



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: FFT MNSD RPP FFL MNDL-S

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlord requested:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenants requested:

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38;
- an order requiring the landlord to return the tenants’ personal property pursuant to section 65; and
- authorization to recover the filing fee for this application pursuant to section 72.

The tenants were represented in the hearing by their agent PM in the hearing. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

Both parties confirmed receipt of each other’s applications for dispute resolution hearing package (“Applications”) and evidence. In accordance with sections 88 and 89 of the *Act*, I find that both the landlords and tenant were duly served with the Applications and evidence.

Issue(s) to be Decided

Are the tenants entitled to an order requiring the landlords to return the tenant's personal property?

Are the tenants entitled to a return of all or a portion of their security deposit?

Is the landlord entitled to a monetary order for damage or money owed?

Are the parties entitled to the recovery of the filing fees for their applications?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This fixed-term tenancy began on August 1, 2017, and ended on August 31, 2019. The monthly rent was set at \$1,400.00, payable on the first of every month. The tenants paid a security deposit in the amount of 700.00, which the landlord still holds.

The landlord confirmed in the hearing that is seeking the equivalent of the damage deposit for damage to the carpet caused by the tenants during the tenancy. The landlord testified that he noticed damage to the carpet caused by candle wax, which the landlord has been unable to fix or remove. The landlord testified that he had observed candles in the rental unit during the tenancy used by the tenants. The landlord submitted quotations to repair or replace the carpet, but noted in the hearing that he is only seeking the amount of the damage deposit. The landlord confirmed that no move-in or move-out inspections were done, nor were any inspection reports provided to the tenants.

The tenants dispute the landlord's claims that they had damaged the carpet. The tenants testified that the landlord was able to re-rent the rental unit the next day, and have not repaired or fixed the carpet. The tenants are also seeking the return of a remote control, which the landlord states that he cannot find.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove, on a balance of probabilities, that the tenants had caused damage in the amounts claimed by the landlord.

Section 37(2)(a) of the *Act* stipulates 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. The landlord testified that although a move-in or a move-out inspection was not done, he was certain that the damage to the carpet was caused by the tenants

The tenants dispute the landlord's claim stating that they did not cause the damage to the carpet, which was not brand new at the beginning of the tenancy. Sections 23 and 35 of the *Act* require the landlord to perform both move-in and move-out inspections, and fill out condition inspection reports for both occasions. The consequence of not abiding by these sections of the *Act* is that "the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished", as noted in sections 24(2) and 36(2) of the *Act*. In the absence of any move-in and move-out inspection reports, I have no way of ascertaining what damages occurred during this tenancy beyond what was agreed to by the tenants. On this basis, I dismiss the landlord's monetary claim for damages without leave to reapply.

As the landlord is unable to locate the remote control, I dismiss the tenants' application for the return of this item.

The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. As the landlord was not successful with his claim, I find that the landlord is not entitled to recover the \$100.00 filing fee paid for this application. The landlord must bear the cost of this filing fee.

I allow the tenants the return of their security deposit, as well as a monetary order for recovery of the filing fee for this application.

Conclusion

The landlord's entire application is dismissed without leave to reapply.

I dismiss the tenants' application for the return of their remote control without leave to reapply.

The tenants are provided with a Monetary Order in the amount of \$800.00 for the return of their security deposit and recovery of the filing fee. The landlord must be served with **this Order** as soon as possible. Should the landlord 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: January 10, 2020

Residential Tenancy Branch