explained that they signed the move-in condition inspection report under duress.

The landlord seeks a monetary order of \$4,927.83 plus the \$100.00 application filing fee. At the hearing, the landlord modified a number of claims by providing the actual number of loss, rather than the total estimate of \$5,037.70 originally provided with her application.

Both parties agreed that they attended a previous RTB hearing before a different Arbitrator on January 10, 2019, after which a settlement decision was issued on the

same date. Both parties agreed that the terms of the settlement were as follows (my emphasis added):

1. *The tenancy shall end no later than February 28, 2019 and the tenants shall return vacant possession of the rental unit to the landlord by that date.*
2. *The male tenant shall not participate in the move-out inspection with the landlord.*
3. **The tenants remain obligated to pay rent for February 2019 and any utilities they are required to pay under the tenancy agreement.**
4. *The security deposit and pet damage deposit remains in trust to be administered in accordance with the Act at the end of the tenancy.*
5. *The tenants waive the right to pursue the landlord for any monetary compensation for damages or loss they may have suffered during the tenancy, with the exception of return of the security deposit and pet damage deposit.*
6. **The landlord waives the right to pursue the tenants for monetary compensation for damages or loss, including liquidated damages, with the exception of claims she may determine at the end of the tenancy for: cleaning, damage to the property for which the tenants are responsible for repairing, and unpaid utilities, if any.**

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. To prove a loss, the landlord must satisfy the following four elements on a balance of probabilities:

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*, *Residential Tenancy 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 landlord followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

I award the landlord \$105.77 of the \$210.00 claimed for water utilities. The tenants agreed to pay \$105.00 because that is the only water bill they said they received from the landlord. The landlord only provided a copy of a water utility payment made for \$105.77, not the other amounts claimed, as she handwrote her own amounts on the bill

to indicate that the tenants owed \$188.77. The landlord claimed that even though she only paid \$188.77 she was entitled to \$210.00 because the tenants agreed to pay it on the move-out report. I find that the landlord cannot claim for costs she did not pay for, so she is only entitled to the \$105.77 that she proved above.

I dismiss the landlord's claims for a loss of March 2019 rent of \$2,200.00, the CTIS report of \$236.25, and the February 2019 late rent fee of \$25.00. The tenants disputed these costs, claiming that the landlord agreed not to claim for them after the previous RTB settlement. I find that the landlord voluntarily agreed in the previous RTB settlement on January 10, 2019, that she would not make any claims except for cleaning, damages and utilities. I find that the above costs are for a loss of rent, a late fee, and a report from a company that the landlord asked to accompany her to the rental unit to deal with the tenants.

I dismiss the landlord's claim for \$249.85 for cleaning the carpets, including the cat treatment. The tenants disputed this cost, stating that they cleaned the carpets by renting a steam cleaner, they provided photographs of same, they claimed that the landlord's invoice was missing important information, and they said that the rental unit was not professionally cleaned at the beginning of the tenancy so it did not have to be professionally cleaned at the end of the tenancy as per the written tenancy agreement. I accept the tenants' evidence that they steam cleaned the carpets and I find that the landlord's invoice does not include the date of cleaning or the address of the rental unit to show which property was cleaned.

I dismiss the landlord's claim for \$202.13 to clean the rental unit, \$63.00 for junk removal, \$300.00 to clean the outside trees and branches, \$625.00 to paint the unit, and \$104.86 for paint supplies and the three tiles for the kitchen and hallway. The tenants disputed these costs, claiming that they cleaned property and provided photographs of same. I accept the tenants' testimonial and documentary evidence, including photographs, that they properly cleaned the rental unit and that no painting was required. I find that the tenants did not cause damages beyond reasonable wear and tear, as required by Residential Tenancy Policy Guideline 1.

I dismiss the landlord's claim for \$183.75 to replace the exterior front light sensor and the dryer vent cover and \$185.00 for the hot water tank repair. The tenants disputed these costs. I find that the tenants are not responsible for these damages because they provided documentary evidence that they complained to the landlord about these issues during their tenancy but the landlord failed to fix them.

I dismiss the landlord's claim for \$30.93 for the broken butter cover in the refrigerator. The tenants disputed this cost. I accept the tenants' evidence that the move-in condition inspection report notes "fridge bar & shelf cracked," on page 1, so this damage was present when the tenants moved in and they did not cause it.

I dismiss the landlord's claim for \$41.06 to replace the lint dryer catcher, which she said had a hole. The tenants disputed this cost. I accept the tenants' evidence that they did not cause this damage and they left the filter in the dryer when moving out.

I dismiss the landlord's claim for \$210.00 to pay her husband to fix various items in the rental unit. The tenants disputed this cost. The landlord did not provide documentary proof that she paid her husband cash for the above amount, and there is no invoice or receipt. When I asked the landlord what date she made the payment, she claimed that it was April 7, 2019, almost two months after the tenants had moved out.

I dismiss the landlord's claim for non-slip tape totaling \$61.00. The tenants disputed this cost. I accept the landlord's evidence that she painted over the non-slip tape that she put on the stairs. The tenants claimed that they removed the tape because their child was injured and suffered a concussion from slipping on the stairs. I find that the tenants provided documentary evidence that they complained to the landlord about this danger during their tenancy but the landlord refused to fix it properly.

As the landlord was unsuccessful in this application, I find that she is not entitled to recover the \$100.00 filing fee from the tenants.

The landlord continues to hold the tenants' security and pet damage deposits totaling \$1,600.00. I find that the tenants are not entitled to double the value of their deposits because the landlord applied to retain them on March 8, 2019, within 15 days of the written forwarding address being provided to the landlord on February 22, 2019.

Over the period of this tenancy, no interest is payable on the deposits. I order the landlord to retain \$105.77 from the tenants' security deposit and to return the remainder from both deposits totaling \$1,494.23 to the tenants within 15 days of receipt of this decision. The tenants are provided with a monetary order in the amount of \$1,494.23 against the landlord.

Conclusion

I order the landlord to retain \$105.77 from the tenants' security deposit of \$1,100.00 in full satisfaction of the monetary award.

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

I issue a monetary order in the tenants' favour in the amount of \$1,494.23 against the landlord. The landlord must be served with 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.

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: July 15, 2019

Residential Tenancy Branch