



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL

Introduction

On June 28, 2019, the Landlords made an Application for Dispute Resolution seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the “*Act*”), seeking to apply the security deposit towards these debts pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Landlords attended the hearing; however, the Tenants did not make an appearance during the 21-minute hearing. All in attendance provided a solemn affirmation.

They advised that they served each Tenant a Notice of Hearing and evidence package by registered mail on July 8, 2019 (the registered mail tracking numbers are on the first page of this decision). The tracking history indicated that these packages were signed for by Tenant C.M. on July 18, 2019. Based on this undisputed evidence, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenants were served the Landlords’ Notice of Hearing and evidence package.

All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Are the Landlords entitled to a Monetary Order for compensation?
- Are the Landlords entitled to apply the security deposit towards these debts?
- Are the Landlords entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Landlords advised that the tenancy started prior to them purchasing the rental unit and the tenancy ended when the Tenants gave up vacant possession of the rental unit on or around May 31, 2019, pursuant to a Two Month Notice to End Tenancy for Landlord's Use of Property. They stated that rent was established at \$700.00 per month, due on the first day of each month. A security deposit of \$350.00 was paid.

They advised that they are seeking compensation in the amount of **\$1,405.95** for the cost to repair the garage door. They stated that the Tenants drove their car into the garage door, damaging it. The Landlords confirmed with the previous owner and the realtor that this damage was caused by the Tenants. They also submitted numerous text messages, as documentary evidence, authored by the Tenants who acknowledged that they damaged the garage door. They contacted the Tenants and the Tenants said they would fix the damage, but they have not as of yet. The Landlords submitted an invoice of the estimate to fix this damage.

They also advised that they were seeking compensation in the amount of **\$294.05** for the cost to re-paint the garage door. They stated that this cost is yet to be determined as there are other units in the strata complex that need to be re-painted and the strata is procuring costs of paint to re-paint some other garage doors as well. As the strata wants all the garage doors to match, this cost is still being determined.

Finally, they stated that they received the Tenants' forwarding address via text message on June 15, 2019.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

Section 38(1) of the *Act* requires the Landlords, within 15 days of the end of the tenancy or the date on which the Landlords receive the Tenants' forwarding address in writing,

to either return the deposit in full or file an Application for Dispute Resolution seeking an Order allowing the Landlords to retain the deposit. If the Landlords fail to comply with Section 38(1), then the Landlords may not make a claim against the deposit, and the Landlords must pay double the deposit to the Tenants, pursuant to Section 38(6) of the *Act*.

The undisputed evidence is that the tenancy ended when the Tenants gave up vacant possession of the rental unit on or around May 31, 2019 and that the forwarding address in writing was provided to the Landlords on June 15, 2019. As the Landlords made their Application on June 28, 2019, they made this Application within the 15-day timeframe to claim against the deposit. As the Landlords were entitled to claim against the security deposit still, and as they complied with Section 38(1) of the *Act* by making a claim within 15 days, I find that they have complied with the requirements of the *Act* and therefore, the doubling provisions do not apply.

With respect to the Landlords' claims for compensation, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that the purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred, and that it is up to the party claiming compensation to provide evidence to establish that compensation is warranted. In essence, to determine whether compensation is due, the following four-part test is applied:

- Did the Tenants fail to comply with the *Act*, regulation, or tenancy agreement?
- Did the loss or damage result from this non-compliance?
- Did the Landlords prove the amount of or value of the damage or loss?
- Did the Landlords act reasonably to minimize that damage or loss?

Regarding the Landlords' claims, the first one I will address is the cost associated with the damage to repair the garage door. The Landlords have provided evidence of the Tenants' acknowledgement of this damage. Furthermore, they have provided an estimate for the cost to repair this damage. Based on this undisputed evidence and their solemnly affirmed testimony, I am satisfied that they have substantiated this claim. Consequently, I find that the Landlords should be granted a monetary award in the amount of **\$1,405.95** to satisfy this claim.

With respect to the Landlords' claim for the cost associated with painting the garage door, as the Landlords have not supplied any evidence of the actual cost to paint the

garage door as they are waiting on the strata to determine this, I dismiss this portion of the Landlords' claim with leave to reapply.

As the Landlords were partially successful in their claims, I find that the Landlords are entitled to recover the \$100.00 filing fee paid for this application. Pursuant to Sections 38 and 67 of the *Act*, I allow the Landlords to retain the security deposit in partial satisfaction of this debt.

Pursuant to Sections 38, 67, and 72 of the *Act*, I grant the Landlords a Monetary Order as follows:

Calculation of Monetary Award Payable by the Tenants to the Landlords

Garage door repair	\$1,405.95
Filing fee	\$100.00
Less security deposit	-\$350.00
TOTAL MONETARY AWARD	\$1,155.95

Conclusion

The Landlords are provided with a Monetary Order in the amount of **\$1,155.95** in the above terms, and 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: October 10, 2019

Residential Tenancy Branch