



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 the filing fee for this application from the tenants pursuant to section 72.

The tenants' applied for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided testimony. Both parties confirmed the landlord served the tenants with the notice of hearing package via Canada Post Registered Mail on May 7, 2019 and again with all of the documentary evidence on May 9, 2019. Both parties confirmed the tenants served their notice of hearing package by placing it and all of the tenants' submitted documentary evidence in the landlord's mailbox. Neither party raised any service issues.

I accept the undisputed testimony of both parties and find that both parties have been sufficiently served as per section 90 of the *Act*.

Extensive discussions on the service of documents over a 64 minute period resulted in the hearing being adjourned. Both parties were advised that a new notice of an adjournment of the hearing letter would be sent to the addresses confirmed by both parties. Both parties were also cautioned that no new evidence would be accepted nor should it be submitted.

On September 16, 2019 the hearing was reconvened with all 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 retain all or part of the security deposit?

Are the tenants entitled to a monetary order for return of the security deposit and recovery of the filing fee?

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 both the tenant's claim and the landlord's cross claim and my findings around each are set out below.

This tenancy began on August 21, 2018 on a fixed term tenancy ending on April 21, 2019 as per the submitted copy of the signed tenancy agreement dated August 21, 2018. The monthly rent was \$3,536.17 payable on the 21st day of each month. A security deposit of \$1,690.00 was paid on August 21, 2018.

The landlord seeks a monetary claim of \$1,152.80 which consists of:

\$450.00	Garbage Removal
\$226.80	Kitchen Faucet,
\$56.00	Check Panel Service
\$420.00	Replacement, Basement Kitchen Countertop

The landlord claims that the tenant caused damage to the rental property which required removal of garbage from the property; replacement of a kitchen faucet; replacement of a kitchen countertop in the basement and the cost of checking the electrical panel service.

The landlord claims that there were excessive amounts of garbage left about on the rental property by the tenants and that the lawn was left uncut contrary to the signed addendum to the tenancy agreement. The landlord also claims that the kitchen faucet and pipes were damaged by the tenants requiring replacement. The landlord claims that the basement kitchen countertop was damaged by the tenants requiring a replacement. The landlord stated that the tenants had consented to pay for the garbage removal, grass cutting and kitchen faucet replacement in a verbal conversation.

The tenants dispute the landlord's claims stating that the monetary amount of \$450.00 for garbage removal and grass cutting is excessive. The tenants also argued that at no time did the tenants consent to pay for the amounts claimed by the landlord for garbage removal, grass cutting and a kitchen faucet replacement. The tenants did not commend on the landlord's claim for a "check panel service fee" of \$56.00. The tenants disputed the landlord's claim for replacement of a kitchen counter top arguing that a condition inspection report was completed, but that there was no mention of any damage to the countertops.

The landlord submitted 7 photographs of the rental unit with an uncut lawn, garbage left throughout the rental property, burned countertop and receipts and invoices for each claim.

The tenants seek a monetary claim of \$2,490.00 which consists of:

\$1,690.00	Unreturned portion of Security Deposit
\$400.00	Compensation, Landlord fail to provide receipts for paid rent
\$400.00	Compensation, Landlord visit without giving notice

The tenants clarified their monetary claim seeking the return of the entire \$1,690.00 security deposit, compensation of \$400.00 for the landlord failing to provide receipts for rent payments made in cash and \$400.00 in compensation for the landlord attending the rental property without proper notice.

The tenants stated that they seek \$400.00 in compensation as the landlord failed to provide any receipts for rent paid in cash. The tenants did not provide any particulars of this claim only stating that this was a "random" amount not based on any actual losses. The tenants also seek \$400.00 in compensation for the landlord attending the rental property without proper notification. The tenants stated that the monetary claim is not

based upon any actual losses, but is a “random” amount for what they feel that they deserve. The tenants stated that the landlord would attend the rental property without notice.

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, I accept the evidence of both parties and find on a balance of probabilities that the landlord has failed to establish a claim for the entire amount filed. The landlord has claimed that the tenants vacated the rental unit leaving it requiring garbage removal, replacement of a kitchen faucet and grass cutting. This was disputed by the tenants. The landlord was unable to provide any supporting evidence of an agreement made. However, the tenants have only disputed the monetary amount for garbage removal and the grass cutting. On this item of claim, I find on a balance of probabilities that I prefer the evidence of the landlord over that of the tenants. The tenants disputed only the monetary amount submitted by the landlord, but did not dispute that the excessive garbage was left and that the grass was not cut. In the absence of any evidence supporting the tenants’ claim that these amounts are excessive, I find that the landlord has established a claim for \$450.00 for garbage removal and grass cutting.

On the landlord’s claim for \$226.80 for replacement of a kitchen faucet, I find that the landlord has failed. The landlord relies upon the submitted invoice by her handyman and receipt for a faucet. This is in contrast to the landlord’s own direct testimony which contradicts and conflicts with her documentary evidence. The landlord claimed that the tenants damaged the pipes, yet there is no direct evidence of damaged faucet or pipes provided by the landlord. This portion of the landlord’s claim is dismissed.

On the landlord’s claim for \$56.00 for a “check panel service fee”, I find that the landlord has been successful. The landlord claims that the tenants’ overloaded an electrical outlet which caused the electrical panel circuit to trip. The landlord provided undisputed

testimony that there was no problems with the panel and that the circuit was tripped as the tenants had plugged too many plugs into the outlet. The tenants provided no response to this claim during the hearing. The landlord is granted recovery of the \$56.00 service fee.

On the landlord's claim for \$420.00 to replace the basement kitchen countertop, I find that the landlord has failed. Although the landlord has provided a copy of an invoice of \$420.00 for replacement of a damaged countertop via burning, the tenants have disputed this claim. The tenants have argued that at no time was the countertop damaged during the tenancy. The tenants made reference to a completed condition inspection report for the move-out which indicated that there was no damage noted at the end of tenancy. The landlord responded that she relies on the condition inspection report for the move-in and that she did not notice any damage until a couple of days after. The landlord confirmed that the condition inspection report for the move-out was conducted and that there was no damaged noted on the countertops. In this case, although the landlord has provided a photograph of a burnt countertop and an invoice for replacement of a countertop, this directly contradicts the landlord's evidence that a condition inspection report for the move-out was completed by both parties at the end of tenancy and that no details of a damaged countertop were noted by the landlord. On this basis, this portion of the landlord's claim is dismissed.

The tenants' monetary claim for compensation of \$400.00 for not receiving receipts for cash rent payments and \$400.00 for compensation of the landlord failing to provide proper notification is dismissed. The landlord has disputed these claims and the tenants failed to provide sufficient evidence that repeated requests for receipts were made to the landlord. I also find that the tenants suffered any losses incurred for these claims or that the landlord's attendance without proper notice has not been proven. The tenants provided no basis for the amounts claims other than as a "random number" for what they "feel that they should get". These portions of the tenants' claims are dismissed.

The landlord has established a total monetary claim of \$506.00. The tenants are entitled to recovery of the \$1,690.00 security deposit. The landlord is also entitled to recovery of the \$100.00 filing fee.

In offsetting these claims, I authorize the landlord to retain the \$606.00 established claim. I order the landlord to return the remaining \$1,084.00 to the tenants.

Conclusion

The tenants are granted a monetary order for \$1,084.00.

This order must be served upon the tenants. Should the landlord fail to comply with the 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 16, 2019

Residential Tenancy Branch