



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT MNDCT MNSD // FFL MNDCL-S MNDL-S

Introduction

This hearing dealt with the two applications pursuant to the *Residential Tenancy Act* (the “**Act**”). The landlord’s for:

- authorization to retain the security deposit in partial satisfaction of the monetary orders sought, pursuant to section 38;
- a monetary order for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of \$1,413.29 pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

And the tenants’ for:

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of \$2,150 pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

All parties attended the hearing. The tenants were represented by an agent (“**MK**”). All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

MK testified, and the landlord confirmed, that the tenants served the landlord with the notice of dispute resolution form and supporting evidence package. The landlord testified, and MK confirmed, that the landlord served the tenants with their evidence package. I find that all parties have been served with the required documents in accordance with the Act.

Issue(s) to be Decided

Is the landlord entitled to:

- keep the security deposit in satisfaction of the monetary order sought;
- a monetary order for \$1,413.29; and
- recover the filing fee?

Are the tenants entitled to:

- 1) the return of their security deposit;
- a monetary order for \$2,150; and
 - recover the filing fee?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into an oral tenancy agreement starting in early June 2019. Monthly rent was \$1,300 and was payable on the first of each month. The parties disagree as to how much of a security deposit was paid.

The landlord testified that the tenants provided him with a security deposit of \$450 on June 1, 2019. He testified that he issued a receipt for this amount on June 1, 2019, which he entered into evidence (the "**June 1 Receipt**"). He then testified that the tenants returned to him on June 4, 2019 and asked if he could re-issue the receipt, as they lost their copy. The landlord testified that he issued a new receipt, which he also entered into evidence that same day (the "**June 4 Receipt**"). The June 4 Receipt has the annotation "deposit" on it. The June 1 Receipt has no annotation as to the reason for its issuance.

MK provided conflicting testimony as to the amount of the deposits. At the outset of the hearing he testified that the tenants provided \$900 as a deposit, and that the June 1 Receipt and June 4 Receipt (collectively, the "**Receipts**") each represent a separate payment. However, later in the hearing he testified that the Receipts represented receipts from two cash payments made by the tenants to the landlord for the installation of a hardwood laminate floor (which I will discuss below) He then testified that he was mistaken before, and that the tenants paid a security deposit of \$650 in cash, for which they received no receipt.

The parties agree that the tenants vacated the rental unit on July 1, 2019.

The parties agree that the landlord did not provide the tenants with either a move-in or move-out condition inspection report.

The parties agree that the tenants did not provide their forwarding address to the landlord in writing.

Landlord's Claim

The landlord provided a monetary order worksheet setting out his claim as follows:

Serving of documents	\$27.29
Security deposit (short)	\$200.00
Short Notice given for termination	\$650.00
Cleaning	\$336.00
Fixing window	\$100.00
Filing Fee	\$100.00
Total	\$1,413.29

The landlord testified that the tenants did not give any written notice of their intention to end the tenancy. He testified that they informed him of their intention to end the tenancy on June 26, 2019. MK agreed that the tenants gave no written notice of their intention to end the tenancy but testified that they did give verbal notice of their intention 30 days prior to the end of tenancy.

The landlord testified he was able to rent out the rental unit on July 15, 2019.

The landlord testified that the rental unit was left uncleaned, and that he had to hire cleaners to clean the rental unit at a cost of \$336. He submitted an invoice in support of this amount. He submitted photographs of the rental unit into evidence which show:

- a dirty stovetop;
- a dirty floor;
- a dirty cabinet under the sink;
- a dirty exhaust fan; and
- bags of garbage on the back patio.

MK testified that the rental unit was cleaned thoroughly by the tenants prior to move-out, and that the tenants put the bags of garbage in the rental unit's garbage can. He speculated that the landlord removed the garbage bags from the can and placed them on the back patio.

The parties agree that the tenants broke a window of the rental unit during move out. The landlord did not submit a receipt or invoice showing the window's replacement cost.

The landlord testified that he originally wanted \$650 as a security deposit, but that the tenants told him they did not have enough money for that. He testified that he accepted \$450 as a security deposit (as set out above). At the hearing, the landlord did not make submissions as to why he believed he is entitled to \$200 for the balance of the security deposit. As stated above, the tenants take the position that they have paid the landlord a \$650 security deposit.

Tenants' Claim

The tenant's claim, as listed on the application for dispute resolution (they did not provide a monetary order worksheet) is listed as:

- 1) damage deposit \$650
- 2) painting \$500
- 3) hardwood flooring \$1,000
- 4) no heat for a year no clean in the front yard because of dog [no value assigned]

At the hearing, MK testified that the tenants were also denied access to the shared laundry room for the final nine months of the tenancy and were seeking an order of \$150 per month (\$1,350) in compensation for this.

In response to the landlord's claim for compensation stemming from the tenants' ending the tenancy without proper notice, MK testified that the tenants ended the tenancy due to health concerns for their infant daughter. MK testified that the heat did not work in the rental unit, which caused negative health implications to their child, and that the front yard had fecal matter for the landlord's dog on it.

The tenants provided a doctor's note dated September 30, 2019, which, in part, reads:

[The tenant's child] has experienced at least three episodes of skin infections and appears vulnerable to further infection.

It is my understanding that their current dwelling is inappropriate for this child as it lacks appropriate heating and temperature controls. As well, the parents report presence of animal excrements on the property.

The tenants did not enter any other documents which supported their position regarding the suitability of the rental unit for their daughter.

The landlord denied that there was a heating problem in the rental unit. He testified that the rental unit had its own independent thermostat which could regulate the heat. He submitted a photo of the thermostat into evidence.

MK testified that, at the start of the tenancy, the tenants and the landlord entered into two oral agreements:

- 1) the tenants agreed to paint the interior of the rental unit and the landlord would pay them \$500 (the "**Painting Agreement**"); and
- 2) the tenants would give the landlord \$1,000, the landlord would use this money to replace the carpet in the rental unit with hardwood laminate floors, and the landlord would either repay the tenants this money at a later date, or allow them to deduct amounts owing on their monthly rent (the "**Reflooring Agreement**")

MK testified that the tenants painted the interior of the rental unit and landlord never paid them, and that the landlord never reimbursed the tenants the \$1,000 or permitted them to deduct money from their monthly rent, in lieu.

The landlord denied that he ever entered into any such agreements with the tenants.

The tenants did not provide any documentary evidence to support their claims that these agreements existed. MK testified (as stated above) that the Receipts were receipts from the landlord confirming the receipt of cash from the tenants in accordance with the Reflooring Agreement. MK did not provide any testimony as to why the tenants did not receive a receipt for the remaining \$100 the tenants claim to have provided the landlord pursuant to the Reflooring Agreement.

Analysis

Tenants' Claim for Rent Reimbursement

In their application for dispute resolution, the tenants made no mention of their claim for a rent reduction for denial of access to the laundry room. This is a requirement in order for the tenants to advance such a claim. Since this was not done, the landlord had no notice of the tenant's intention to seek such damages and was deprived of his opportunity to prepare a full response.

Rule of Procedure 4.2 allows for an amendment of an applicant's claim to be made at a hearing. It states:

4.2 Amending an application at the hearing

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing

In these circumstances, I find that the tenants' claim for a reimbursement of rent could not reasonably have been anticipated. As such, I decline to order that the tenants' application be amended to include such a claim. I decline to award the tenants any compensation in connection with the alleged loss of use of the laundry room.

Evidentiary Onus

Rule of Procedure 6.6 states:

6.6 The standard of proof and onus of proof

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

In this case, each party bears the onus to prove the facts upon which they rely as the basis for their respective claims. So, the landlord must prove that the tenants did not provide proper notice to end the tenancy, that the tenants failed to clean the rental unit upon their departure, and that the tenants broke the window.

The tenants must prove that they paid the landlord \$650 for the security deposit, that the agreements regarding painting and flooring exist, that if they do, the landlord failed to pay them in accordance with the agreements, and that they gave proper notice to end the tenancy.

Amount of Security Deposit

The parties' testimony regarding the amount of the security deposit differs. Given the conflicting testimony, I must determine which of the two accounts is more credible. A useful guide in that regard, and one of the most frequently used in cases such as this, is found in *Faryna v Chorny* (1952), 2 DLR 354 (BCCA), which states at pages 357-358:

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanor of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those circumstances.

I am troubled by MK's shifting account of how much the tenants paid a security deposit. His uncertainty calls into question his credibility generally.

In any event, I find that that landlord's version of events to be more in harmony with the preponderance of probabilities as, to find (as claimed by the tenants) that the June 4 Receipt was a receipt for payment of a sum of money in connection Reflooring Agreement, I would have to ignore the fact that June 4 Receipt is clearly annotated with the word "deposit". I find that this is a clear indication of what the June 4 Receipt was issued for (that is, the payment of the security deposit by the tenants to the landlord). Finding otherwise would not be in harmony with the preponderance of the probabilities.

I find the landlord's testimony more reasonable. I accept that he issued two receipts for the same payment of cash by the tenants. I find that when he issued the June 4 Receipt, he indicated on it that it was for the "deposit". This is a reasonable action to take.

Where the testimony of the landlord and MK differ, I prefer the testimony of the landlord.

I find that the amount of the security deposit paid by the tenants to the landlord was \$450.

Landlord's Claim

1. Loss of rent

Section 45 of the Act permits a tenant to end a periodic tenancy in one of two ways:

Tenant's notice

45 (1)A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

- (a)is not earlier than one month after the date the landlord receives the notice, and
- (b)is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

[...]

(3)If a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

(4)A notice to end a tenancy given under this section must comply with section 52 *[form and content of notice to end tenancy]*.

Based on the testimony of MK, I find that the tenants failed to provide written notice of any kind of their intention to end the tenancy. This is a requirement of both section 45(1) and 45(3). I make no findings as to the suitability of the rental unit for habitation by an infant, as, even if it were unsuitable for habitation by an infant and the tenants wanted to end the tenancy on short notice, the tenants are required to provide written notice to the landlord of such an intention. They did not do this.

Therefore, I find that by failing to give proper notice, the tenants breached the tenancy agreement and the Act. I find that, as a result of this breach, the landlord was deprived of his right to collect rent from the tenants for the month of July 2019. I accept that the landlord was able to re-rent the rental unit for July 15, 2019. As such, I find that the landlord suffered \$650 (that is, the loss of half a month's rent) as the result of the tenants' breach.

I order that the tenants repay the landlord this amount.

2. Cleaning

The landlord failed to conduct a move-in condition inspection report as required by section 23 of the Act. As such, I cannot determine the condition of the rental unit at the time the tenants took possession. I cannot determine if the stains on floor and stove top existed when the tenants moved in. I cannot say if the exhaust hood was properly cleaned.

As such, I find that the landlord has failed to meet its evidentiary burden to prove that the tenants failed to properly clean the rental unit at the end of the tenancy.

I recognize that the move-in inspection report would not capture whether garbage bags were left on the back patio by the tenants at the end of the tenancy. However, I find that, if the tenants did leave them there, the removal of such bags to the rental unit's garbage can would not warrant any amount of compensation.

As such, I decline to make any order in compensation for cleaning costs.

3. Window

The tenants have admitted to breaking the window. While the landlord has not provided any documentation supporting his claim that it costs \$100 to replace the window, I nevertheless find this to be a reasonable amount. I order that the tenants compensate the landlord this amount for breaking the window.

4. Balance of security deposit

Any failure of the tenants to provide the landlord with the full amount of the requested security deposit does not give rise to any damage to the landlord. A security deposit is not an amount of money that the landlord is entitled to keep. It is an amount of money which he is to hold in trust for the tenants. As such, I find that the landlord suffered no damage by any underpayment of the security deposit by the tenants.

5. Service of Documents

There is no basis under the Act whereby a party can recover its costs associated with commencing or prosecuting an application for dispute resolution (other than recovering its filing fee). As such, I decline to award any amount to the landlord in connection with this claim.

Tenants' Claim

1. Return of Security Deposit

Section 38 of the Act states:

Return of security deposit and pet damage deposit

38(1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Based on the testimony of MK, I find that the tenants never provided the landlord with their forwarding address in writing at the end of the tenancy. As such, the landlord was under no obligation to return it prior to this hearing.

I will provide directions as to what the landlord is to do with the security deposit at the end of this decision.

2. Painting Agreement

As stated above, the tenants must prove that it is more likely than not that they entered into the Painting Agreement

The tenants have provided no documentary evidence to support this claim (such as photos of them painting, receipts for painting supplies, or communications with the landlord). The only evidence that the Painting Agreement exists is a bald assertion by MK. This is not sufficient evidence to establish the existence of the Painting Agreement. I find that the tenants have failed to meet their evidentiary burden to establish the existence of the Painting Agreement. I dismiss this portion of their claim.

3. Reflooring Agreement

As with the painting agreement, the tenants bear the onus to prove that the reflooring agreement exists.

The only documentary evidence relied upon by the tenants to prove the Reflooring Agreement's existence are the Receipts. I have already rejected the tenants' assertion that the Receipts represent partial payment for funds paid to the landlord pursuant to the Reflooring Agreement. The Receipts were issued by the landlord as proof of payment of the security deposit by the tenants.

As such, I find that the tenants have failed to prove that it is more likely than not that the Reflooring Agreement exists. As such, I dismiss this portion of their claim.

Conclusion

As the landlord has been largely successful in his application, he may recover his filing fee from the tenants.

As the tenants have been unsuccessful in their application, I decline to order that they may recover their filing fee from the landlord.

Pursuant to section 72(2), I order that the landlord may retain the entirety of the security deposit (\$450) in partial satisfaction of the monetary orders made.

In summary, I order that the tenants pay the landlord \$400, representing the following:

Loss of rental income	\$650.00
Fixing window	\$100.00
Filing fees	\$100.00
Security deposit credit	-\$450.00
Total	\$400.00

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 27, 2019

Residential Tenancy Branch