



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 landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for unpaid rent and for compensation for damage or loss under the *Act* pursuant to section 67 of the *Act*;
- authorization to retain the tenant's security deposit in partial satisfaction of this claim pursuant to sections 38 and 67 of the *Act*; and
- recovery of the filing fee for this application from the tenants pursuant to section 72 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

As both parties were present, service of documents was confirmed. The tenants confirmed receipt of the landlord's Notice of Dispute Resolution Proceeding package and evidence. The landlord confirmed receipt of the tenants' evidence. Based on the undisputed testimonies of the parties, I find that both parties were sufficiently served for the purposes of this hearing in accordance with the *Act*.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent and damages?

Is the landlord entitled to retain the security deposit in partial satisfaction of the monetary claim?

Is the landlord entitled to recover the cost of the filing fee for this application from the tenants?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. Only the aspects of this matter relevant to my findings and the decision are set out below.

A written tenancy agreement was submitted into evidence. The parties confirmed the following details pertaining to this tenancy:

- This month-to-month tenancy began on October 1, 2017.
- Monthly rent of \$1,400.00 was payable on the first of the month.
- At the beginning of the tenancy, the tenants paid a security deposit of \$700.00, which the landlord continues to hold.
- The tenancy ended on May 31, 2019.
- The landlord confirmed receipt of the tenants' forwarding address received by email on June 11, 2019.
- On June 26, 2019, the landlord filed an Application for Dispute Resolution seeking to retain the tenants' security deposit against claims for unpaid rent and utilities, as well as for compensation for damages.
- The landlord did not conduct a move-in or move-out condition inspection with the tenants and as such that landlord did not provide a written condition inspection report to the tenants at move-in or move-out.

The landlord submitted a Monetary Worksheet with receipts or estimates claiming costs for compensation or loss related to: carpet cleaning; flea treatment; damages to the microwave handle, wall and tub drain; junk removal; a portion of unpaid rent for May 2019 and loss of rental revenue for June 2019; unpaid electricity bills; and cleaning and yard work.

The tenants testified that they cleaned the carpets but from the video evidence submitted by the tenants, the carpets did not appear to have been steamed cleaned or shampooed.

The landlord confirmed that the flea treatment was applied to both rental units in the rental property as both the tenants and the residents of the other rental unit had dogs.

The landlord confirmed that only the handle was broken on the microwave but otherwise the microwave still worked. The landlord testified the tub drain was broken and had to be replaced. The tenants claimed the microwave handle and the tub drain were broken at the beginning of the tenancy when they moved in.

The tenants confirmed that they had installed a chalk board paint wall and acknowledged they were responsible for the associated cost of those repairs of \$67.25.

The landlord testified that he only submitted an estimate for the cost of removal of the tenants' property left behind as the property remained at the rental property. The tenants confirmed that they had left some property behind outside in the yard, as follows:

- Boat

- Slide
- Broken bicycle
- Pallets

During the hearing, the tenants agreed to pickup their property, as listed above, by no later than October 20, 2019, in order to avoid the costs of removing the property by the landlord estimated at \$407.40. Any other items at the site the tenants claimed belonged to other residents of the rental property.

The landlord testified that the tenants deducted, without permission, \$330.36 from their rent for the cost of garbage disposal. The tenants confirmed the deduction as they claimed garbage was included in their rent as provided on the tenancy agreement. The landlord acknowledged that he made a mistake on the tenancy agreement as he wrote garbage disposal in the section of included services in rent, when it should have been in the section for services that were the tenant's responsibility, however, he claimed it was discussed with the tenants and they understand that it was not included and they had been paying for garbage disposal since the beginning of their tenancy.

The landlord testified that he spent several weeks cleaning and repairing the rental unit and as such he was unable to rent it until July 2019, resulting in rental revenue loss for the month of June. The landlord acknowledged that he re-rented the rental unit to his son. The tenants claimed that was the plan all along as the son moved a storage trailer to the rental property at the end of May 2019.

The landlord claimed that the tenants failed to pay the hydro bills, totalling \$331.62. The tenants acknowledged that they owed \$59.95 for the portion of the hydro bill for the period in May 2019 that was not received until after they had moved out. The remaining bill for the period of Nov 2018 to January 2019, the tenants claimed they had paid in cash to the landlord, but the tenants could not provide any details of what date it had been paid, or any communications with the landlord regarding arranging payment or making payment.

The landlord claimed that he, along with help from family, did the cleaning and yard work which took 100 hrs in total, for which he has claimed \$2,066.17. The tenants testified that they had spent eight hours cleaning the rental unit when they moved out and submitted video evidence of the condition of the rental unit. The tenants also claimed that they had done the yard work when they moved out and that the photographic evidence of the unkempt yard submitted by the landlord was taken over a month after they had moved out.

Both parties submitted photographic or video evidence in support of the testimony.

Analysis

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle all or a part of their dispute and record this settlement in the form of an Order. During the hearing the parties agreed that the tenants would pick-up their personal property left behind in the yard of the rental property, by no later than October 20, 2019 as follows:

- Boat
- Slide
- Broken bicycle
- Pallets

As such, I find that the landlord is entitled to a separate monetary order for junk removal costs of \$407.40 ONLY in the event the tenants fail to pick up their property as agreed to in the hearing. If the tenants remove the above-noted items from the rental property, the landlord is NOT entitled to enforce the monetary order.

Section 67 of the *Act* provides that, where an arbitrator has found that damages or loss results from a party not complying with the *Act*, regulations, or tenancy agreement, an arbitrator may determine the amount of that damage or loss and order compensation to the claimant. The claimant bears the burden of proof. The claimant must show the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* by the other party. If this is established, the claimant must provide evidence of the monetary amount of the damage or loss. The amount of the loss or damage claimed is subject to the claimant's duty to mitigate or minimize the loss pursuant to section 7(2) of the *Act*.

In this case, the landlord has claimed for compensation or loss under several heads of claim. Therefore, I have addressed my findings under several sub-categories, as follows:

- **Unpaid Rent & Hydro Bills**

Section 26 of the *Act* requires that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent.

I accept the landlord's claim that the agreed upon terms of the tenancy required the tenants to pay \$1,400.00 in monthly rent and 1/3 of hydro costs. I do not find the tenants had any right under the *Act* to deduct all or a portion of rent. If the tenants disputed the terms of the tenancy agreement pertaining to costs that they had paid for garbage removal, the tenants had the avenue of filing an Application for Dispute Resolution to address the issue.

The tenants acknowledged that \$59.95 in hydro costs were owed by them but disputed the remaining amount claimed by the landlord as they testified that they had paid cash. As the tenants were unable to provide any evidence, such as text messages or witness testimony, or even to indicate what date they allegedly made the payment to the landlord, I find the tenants have not provided sufficient evidence to support their version of events in this matter.

Therefore, based on the testimony and evidence presented, on a balance of probabilities, I find the landlord is entitled to a monetary award of \$330.36 for unpaid rent and \$331.62 for unpaid hydro owed by the tenants.

- **Cleaning and Damages**

Section 37(2) of the *Act* sets out the requirements for a tenant to fulfill when vacating the rental unit, as follows, in part:

- 37(2) When a tenant vacates a rental unit, the tenant must
- (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear,...

Residential Tenancy Policy Guideline 1. Landlord & Tenant – Responsibility for Residential Premises provides further explanation regarding the responsibilities of both parties during and at the end of a tenancy. The sections relevant to this matter have been noted below, in part:

CARPETS

...

3. *The tenant is responsible for periodic cleaning of the carpets to maintain reasonable standards of cleanliness. Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year. Where the tenant has deliberately or carelessly stained the carpet he or she will be held responsible for cleaning the carpet at the end of the tenancy regardless of the length of tenancy.*

In this case, I find the video evidence submitted by the tenants showed carpets that did not appear to have been shampooed or steam-cleaned. Although the tenants claimed that the carpets were not cleaned at the beginning of the tenancy, the tenants did not submit any evidence that they raised this concern to the landlord, through an email or letter at the beginning of the tenancy. The tenants could have filed their own Application for Dispute at the beginning of the tenancy to have the carpets cleaned, therefore this circumstance, even if true, does not alleviate the tenants of their responsibility for cleaning the carpets at the end of the tenancy. Therefore, in accordance with Policy Guideline #1, I find that the tenants contravened the *Act* by failing to have the carpets cleaned at the end of the tenancy and are responsible for costs claimed by the landlord of \$350.00.

The landlord claimed compensation for damage to the walls, microwave, tub drain, and for the cost of cleaning and yard clean-up.

The tenants acknowledged responsibility for the wall damage of \$67.25 but claimed the microwave and tub drain were pre-existing damages when they moved in. The tenants claimed

the yard maintenance was in good condition when the moved out. The tenants claimed they cleaned the rental unit, however, they acknowledged the fireplace may not have been cleaned out.

As the onus for proving a claim for damages is on the party seeking compensation, the landlord must prove their claim on a balance of probabilities.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their version of events.

Section 21 of the Residential Tenancy Regulation sets out the evidentiary significance of the condition inspection report, as follows:

Evidentiary weight of a condition inspection report

21 In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

In this case, the landlord did not complete a condition inspection report at the beginning or end of the tenancy, nor did the landlord submit into evidence any photographic evidence of the condition of the rental unit at the beginning of the tenancy.

Based on the testimony and evidence presented, on a balance of probabilities, I find that the landlord has failed to establish the condition of the rental unit at the beginning of the tenancy in order to overcome the tenants' version of events that any of the damages to the microwave and tub drain were pre-existing to the tenancy. As the landlord failed to conduct a move out condition inspection, I find that the tenants raised sufficient questions as to the status of the yard and gutters when they moved out, as the photographic evidence submitted by the landlord was not date-stamped. I find that the landlord established sufficient evidence that the tenants failed to clean some areas of the rental unit to a standard of "reasonably clean", specifically the fireplace, the cupboards and the appliances, and that the tenants failed to clean the carpets at the end of the tenancy. As such, the landlord is entitled to a monetary award for the cost of the wall repair of \$67.25 which was acknowledged by the tenants, the cost of carpet cleaning of \$350.00 and for a nominal award of \$200.00 for the cleaning costs required due to the deficiencies in cleaning left by the tenants.

- **Lost Rental Revenue**

The landlord failed to submit any evidence that he tried to re-rent the rental unit for the beginning of June or for any period during the month of June 2019. I find that the cleaning and damages claimed by the landlord were not sufficient to require the rental unit to be vacant for

the entire month of June 2019. Based on the testimony and evidence presented, on a balance of probabilities, I do not find that the landlord submitted sufficient evidence that he took reasonable efforts to mitigate his claimed loss of rental revenue. Therefore, the landlord's claim for this loss is dismissed.

- **Flea treatment**

I note that the landlord provided flea treatment for both the tenants' rental unit and a lower level rental unit within the rental property, and that both rental units contained pets. As such, based on the testimony and evidence presented, on a balance of probabilities, I do not find that the landlord provided sufficient evidence that if there were any fleas present in the rental property, that they were caused by and solely attributable to the tenants' pet, as opposed to any of the other pets in the property. Therefore, the landlord's claim for this loss is dismissed.

Summary of Monetary Award and Set-off Against Security Deposit

In summary, I find that the landlord has established entitlement to a monetary award of \$1,279.23.

Further to this, as the landlord was successful in obtaining a monetary award through this application, I find that the landlord is entitled to recover the \$100.00 filing fee from the tenant.

The landlord continues to retain the tenant's security deposit of \$700.00. The landlord confirmed receipt of the tenants forwarding address in writing by June 11, 2019, as required by section 38(1)(b) of the *Act* to trigger the return of the deposits. The landlord filed their application for dispute to claim against the deposits on June 26, 2019, which is within the 15-day time limit provided under the *Act*.

Therefore, in accordance with the offsetting provisions of section 72 of the *Act*, I set-off the total amount of compensation owed by the tenants to the landlord of \$1,279.23, plus an additional \$100.00 for the filing fee recovery, against the tenants' security deposit of \$700.00 held by the landlord, in partial satisfaction of the total monetary award in favour of the landlord.

As such, I order the landlord to retain the tenants' security deposit of \$700.00 and I issue a Monetary Order in the landlord's favour for the remaining amount of the monetary award owing in the amount of \$679.23, explained as follows:

| Item | Amount |
|--|-----------------|
| Monetary award in favour of landlord | \$1,279.23 |
| LESS: Security deposit held by landlord | (\$700.00) |
| PLUS: Recovery of the filing fee from the tenants | \$100.00 |
| Total Monetary Order in Favour of Landlords | \$679.23 |

As enforcement of the agreed upon settlement between the parties for the tenants to remove their personal property from the rental property by October 20, 2019, I issue to the landlord a separate Monetary Order for \$407.40 enforceable ONLY if the tenants fail to comply with the agreed upon terms of the settlement pertaining to removal of personal property.

Conclusion

I issue the following Orders:

- 1) I order the landlord to retain the security deposit for this tenancy in partial satisfaction of the monetary award granted to the landlord for compensation.
- 2) A Monetary Order in the landlord's favour against the tenants in the amount of \$679.23 in satisfaction of the remaining amount of compensation owed, and to recover the landlord's filing fee for this application.

The landlord is provided with this Order in the above terms and the landlord must serve the tenants 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.

- 3) A Monetary Order in the landlord's favour against the tenants in the amount of \$407.40 as enforcement of the agreed upon settlement between the landlord and the tenants for the tenants to remove their personal property from the rental property.

The landlord is provided with this Order in the above terms and the landlord must serve the tenants with this Order ONLY if the tenants fail to abide by the agreed upon settlement that they remove their personal property from the rental property. If the tenants are served with this Order, and 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: October 31, 2019

Residential Tenancy Branch