



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

FFL MNDL MNRL FFT MNSD

Introduction

This hearing dealt with applications from both the landlords and the tenants under the *Residential Tenancy Act* (the *Act*).

The landlords applied for:

- a monetary order for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants made an application for:

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

The tenants did not attend this hearing, which lasted approximately 10 minutes. The teleconference line remained open for the duration of the hearing and the notice of hearing were confirmed to contain the correct information. The landlord GA (the “landlord”) attended the hearing on behalf of both named landlords and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord testified that they served each of the tenants with their application for dispute resolution dated May 7, 2019 and evidence by registered mail sent on or about that date. The landlord provided two Canada Post tracking numbers as evidence of service. Based on the evidence I find that each of the tenants was deemed served with the landlord's materials on May 12, 2019, five days after mailing, in accordance with sections 88, 89 and 90 of the Act.

Issue(s) to be Decided

Are the landlords entitled to a monetary award as claimed?
Are the tenants entitled to any of the relief sought?
Is either party entitled to recover the filing fee from the other?

Background and Evidence

The monthly rent for this tenancy was \$1,350.00, payable by the last day of the previous month. A security deposit of \$600.00 was collected at the start of the tenancy and has been returned in full to the tenants. The tenants gave notice to end the tenancy on February 3, 2019 by text message to the landlord. The tenancy ended February 28, 2019. The tenants provided a forwarding address to the landlords by letter dated April 29, 2019. No condition inspection report was prepared at any time for this tenancy.

The landlord seeks a monetary award in the amount of \$3,150.00 comprised of unpaid rent for March, 2019 of \$1,350.00 and the cost for cleaning and repairs to the rental unit in the amount of \$1,800.00. The landlords submitted into documentary evidence photographs of the suite, receipts and invoices for work done and testified that the rental unit was left in a state of disarray requiring considerable work.

Analysis

Rule 7.3 of the Rules of Procedure provides as follows:

7.3 Consequences of not attending the hearing – If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application with or without leave to reapply.

Therefore, as the tenants did not attend the hearing I dismiss the tenants' claim in its entirety without leave to reapply.

Section 45 of the *Act* explains that a tenant may end a periodic tenancy by giving the landlord notice on a date not earlier than one month after the date the landlord receives the notice.

I find that, as the tenants gave notice of their intention to end the tenancy on February 3, 2019 the effective date of the end of tenancy was March 31, 2019. I find that the tenants were obligated to pay the monthly rent in the amount of \$1,350.00 on February 28, 2019. I accept the evidence of the landlords that the tenants failed to pay the full rent on that date.

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.

I find that a violation of the tenancy agreement occurred by the tenants who failed to pay the full rent owing on February 28, 2019. Therefore, the landlords are entitled to a monetary award in the amount of \$1,350.00, the equivalent of one month's rent.

I find that there is insufficient evidence in support of the remaining portion of the landlord's claim. In the absence of a proper condition inspection report prepared by the parties at the start of the tenancy I find there is insufficient evidence that the condition of the suite is attributable to the tenants. I find that the photographs submitted by the landlord to be insufficient to determine that the tenants have violated the *Act*, regulations or tenancy agreement resulting in damages or loss. I do not find there is sufficient evidence to connect the costs incurred by the landlord to the actions or negligence of the tenants. Therefore, I dismiss this portion of the landlord's claim.

As the landlords were partially successful in their application they are entitled to recover the filing fees from the tenants.

Conclusion

The tenants' claim is dismissed in its entirety without leave to reapply.

I issue a monetary award in the landlords' favour in the amount of \$1,450.00 as against the tenants.

The landlords are provided with these Orders in the above terms and the tenants must be served with this Order as soon as possible. Should the tenants fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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 30, 2019

Residential Tenancy Branch