



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

FFL MNDL-S MNRL-S

Introduction

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

- A monetary award for damages and loss pursuant to section 67;
- Authorization to retain the security deposit for the tenancy pursuant to section 38; and
- Authorization to recover the filing fees from the tenants pursuant to section 72.

The tenants did not attend this hearing which lasted approximately 15 minutes. The teleconference line remained open for the duration of the hearing and the Notice of Hearing was confirmed to contain the correct hearing information. The landlords attended and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord SG (the "landlord") primarily spoke on behalf of the named landlords.

The landlord testified that they served each of the tenants by registered mail to a service address provided by the tenants on or about June 9, 2019. The landlord provided two valid Canada Post tracking numbers as evidence of service. Based on the evidence I find that the tenants are each deemed served with the landlord's materials on June 14, 2019, five days after mailing, in accordance with sections 88, 89 and 90 of the *Act*.

Residential Tenancy Policy Rule of Procedure 3.7 provides that evidence submitted by a party must be organized, clear and legible. I find that the evidence submitted by the landlord does not conform to this Rule. The landlord submitted numerous individual files in a haphazard and unorganized manner. They submitted multiple files of photographs instead of a single pdf file with numbered pages. The file names are inconsistent and for the most part non-descriptive making it unclear as to their contents. Files have been uploaded in no particular sequence making it difficult to locate individual pieces of evidence. While I have not excluded any of the documentary evidence, I find that the poor presentation detrimentally affects the strength of submissions and the parties are advised to submit all evidence in a single numbered pdf file containing only relevant materials.

Issue(s) to be Decided

Are the landlords entitled to a monetary award as claimed?

Are the landlords entitled to retain the security deposit for this tenancy?
Are the landlords entitled to recover their filing fee from the tenants?

Background and Evidence

The landlord provided undisputed evidence that this periodic tenancy began in 2013 and ended in May, 2019 when they discovered the tenants had abandoned the property. The monthly rent was \$1,560.00 payable by the first of each month. A security deposit of \$750.00 and pet damage deposit of \$750.00 was collected at the start of the tenancy and are still held by the landlords.

The landlord testified that the tenants failed to pay the full rent for March, April and May, 2019 and there is an arrear of \$3,320.00 as at September 23, 2019, the date of the hearing.

The tenants abandoned the rental unit sometime in May 2019 and provided a forwarding address to the landlords by text message dated June 2, 2019. A copy of the text message was submitted into evidence.

The landlord submits that a move-in condition inspection report was prepared at the start of the tenancy by the parties. The landlord says that the tenants were given multiple opportunities to participate in a move out inspection but they declined to participate and a move-out condition inspection report was prepared by the landlord alone. A copy of a condition inspection report was submitted into evidence. The report is not signed by either party at move-in and signed solely by the landlord at move-out. The landlord says that the condition inspection report was prepared at move in together with the tenants but they neglected to sign it at that time. The landlord submits that the rental unit was left in a state of disarray requiring considerable cleaning, maintenance and repairs at the end of the tenancy. The landlord submits into evidence numerous photographs which they say show the condition of the suite. The landlords seek a monetary award in the amount of \$8,300.00 for various cleaning, garbage disposal, replacement of appliances and repairing fixtures. ``

Analysis

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the *Act*, regulations or a tenancy agreement. 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 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. The claimant also has a duty to take reasonable steps to mitigate their loss.

I find that the tenants were obligated to pay monthly rent in the amount of \$1,560.00. I accept the evidence that the tenants failed to pay the monthly rent and there is an arrears for this

tenancy in the amount of \$3,320.00. Accordingly, I issue a monetary award for unpaid rent owing of \$3,320.00 as at September 23, 2019, the date of the hearing, pursuant to section 67 of the Act.

Section 23(5) of the Act provides that both the landlord and tenant must sign a condition inspection report. The purpose of such a requirement is to ensure there is no ambiguity in the veracity of the information contained in a condition inspection report.

The landlords submit that the unsigned condition inspection report submitted into evidence was completed by the parties at the start of the tenancy and accurately represents the state of repair and condition of the rental suite. The sole signature on the condition inspection report submitted into evidence is of the landlord at the end of the tenancy. I am not convinced by the landlords' submission. I find that I have little confidence that a condition inspection report that is not signed by either party is an accurate record of the state of the rental suite. It is clear from the fact that the landlord signed the move-out portion of the report that they were aware of the requirements to sign the condition inspection report. I find the absence of signatures on the move-in portion of the report creates doubt as to the veracity of the information or the circumstances in which the report was prepared.

I find that in the absence of a valid condition inspection report prepared by the parties at the start of the tenancy, there is insufficient evidence in support of the landlord's claim. I find the random photographs submitted by the landlord to be of little assistance as they simply show the condition of the rental suite without showing how any damages are attributable to the tenants. I find that there is insufficient evidence to show that the tenants are responsible for any damage to the rental suite.

The landlord claims a monetary award for various items but the amount claimed are not supported with receipts or invoices. The sole quotation submitted into evidence by the landlords is unsigned, undated and provides no information as to who prepared the quotation. Furthermore, the amounts provided on the quotation are not reflected in the amounts claimed by the landlords on their application.

I find that the landlords have not established on a balance of probabilities that they have suffered any damages or loss, that any losses are attributable to the tenants or that the amounts claimed are an accurate reflection of losses. As the landlords have failed to meet their evidentiary burden I dismiss this portion of the landlords' application.

As the landlords were partially successful in their application I issue an order allowing the landlords to recover their filing fee from the tenants.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlords to retain the security and pet damage deposit in partial satisfaction of the monetary award issued in the landlord's favour.

Conclusion

I issue a monetary order in the landlords' favour in the amount of \$1,920.00, which allows the landlords to recover the rental arrears and filing fee for this application and retain the security and pet damage deposit for this tenancy.

The tenants must be served with this Order as soon as possible. Should the tenants 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: September 23, 2019

Residential Tenancy Branch