



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding KINGSGATE GARDEN CORPORATION and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC-S, FF

Introduction

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

- a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement 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 its filing fee for this application from the tenants 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 and the submitted documentary evidence via Canada Post Registered Mail and XpressPost with a signature requirement. Both parties also confirmed the tenants served the landlord with the submitted documentary evidence via XpressPost with a signature requirement on September 9, 2019. I accept the undisputed evidence of both parties and find that both parties have been deemed served as per section 90 of the Act.

At the outset, both parties noted that the landlord had served the tenants with an unfiled amendment increasing the monetary claim. No details or an application were found in the Residential Tenancy Branch File. The landlord confirmed that the amendment was not filed and stated that he wished to proceed at this time only with the original application filed.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for money owed or compensation for damage or loss 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 applicant's claim and my findings are set out below.

This tenancy began on July 1, 2018 on a fixed term tenancy ending on June 30, 2019 as per the submitted copy of the signed tenancy agreement dated June 14, 2018. The monthly rent is \$1,950.00 payable on the 1st day of each month. A security deposit of \$975.00 was paid.

The landlord seeks a monetary claim of \$775.00 which consists of the details:

\$250.00	Marks and nicks on walls(painting)
\$650.00	water marks on floors, sanding laminate floors
\$350.00	replaced damaged blinds and repaired closet shelf
\$150.00	cleaning shower glass

During the hearing the landlord's monetary claim was clarified. The above noted amounts exceed the landlord's filed claim of \$775.00 and will be limited if successful to the total amount of \$775.00.

The landlord claims that the tenants vacated the rental unit leaving it dirty and damaged. The landlord suffered an expense of \$250.00 for repairs on the walls and \$350.00 to replace blinds and to repair the closet. The landlord claims that "marks and knicks" were noted throughout the rental unit as well as damaged blinds and a broken closet shelf. This is reflected in the completed copy of the condition inspection report for the move-out completed by both parties on May 30, 2019 and 34 photographs submitted by the landlord. The landlord relies on two invoices which is dated June 20, 2019 for work completed by private contractors for \$250.00 and \$350.00. No copies were found uploaded to the Residential Tenancy Branch, but the tenants confirmed receipt of these invoices and their details.

The tenants have disputed these claims stating that at the request of the landlord's agent, the tenant and his son filled in and repaired nail holes throughout the rental unit.

The landlord stated he is unable to comment on this claim as he has no details and was not present during the condition inspection report for the move-out. The tenants dispute the landlord's claim for the water marked floor. The tenant argues that in November 2017, the landlord replaced the flooring for the dishwasher improperly. The result is that each time the dishwasher was opened it would fall over splashing water. The tenants have referred to an email dated November 30, 2017 which confirms notification of this issue to the landlord. The landlord acknowledged receipt of this email only stating that the floor support problem was resolved. The tenants agreed that the blinds were damaged and the closet shelf was damaged, but not broken. The tenants argue that the landlord's claim for cleaning is incorrect noting that the shower glass was left dirty because the tenant could not remove that portion of the glass to clean it and that the landlord was advised of this issue during the move-out. The landlord stated that he does not have any information to comment on this claim by the tenants.

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 submitted by both parties and find that the landlord has failed to establish a claim as filed. Although the tenants have confirmed that nail holes were filled; water damage was caused to the laminate floor; blinds were damaged during the tenancy and the shelf was damaged, but not broken, I find that the landlord has failed to establish a claim for the \$775.00 filed. I note first that the monetary claim filed of \$775.00 does not equal the total amount of the listed items of claim for \$1,400.00. The landlord failed to provide any explanation of such nor did the landlord submit copies of the invoices referred to in the hearing. I also find that although the landlord relies primarily on the completed condition inspection report that the tenants have confirmed, the landlord has failed to provide sufficient evidence of the monetary amount sought based upon the invoices mentioned during the hearing. The landlord

was unable to provide sufficient details of the work involved for each invoice. On this basis, I find that the landlord's monetary claim is dismissed.

As such, I order that the landlord return the \$975.00 security deposit currently held.

Conclusion

The landlord's application is dismissed.

The tenants are granted a monetary order for return of the \$975.00 security deposit.

This order must be served upon the landlord. Should the landlord fail to comply, 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: October 8, 2019

Residential Tenancy Branch