



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL, FFL

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, made on July 26, 2019 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage or loss; and
- an order granting recovery of the filing fee.

The Landlord and the Tenant's Representative J.T. attended the hearing at the appointed date and time and provided affirmed testimony.

The Landlord testified that she served her Application package to the Tenant by registered mail on August 2, 2019, as well as her documentary evidence on August 21, 2019. J.T. confirmed receipt of both mailings. Pursuant to section 88 and 89 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

J.T. testified that she served the Landlord with the Tenants' documentary evidence by registered mail on October 24, 2019. The Landlord stated that she has been out of the Country and has not been able to receive the Tenants' documentary evidence. Based on the oral and written submissions of the parties, and in accordance with sections 89 and 90 of the *Act*, I find that the Landlord is deemed to have been served with the Tenants' documentary evidence on October 29, 2019, the fifth day after the registered mailing.

The parties were provided with a full opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Landlord entitled to a monetary order for damage or loss, pursuant to Section 67 of the *Act*?
2. Is the Landlord entitled to an order granting recovery of the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; the tenancy began on June 15, 2018. During the tenancy, the Tenants were required to pay rent in the amount of \$1,950.00 to the Landlord on the first day of each month. The Tenants paid a security deposit in the amount of \$975.00 which has since been returned to the Tenants. The tenancy ended on July 1, 2019.

The Landlord is seeking monetary compensation in the amount of \$521.02 in relation to cleaning costs and supplies needed to clean the rental unit as a result of the Tenants leaving the rental unit unclean.

The Landlord acknowledged that the no condition inspection report was completed at the start of the tenancy. The Landlord stated that at the end of the tenancy, she had a friend and her realtor attend the rental unit who both notified the Landlord that further cleaning would be required. The Landlord stated that the parties met on July 7, 2019 to complete a move out condition inspection at which point the Tenants did not agree with the Landlord's assessment of the rental unit.

The Landlord stated that she had the rental unit professionally cleaned prior to the commencement of the tenancy at a cost of \$402.50. The Landlord stated that it took 21 hours to clean the rental unit at the end of the tenancy. As such, the Landlord stated that she is seeking the return of \$402.50 as well as the cost of the cleaning supplies purchased in the amount of \$118.52. The Landlord submitted copies of receipts as well as photographic evidence in support.

In response, J.T. stated that the rental unit at the start of the tenancy was in poor condition. J.T. stated that it was apparent to the Tenants that the prior occupants had misused the rental unit and caused some damage to the walls as well as a smell of cat urine in one of the bedrooms. J.T. stated that the Tenants returned the rental unit to the Landlord reasonably clean at the end of the tenancy. The Tenants provided a video as well a photographic evidence in support.

Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Act*. An applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on the Landlord to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenants. Once that has been established, the Landlord must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the Landlord did what was reasonable to minimize the damage or losses that were incurred.

The Landlord is seeking monetary compensation in the amount of \$521.02 in relation to cleaning costs and supplies needed to clean the rental unit as a result of the Tenants leaving the rental unit unclean at the end of their tenancy.

I accept that the parties agreed that there was no condition inspection report completed at the start of the tenancy. The Landlord stated that at the end of the tenancy, she had a friend and her realtor attend the rental unit who both indicated that further cleaning would be required. The Landlord stated that the parties met on July 7, 2019 to complete a move out condition inspection at which point the Tenants did not agree with the Landlord's assessment of the rental unit.

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In this case, I find that the Landlord has provided insufficient evidence to demonstrate the condition of the rental unit at the start of the tenancy compared to the condition of the rental unit at the end of the tenancy. I find that the receipt submitted by the Landlord for cleaning prior to the tenancy does not indicate the overall condition of the rental unit at the start of the tenancy or what areas were professionally cleaned. As such, I dismiss the Landlord's Application without leave to reapply.

Having not been successful, I find that the Landlord is not entitled to the return of the filing fee paid to make the Application.

Conclusion

The Landlord's Application for monetary compensation is dismissed without leave to reapply.

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 14, 2019

Residential Tenancy Branch