



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND-S, FF, MNSD

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- a monetary order for damage to the rental unit pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover his filing fee for this application from the tenants pursuant to section 72.

The tenants applied for:

- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38;
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

The landlord attended the hearing via conference call and provided undisputed testimony. The tenants did not attend. The landlord stated that the tenants were served via Xpress Post with a Signature requirement on April 15, 2019 and then later with the submitted documentary evidence via Xpress Post with a Signature requirement sometime in May 2019. The landlord stated that he was not served with the tenants' notice of hearing package nor any documentary evidence.

I accept the undisputed testimony of the landlord and find that the tenants were sufficiently served as per sections 88 and 89 of the *Act*. Although the tenants did not

call in and participate in the hearing, I find that the tenants are deemed served as per section 90 of the Act.

On the basis of the landlord's undisputed testimony, I find that the landlord was not served with the tenants' application for dispute and as such dismiss it with leave to reapply for lack of service.

At the outset, the landlord's monetary claim was clarified in which the application was filed for \$800.00, but the landlord provided monetary details totalling, \$1,728.00. This was also reflected in the Residential Tenancy Branch audit notes detailing this discrepancy and the necessary actions if required to amend this monetary claim. As such, the landlord's application is limited to \$800.00 as filed on April 13, 2019.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for money owed for damage and recovery of the filing fee?

Is the landlord entitled to retain all or part of the security deposit?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on April 1, 2018 on a fixed term tenancy ending on April 1, 2019 as per the submitted copy of the signed tenancy agreement dated March 29, 2018. The monthly rent was \$1,700.00 payable on the 1st day of each month. A security deposit of \$850.00 and a pet damage deposit of \$1,700.00 were paid. The landlord provided undisputed testimony that no condition inspection reports for the move-in or the move-out were completed by both parties. The landlord also stated that the entire \$1,700.00 pet deposit was returned to the tenants in two payments of \$850.00 each, once in January 2019 and the second in April 2019.

The landlord seeks a clarified monetary claim of \$800.00 which consists of damage to the walls, baseboards, toilet and the mirror in the bathroom. The landlord stated that the unit was provided to the tenants in a "new" condition as they were the first occupants of the unit after construction. The landlord has provided 20 photographs showing the condition of the rental unit at the end of tenancy in contrast. The landlord

relies upon the submitted estimates for painting and the replacement cost of a cracked mirror. The landlord referred to an email from the painting estimate which supports the landlord's claims that the rental unit was provided to the tenants in a "new" condition and that it noted damaged walls (attempted repairs) inconsistent paint and damage to the doors and window trim. The landlord confirmed that as of the date of this hearing, no repairs have been made and that there is a new tenant residing at the rental unit. The landlord stated that the noted damage forms part of a condition inspection report completed at the move-in for the new tenant.

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/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 the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

In this case, I accept the undisputed evidence of the landlord and find that the tenants vacated the rental unit leaving it damaged and requiring repairs to the walls, doors and window trims. I also find that the tenants vacated the rental unit leaving a damaged "cracked" mirror in the bathroom. I accept the undisputed evidence which consists of the 20 photographs, estimates for repair and the undisputed testimony provided by the landlord. I accept the estimates to be reasonable in the circumstances without any evidence to the contrary. On this basis, I find that the landlord has established a claim for \$800.00.

The landlord having been successful is also entitled to recovery of the \$100.00 filing fee. I authorize the landlord to retain the \$850.00 security deposit in partial satisfaction of the claim.

Conclusion

The landlord is granted a monetary order for \$50.00.

This order must be served upon the tenants. Should the tenants fail to comply with this order, the 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 19, 2019

Residential Tenancy Branch