



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL MNDCL MNDL-S

Introduction

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

- a Monetary Order for compensation for damage or loss under the *Act* pursuant to section 67 of the *Act*;
- authorization to retain a portion of the tenants' security and pet damage deposits in 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. Tenant W.D. attended and spoke on behalf of both the tenants.

As both parties were present, service of documents was confirmed. The tenant confirmed receipt of the landlord's Notice of Dispute Resolution Proceeding Package and evidence sent by Canada Post registered mail. Based on the undisputed testimonies of the parties, I find that the tenants were served with the notice of this hearing and the evidence referenced above in accordance with sections 88 and 89 of the *Act*.

The tenant confirmed that they did not serve any evidence on the landlord in this matter.

Preliminary Issue – Prior Arbitration Decision on Determination of Deposits

The parties participated in a prior arbitration hearing in which a decision was rendered (file number noted on cover sheet of this Decision) that the landlord return the deposits to the tenants. As such, I find the landlord's request in this application to retain the deposits against any monies owed for damages is declined due to "res judicata" meaning the decision on the matter has already been previously determined. As such, I have proceeded to only consider if the landlord is entitled to a monetary award on the basis of his claims for compensation for damage or loss.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for compensation for damage or loss?
Is the landlord entitled to recover 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 documentary evidence by the landlord, confirming that this tenancy began December 1, 2016. The tenancy ended on November 30, 2018 when the tenants vacated the rental unit at the end of the fixed term.

Monthly rent, payable on the first of the month, at the end of the tenancy was \$1,750.00. As explained under "Preliminary Issues", the issue of the security and pet damage deposits was already addressed in a prior arbitration decision.

The landlord claimed damages to the rental unit beyond reasonable wear and tear, and lost rental revenue due to time spent repairing the rental unit. Other than acknowledging damage to a closet the door, the tenants disputed the landlord's assertions that they caused the alleged damages and claimed that the damages were reasonable wear and tear, the result of building construction deficiencies as the rental unit was a newly built condominium unit, or occurred after they moved out of the rental unit. Further, the tenants testified that the landlord never provided them with a written condition inspection report of the condition of the rental unit at move-out, in order to have documented the condition of the rental unit at move-out. This was confirmed by the landlord.

In support of this testimony, the landlord submitted photographic evidence, receipts for a new bathroom light fixture and glue to fix a handle for the blinds, a contractor invoice, and an estimate for the cost of replacing the flooring.

Analysis

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*.

Where the claiming party has not met each of the above-noted four elements, the burden of proof has not been met and the claim fails.

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.

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

Section 37(2)(a) of the *Act* provides that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

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, it was undisputed by both parties that the landlord failed to complete a written condition inspection report with the tenants at move in or move out, and as such, there was no written condition inspection report before me for consideration at this hearing.

As such, I make the following findings, based on the testimony and evidence presented, on a balance of probabilities.

The tenant acknowledged damage they caused to a closet door and testified that they had purchased a replacement door and had it delivered. Therefore, I find that the tenants contravened the *Act* by causing damage to the door and are responsible for the costs associated with that repair. Accordingly, I find that the landlord is entitled to his claim of \$200.00 for the cost of installing and painting the door.

I find that the landlord has failed to provide sufficient evidence to prove his claim that the damages noted on the contractor's invoice were caused by the tenants and that the damages existed at the time the tenants moved out of the rental unit on November 30, 2018. Without the benefit of a completed condition inspection report signed by both parties at move-out, the landlord can only rely on his photographic evidence, which the landlord testified was taken in early December 2018, not at the date and time of move out by the tenants. Accordingly, I find that the landlord is not entitled to this claim as he has not met all of the four elements required for a successful claim for damages pursuant to section 67 of the *Act*.

I find that the landlord only submitted an estimate for the replacement of flooring costs, and therefore never incurred a loss, and further, was able to re-rent the rental unit at a higher rent without replacing the flooring. Additionally, I find that the tenant raised sufficient arguments that the damage to the flooring may have been as a result of a building deficiency with the door jam, not damage caused by the tenants, an issue which the landlord was aware of and had a technician investigate. Accordingly, I find that the landlord is not entitled to this claim as he has not met all of the four elements required for a successful claim for damages pursuant to section 67 of the *Act*.

Based on the above findings, I find that the landlord has failed to establish that the tenants contravened the *Act* resulting in damages to the rental unit that were so extensive that it prevented the landlord from re-renting the unit for the month of December 2018. The landlord failed to submit any evidence to demonstrate that he had made any attempts to show the rental unit to prospective renters at the end of

November 2018. The landlord testified that although he had listed the unit for rent at the end of November, he took down the listing and waited until the end of December to re-list the rental unit. Accordingly, I find that the landlord is not entitled to this claim as he has not met all of the four elements required for a successful claim for damages pursuant to section 67 of the *Act*.

In summary, I find that the landlord is entitled to a monetary award of \$200.00. As the landlord met with only partial success in his claim, I find that the landlord is only entitled to recover a partial amount of the filing fee of \$50.00.

Therefore, I issue a Monetary Order in the landlord's favour of \$250.00.

Conclusion

I issue a Monetary Order to the landlord in the amount of \$250.00.

The landlord is provided with this Order in the above terms. The landlord is required to serve this Order on the tenants. Should the tenants fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court, where it will be 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: November 4, 2019

Residential Tenancy Branch