



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT MNSD OLC FFL MNDCL MNDL-S MNRL-S

Introduction

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

- return of all or a portion of the security deposit;
- an order for the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for this application pursuant to section 72.

This hearing also dealt with the landlords' application pursuant to the *Act* for:

- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and,
- authorization to recover the filing fee for this application pursuant to section 72.

Both parties attended the hearing and had full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions. Both parties acknowledged receipt of the other party's Notice of Hearing and Application for Dispute Resolution. Neither party raised issues of service. I find that both of the parties were served in accordance with the *Act*.

Issue(s) to be Decided

Are the tenants entitled to a return of all or a portion of the security deposit pursuant to section 38?

Are the tenants entitled to an order for the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62?

Are the tenants entitled to recover the filing fee for this application pursuant to section 72?

Are the landlords entitled to a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67?

Are the landlords entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38?

Are the landlords entitled to recover the filing fee for this application pursuant to section 72?

Background and Evidence

The parties both testified that the tenants had a month-to-month tenancy. The monthly rent was \$2,550.00 per month and the landlords hold a \$1,275.00 security deposit.

The tenants gave notice by email on August 6, 2019 that they were ending the tenancy as of August 31, 2019.

The parties completed a condition inspection report on August 31, 2019. The condition inspection report indicated damage to the wall. The landlords testified that the walls were repaired at a cost of \$550.00. The landlord presented an invoice for \$550.00 for repainting the walls.

The landlords have claimed damages from loss of rent after the tenants terminated the tenancy agreement. The landlords testified that they initially advertised the rental unit \$2,800.00 per month. The landlord testified that they did not find a tenant at that rate and they lowered the asking rent to \$2,680.00 and then down to \$2,550.00. The landlord testified that they were unable to find a new tenant until October 1, 2019.

The tenants claimed that the landlords did not make reasonable efforts to mitigate their damages. The tenants testified that they advertised the rental unit for \$2,600.00 and they received multiple inquiries almost immediately. The tenants testified that they forwarded these leads to the landlords but they did not follow up on them.

The landlords testified that they did follow up with these leads but these prospective tenants did not complete rental applications. The landlords also claimed that the tenants' advertisement confused the market and hindered the landlords' ability to market the rental.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy agreement or the *Act*, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. The purpose of compensation is to put the claimant who suffered the damage or loss in the same position as if the damage or loss had not occurred. Therefore, the claimant bears the burden of proof to provide sufficient evidence to establish **all** of the following four points:

1. The existence of the damage or loss;
2. The damage or loss resulted directly from a violation – by the other party – of the *Act*, regulations, or tenancy agreement;
3. The actual monetary amount or value of the damage or loss; and
4. The claimant has done what is reasonable to mitigate or minimize the amount of the loss or damage claimed, pursuant to section 7(2) of the *Act*.

In this case, the onus is on the landlord to prove entitlement to a claim for a monetary award. 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 Condition Inspection Report for move-out indicated wall damage and *Residential Tenancy Regulations*, regulation 21 provides that “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.” In addition, the landlord provided photographs showing wall damage.

However, I find that the claimed \$550.00 for wall repair is excessive. I find that the photographs only show minor wall damage. Based on the condition inspection report and the photographs provided, I find that a reasonable amount of for repairing the walls to be \$200.00. Accordingly, I will allow the landlords \$200.00 for wall repair.

I find that the landlords have not provided sufficient evidence to establish that they have made reasonable efforts to mitigate their losses. Specifically, I find that landlord has not provided sufficient evidence to prove that their attempt to market the rental unit at, \$2,800.00, being \$250.00 more per month than the current rent, was a reasonably economic rent as required by *Residential Tenancy Policy Guideline No. 5*.

Further, I find the tenants' testimony that they were able to find multiple prospective tenants almost immediately to be credible. In light of the ease at which the tenants were able to find prospective tenants, I am not convinced that the landlords made reasonable efforts to mitigate their loss of rent. Accordingly, I dismiss the landlords' application for a monetary order for loss of rent.

Since both the tenants and the landlords were partially successful in this matter, I dismiss both parties' applications for reimbursement of their filing fees as offsetting.

For the forgoing reasons, I find that the tenants are entitled to a return of \$1,075.00 from the balance of their security deposit, as calculated below.

<u>Item</u>	<u>Amount</u>
Security deposit held by landlords	\$1,275.00
Less: damages regarding walls	-\$200.00
Total	\$1,075.00

Conclusion

I grant the tenants a monetary order in the amount of **\$1,075.00**. If the landlords fail to comply with this order, the tenants may file the order in the Provincial Court to 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 13, 2019

Residential Tenancy Branch