



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MN DL-S, OPL

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlords on September 10, 2019 (the “Application”). The Landlords sought:

- Compensation for damage to the rental unit;
- To keep the security deposit;
- For an Order of Possession based on a Two Month Notice to End Tenancy for Landlord’s Use of Property dated August 10, 2019 (the “Notice”); and
- Reimbursement for the filing fee.

The Landlords filed an amendment in relation to the rental unit address.

The Landlord appeared at the hearing. The Tenant did not appear. I explained the hearing process to the Landlord who did not have questions when asked. The Landlord provided affirmed testimony.

The Landlord advised at the outset that the Tenant vacated the rental unit November 01, 2019. The Landlord also advised that the Landlords gave the Tenant the security deposit back. The Landlord withdrew the following requests:

- To keep the security deposit; and
- For an Order of Possession based on the Notice.

The Landlord submitted evidence prior to the hearing. The Tenant did not. I addressed service of the hearing package and Landlord’s evidence.

The Landlord testified that the hearing package was served on the Tenant in person September 19, 2019. The Landlords submitted a witness letter from Landlord E.C. about this. The Landlord testified that the Tenant gave the package back.

The Landlord testified that the hearing package, amendment and evidence were then sent by registered mail to the rental unit on September 20, 2019. The Landlord provided Tracking Number 1 for this package. The Landlords had submitted the customer receipt for this.

I looked Tracking Number 1 up on the Canada Post website which shows the package was delivered and signed for by the Tenant September 26, 2019.

Based on the undisputed testimony of the Landlord, customer receipt and Canada Post website information, I find the Tenant was served in accordance with sections 59(3), 88(c) and 89(1)(c) of the *Residential Tenancy Act* (the “Act”). I also find the Landlords complied with rule 3.1 of the Rules of Procedure. Based on the Canada Post website information, I find the Tenant received the package September 26, 2019, in enough time to prepare for, and appear at, the hearing.

As I was satisfied of service, I proceeded with the hearing in the absence of the Tenant. The Landlord was given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered all testimony provided and reviewed all documentary evidence submitted. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Landlord entitled to compensation for damage to the rental unit?
2. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

In the Application, the Landlords sought \$350.00 and outlined two issues. First, damage to the floor which “will be over \$800.00” and damage to a window frame which “will be about \$300.00”. At the hearing, the Landlord withdrew the request for compensation for damage to the floor and only proceeded with the request for compensation for damage to the window frame.

The Landlord testified as follows. There was a verbal tenancy agreement between the parties in relation to the rental unit. The tenancy started December 01, 2014 or 2015 and was a month-to-month tenancy. Rent was \$650.00 per month due on the first day of each month. The Tenant paid a \$325.00 security deposit which has been returned to the Tenant.

The Landlord further testified as follows. The parties did a verbal move-in inspection at the start of the tenancy. No report was done.

The Landlord further testified as follows. The parties did a move-out inspection November 01, 2019. She completed a report and signed it, but the Tenant did not sign it. The report was not given to the Tenant.

The Landlord further testified as follows. Landlord E.C. built the window frame prior to the tenancy. The Tenant put plants on the window frame. Water from the plants got onto the window frame and damaged it. The wood is swollen and cracked from the water. The frame needs to be replaced. The amount sought is for materials only. Landlord E.C. will replace the frame. The amount sought is based on the cost of wood, paint and sanding materials.

The Landlords did not submit documentary evidence to support the Landlord's testimony about the window frame.

Analysis

Section 7(1) of the *Act* states that a party that does not comply with the *Act* must compensate the other party for damage or loss that results. Section 7(2) of the *Act* states that the other party must mitigate the damage or loss.

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the *Act*, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;

- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Section 37 of the *Act* states:

(2) When a tenant vacates a rental unit, the tenant must

(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear...

Pursuant to rule 6.6. of the Rules of Procedure, it is the Landlords as applicants who have the onus to prove the claim.

Here, the Landlords did not provide documentary evidence to support the claim.

Pursuant to section 23 of the *Act*, the Landlords were required to do a move-in inspection and complete a condition inspection report. The purpose of a move-in condition inspection report is to create evidence of the condition of the rental unit at the start of the tenancy. The Landlords did not complete a move-in condition inspection report at the start of the tenancy as required. Therefore, I do not have this piece of evidence before me. The Landlords did not provide other evidence to support the testimony of the Landlord about the state of the window frame at the start of the tenancy.

The Landlord testified that she completed a move-out condition inspection report; however, this was not submitted as evidence. This should have been submitted.

The Landlords provided photos of the rental unit; however, they did not provide photos of the window frame showing the alleged damage. It seems that photos of the damage could have been provided given other photos of the rental unit were provided.

The Landlords did not provide documentary evidence showing that the materials required to replace the window frame will cost \$300 to \$350.00 such as receipts for materials purchased, an invoice, an estimate or information from a website about the cost of these materials. This is the type of evidence I would expect to see on an application for compensation for damage.

In the circumstances, the Landlords failed to submit documentary evidence, or other evidence, to support the testimony of the Landlord about the window frame. I find the Landlords could have submitted evidence to support the claim. In the absence of further evidence to support the Landlord's testimony about the window frame, I am not satisfied the Landlords have proven they are entitled to the compensation sought. I am not satisfied the Landlords have proven that the Tenant failed to comply with the *Act*, that loss or damage resulted or the amount or value of the damage or loss.

Given the Landlords were not successful, I decline to award them reimbursement for the filing fee.

Given the above, I dismiss the Application without leave to re-apply.

Conclusion

The Application is dismissed without leave to re-apply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: November 21, 2019

Residential Tenancy Branch