



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL

Introduction

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

- a monetary order for damage to the rental unit, pursuant to section 67;
- authorization to retain the tenants' security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The male landlord, "tenant FZ," and "tenant XX" did not attend this hearing, which lasted approximately 43 minutes. The female landlord ("landlord"), tenant XZ ("tenant"), and "tenant YL" attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that she had permission to represent the male landlord at this hearing. The tenant confirmed that he had permission to represent tenant FZ and tenant XX at this hearing.

This hearing began at 1:30 p.m. with all parties present. Tenant YL exited the hearing at 1:59 p.m. without warning and did not return. The tenant continued the hearing in the absence of tenant YL. The hearing ended at 2:13 p.m.

The tenant and tenant YL confirmed receipt of the landlords' application for dispute resolution and notice of hearing. In accordance with sections 89 and 90 of the *Act*, I find that all four tenants were duly served with the landlords' application.

The tenant and tenant YL stated that they did not receive the landlords' written evidence package. The landlord stated that all the evidence was served together with the landlords' application and notice of hearing. The landlord provided four Canada Post receipts and tracking numbers for the registered mail sent on June 27, 2019. The

tenant stated that he was in possession of a repair invoice from prior to this hearing. Accordingly, I find that the tenants were deemed served with the landlords' evidence package on July 2, 2019, five days after their registered mailings.

Issues to be Decided

Are the landlords entitled to a monetary order for damage to the rental unit?

Are the landlords entitled to retain the tenants' security deposit?

Are the landlords entitled to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to the landlords' documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the landlords' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on January 15, 2019 and ended on June 15, 2019. Monthly rent in the amount of \$3,600.00 was payable on the first day of each month. A security deposit of \$1,800.00 was paid by the tenants and the landlords continue to retain this deposit. Both parties signed a written tenancy agreement. Move-in and move-out condition inspection reports were not completed for this tenancy. No written permission was given by the tenants to the landlords to keep any part of the security deposit. An application to retain the security deposit was made by the landlords on June 24, 2019.

The landlords seek a monetary order of \$966.50 plus the \$100.00 application filing fee. The landlords originally applied for \$1,016.50 but reduced this claim at the hearing. The landlords initially applied for \$250.00 in cleaning fees but agreed to accept \$200.00, as the tenant agreed to pay this amount during the hearing.

The landlords seek \$766.50 for repairs. The landlords seek \$525.00 for repairs to the railing wall and \$241.50 for repairs to the front door lock. The landlords provided an invoice for same with a breakdown of job tasks, and the tenant confirmed that he received this invoice.

The landlord testified that the tenant told her that he caused a scratch on the wall of the stairwell in the basement, when moving furniture. She said that she allowed the

tenant's father to fix the scratch because he was a handyman, but he did not fix it properly, so the landlords had to hire a contractor. The landlord stated that it cost \$500.00 plus tax of \$25.00 for the repair, labour and material, for a total of \$525.00.

The tenant disputed this cost, stating that he thinks he caused the scratch, but there was no move-in condition inspection report. He agreed with the landlord that the rental unit was renovated when he moved in and in good condition. He said that his father fixed the scratch, the landlords did not provide a quote for the repair as requested by the tenant, and the tenant did not get to choose the contractor when the landlords repaired it without his permission.

The landlord stated that the tenants changed the front door lock without the landlords' permission and knowledge. She said that the tenants did not tell her that there was an issue and her contractor discovered that the lock was not working when he was examining other damages in the rental unit. She claimed that the repair and new lock cost \$230.00 plus tax of \$11.50 for a total of \$241.50.

The tenant disputed this cost, stating that the front door lock stopped working during the tenancy. He said that the door would open but he removed a part of the lock that was not working and did not tell the landlords. He claimed that he did not ask the landlords to repair it during the tenancy because the door was still opening. He explained that he sent text messages to the landlords about the lock when he moved out, but the landlord denied receiving same.

Analysis

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicants to establish the claim. To prove a loss, the landlords must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the tenants in violation of the *Act*, *Residential Tenancy Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the landlords followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

I award the landlords \$200.00 for cleaning, as the tenants agreed to pay this amount during the hearing, and the landlord agreed to accept it.

I award the landlords \$300.00 total of the \$525.00 claimed for the railing wall repair. I find that \$300.00 is a reasonable amount for the railing wall repair, since the tenants caused only a scratch, as per both parties' evidence. The landlords provided an invoice and breakdown for the repair. I find that the tenant agreed during the hearing that he caused this scratch, despite not having a move-in condition inspection report, as the unit was newly renovated, the tenant had his father try to fix the scratch, but he was not a professional painter, and the tenant wanted a quote. Therefore, I find that the tenants are responsible for this repair.

I award the landlords \$241.50 for the front door lock replacement. The landlords provided an invoice and breakdown for the repair. The tenant agreed that the lock did not work, he removed a part of it without the knowledge or permission of the landlords, and he did not advise the landlords to repair this during the tenancy. Therefore, I find that the tenants are responsible for this repair.

As the landlords were mainly successful in this application, I find that they are entitled to recover the \$100.00 filing fee from the tenants.

The landlords continue to hold the tenants' security deposit of \$1,800.00. Over the period of this tenancy, no interest is payable on the deposit. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlords to retain \$841.50 from the tenants' security deposit of \$1,800.00 in full satisfaction of the monetary award.

I order the landlords to return the remainder of the tenants' security deposit of \$958.50 to the tenants within 15 days of receiving this decision. The tenants are provided with a monetary order for same. Although the tenants did not apply for the return of their security deposit, I am required to consider it under Residential Tenancy Policy Guideline 17, when the landlords have applied to retain the deposit.

Conclusion

I order the landlords to retain \$841.50 from the tenants' security deposit in full satisfaction of the monetary award.

The remainder of the landlords' application is dismissed without leave to reapply.

I issue a monetary order in the tenants' favour in the amount of \$958.50 against the landlords. The landlords must be served with this Order as soon as possible. Should the landlords 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 07, 2019

Residential Tenancy Branch