



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND-S, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) 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 her filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing via conference call and provide testimony. Both parties confirmed the landlord served the tenants with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail. The tenants claim that the landlord was served with their submitted documentary evidence by placing it in the door crack of the landlord's residence on May 13, 2019. The landlord disputes this claim stating that no documentary evidence was received from the tenants. The tenants stated that he has a photograph of the service, but that it was not submitted. In this case, I find on a balance of probabilities that the tenants failed to serve the landlord with their submitted documentary evidence as claimed. As such, the tenant's evidence shall be excluded from consideration in this hearing. Neither party raised any further service issues. I accept the undisputed evidence of both parties and find that the landlord has sufficiently served the tenants with the notice of hearing package and the submitted documentary evidence as per section 90 of the Act.

Preliminary Issue(s)

At the outset, the landlord's monetary claim of \$1,200.00 was filed. The landlord provided details in a summary totalling, \$7,156.91. The landlord corrected herself clarifying that an

amendment to increase the monetary claim was not filed or served. The landlord did not complete a monetary worksheet detailing the claim and instead relies upon a typed summary of damages submitted as evidence. Extensive discussions resulted in the landlord's claim being limited to the amount filed of \$1,200.00. The landlord has withdrawn the remaining damage claims and will seek a remedy in a separate application for dispute.

The hearing was adjourned due to technical difficulties (as detailed in the interim decision).

In a previous application filed (noted on the cover of this decision) the tenants' request for return of double the security deposit was adjourned to be dealt with in this hearing and decision.

On August 27, 2019 the hearing resumed with both parties present.

Issue(s) to be Decided

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

Is the landlord entitled to recovery of the filing fee?

Are the tenants entitled to a monetary order for return of double 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 September 1, 2018 as per the submitted copy of the signed tenancy agreement dated August 26, 2018. The monthly rent was \$2,500.00 payable on the 1st day of each month. A security deposit of \$1,250.00 and a pet damage deposit of \$200.00 were paid.

Both parties confirmed that a condition inspection report was not completed by both parties for the move-in or the move-out. The landlord relies upon a self completed condition inspection report for both the move-in and the move-out as well as video taken at the start of the tenancy and photographs taken at the end of tenancy.

The landlord seeks a clarified monetary claim \$1,200.00 which consists of:

\$481.28	Utilities, Gas
\$226.80	Cleaning, Interior
\$150.00	Cleaning, Exterior
\$50.00	Cabinet Repair

\$178.00 Faucet Replacement

\$61.90 Bike Pump Replacement

\$75.99 Lock Replacement

\$1,223.97 Total (Landlord's claim limited to \$1,200.00 as per finding noted above
based upon application filed)

The landlord stated that outstanding utilities remain unpaid by the tenant totalling \$481.28 as provided in the submitted copies of the invoices for the period November 17, 2018 to January 17, 2019. The landlord stated that the tenancy ended on January 22, 2019. The tenant disputes this stating that they had moved out on January 14, 2019. The tenants dispute this claim stating that utilities were included in the tenancy agreement. The landlord argues that utilities were not included in the tenancy agreement and that an agreement was made with the tenant to pay their share of the utilities. The tenants dispute this claim.

The landlord seeks \$226.80 and \$150.00 for cleaning of the interior and exterior of the rental premises. The landlord claims that the tenant vacated the rental unit leaving it dirty requiring cleaning. The landlord hired a cleaning service which required 8 hours of cleaning and the landlord has provided 15 photographs and a cleaning invoice of the rental unit at the end of tenancy in support of this claim. The landlord also estimated that it took 3 hours of cleaning the exterior at \$50.00 per hour. The tenants disputed this claim.

The landlord also claims that damage was noted on the cabinet noted on the move-out on the vinyl flooring and the top 2 steps. The repairs cost \$50.00 which was paid in cash to a handyman, the landlord was unable to provide any details for the handyman. The landlord clarified that the hinge for the cabinet door was torn off. The tenant disputes this claim.

The landlord seeks recovery of \$178.00 for the replacement of a faucet that was damaged by the tenant during the tenancy. The tenant disputed this claim.

The landlord seeks \$61.99 for the cost of replacing a missing bike pump. The tenant disputes this claim. The landlord stated that the bike pump was left in the garage during the tenancy and now it is missing.

The landlord seeks \$75.99 for the cost of replacing a lockset. The tenant disputes this claim. The landlord stated that the faceplate for the bathroom door lockset is missing.

The tenants seek a monetary claim for return of double the \$1,250.00 security and \$200.00 pet damage deposits. The tenant claims that the tenancy ended on January 14, 2019 which was disputed by the landlord who claims that the tenancy ended on January 22, 2019. The landlord argued that the tenants still had possession of the rental unit until the keys were returned on January 22, 2019. Both parties agreed that the landlord currently holds the \$1,250.00 security

deposit and the \$200.00 pet damage deposits in dispute. The tenants stated that the landlord has withheld the combined deposits without their consent.

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 evidence of both parties and find that the landlord has failed to establish a claim for her entire monetary claim of \$1,200.00. The tenant has disputed the landlord's entire monetary claim and the landlord has failed to provide sufficient evidence to establish a claim. No evidence of costs incurred except for copies of utility bills and a cleaning service invoice. The landlord's claim that an agreement was made for the tenants to pay for all of the utilities was disputed by the tenants. The tenants had claimed that utilities were included in the tenancy. The landlord failed to provide any supporting evidence that an agreement for utilities had been made. I also note that although the landlord submitted 15 photographs of the rental unit, under review only 1 photograph showed a space that was unclean, but no where near the requirement of a professional cleaning service for 8 hours. Both parties also confirmed that a condition inspection report for the move-in and the move-out were not completed by both parties. On this basis, the landlord has failed to provide sufficient evidence. The landlord's application is dismissed without leave to reapply.

As for the tenant's monetary claim for return of double the \$1,250.00 security and the \$200.00 pet damage deposits, I find that the tenants have failed. Although both parties have disputed when the actual tenancy had ended, that being the tenant stating that it had ended on January 14, 2019 and the landlord arguing that the tenancy had ended on January 22, 2019, a review of the landlord's application show that it was filed on January 30, 2019. As such, I find that the tenants are entitled to return of the original \$1,250.00 security deposit and the \$200.00 pet damage deposits. As for compensation under section 38 (6), I find that the tenants are not entitled to this claim. In either argument by both the parties, the tenant have not provided sufficient evidence of when their forwarding address in writing was given to the landlord.

The tenants having been partially successful are entitled to recovery of \$50.00 for the filing fee. The tenants have established a total monetary claim of \$1,500.00.

Conclusion

The landlord's application is dismissed.
The tenants are granted a monetary order for \$1,500.00.

This order must be served upon the landlord. Should the landlord 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: September 5, 2019

Residential Tenancy Branch