



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNDCL-S, FFL; MNDCT, FFT

Introduction

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

- a monetary order for damage to the rental unit and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to retain a portion of the tenants' pet damage deposit, pursuant to section 38; and
- authorization to recover the filing fee for his application, pursuant to section 72.

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

- 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 their application, pursuant to section 72.

The landlord's three agents, landlord YZ ("landlord"), landlord MY ("landlord's agent") and "landlord TL," and the two tenants, female tenant ("tenant") and "male tenant" (collectively "tenants") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that she was the daughter of the landlord owner ("landlord owner") named in this application and that she had permission to speak on his behalf. The landlord also confirmed that the landlord's agent and landlord TL had permission to represent her and the landlord owner. This hearing lasted approximately 57 minutes.

Both parties confirmed receipt of the other party's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that both parties were duly served with the other party's application.

Both parties affirmed that they were ready to proceed with the hearing.

Pursuant to section 64(3)(c) of the *Act*, I amend both parties' applications to correct the tenant's full name, as it was indicated in reverse order. The tenant consented to this amendment during the hearing. Neither party objected to the amendment.

Issues to be Decided

Is the landlord entitled to a monetary order for damage to the rental unit?

Is the landlord entitled to retain a portion of the tenants' pet damage deposit?

Is either party entitled to compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is either party entitled to recover the filing fee for their application?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of both parties' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on October 20, 2018 and ended on September 30, 2019. Monthly rent in the amount of \$1,800.00 was payable on the first day of each month. A security deposit of \$900.00 and a pet damage deposit of \$900.00 were paid by the tenants. The landlord returned the full \$900.00 security deposit and \$540.00 from the pet damage deposit to the tenants and continues to retain \$360.00 from the pet damage deposit. A written tenancy agreement was signed by both parties for a fixed term ending on October 31, 2019. A move-in condition inspection report was completed but a move-out condition inspection report was not completed for this tenancy. The landlord had written permission to keep \$360.00 from the tenants' pet damage deposit. The landlord's application to retain a portion of the tenants' pet damage deposit was filed on October 14, 2019.

The landlord seeks a monetary order of \$4,340.00 plus the \$100.00 application filing fee. The tenants seek a monetary order of \$1,800.00 plus the \$100.00 application filing fee.

The landlord seeks \$180.00 for cleaning the entire rental unit, \$2,500.00 for damage to the wall and painting the living room and two bedrooms, \$250.00 for repair and painting of the kitchen lights, \$600.00 for painting of the kitchen and bedroom ceiling, \$50.00 for repair of the kitchen faucet, \$150.00 for repair of the master room locker, \$200.00 for cleaning and painting of the balcony, \$200.00 for repair of the floor damage due to a pet bite, \$160.00 for carpet cleaning in the two bedrooms from a dirty pet, \$50.00 for a broken sliding door in the entrance and the living room. The landlord's agent claimed that the landlord submitted receipts to support his claim.

The landlord's agent said that the tenants' full security deposit of \$900.00 was returned to them after they moved out. Landlord TL stated that the first move-out visual inspection conducted by the landlord owner was done at night when it was dark and hard to see, at the request of the tenants. The landlord said that the landlord owner does not speak English well. Landlord TL maintained that the landlord owner requested a second move-out visual inspection to show the tenant the damages and the expenses, but the tenants refused.

The tenant confirmed that the tenants agreed to the landlord retaining \$360.00 from the tenants' pet damage deposit for carpet cleaning and floor damage, due to their pet. The tenants disputed the remainder of the landlord's application. The tenant said that the landlord owner conducted a visual move-out inspection, was happy with the condition of the rental unit, had the tenant sign an envelope, and returned the tenants' entire security deposit of \$900.00. The male tenant claimed that when the tenants moved into the rental unit, the real estate agent told them about damage all over the walls and the "trashed" balcony, which the tenants said they tried to clean up. The tenants claimed that the landlord only filed a monetary application in retaliation to the tenants' application for compensation.

The tenants seek a monetary order of \$1,800.00 plus the \$100.00 filing fee. The tenants seek one-month free rent compensation, pursuant to section 51 of the *Act* and a 2 Month Notice to End Tenancy for Landlord's Use of Property, dated September 21, 2019 ("2 Month Notice"), which both parties agreed the landlord issued to the tenants on the same date, by email. Both parties agreed that the 2 Month Notice had an effective move-out date of October 30, 2019.

The landlord disputes the tenants' application, claiming that the tenants ended the fixed term tenancy earlier than October 30, 2019 and did not give at least 10 days' written notice to end the tenancy earlier. The tenants agreed that they only gave one or two days' written notice before vacating the rental unit on September 30, 2019.

Analysis

Landlord's Application

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim on a balance of probabilities. In this case, to prove a loss, the landlord must satisfy the following four elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the tenants in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the landlord followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

On a balance of probabilities, I make the following findings based on the testimony and evidence of both parties.

I award the landlord \$200.00 for the floor damage and \$160.00 for the carpet cleaning, due to the tenants' pet, for a total of \$360.00. The tenants agreed to pay this amount during the hearing from their pet damage deposit. I order the landlord to retain \$360.00 from the tenants' pet damage deposit and both parties agreed that it has already been retained.

I dismiss the remainder of the landlord's monetary claim of \$3,980.00. I find that the landlord did not sufficiently prove his claim, as the landlord's three agents failed to go through any invoices, receipts, photographs or move-in condition inspection report during the hearing. I also find that the landlord's agent did not explain the damage and repairs in detail, simply listing the claims and the amounts, during the hearing.

I further find that the landlord did not complete a move-out condition inspection report but agreed that a visual inspection was done. The tenants' full security deposit and a portion of the pet damage deposit were both returned to the tenants after the move-out inspection was done. The fact that the landlord owner agreed to do a move-out inspection at night, when it was dark and harder to see, was up to the landlord owner. The landlord could have refused the tenants' request for a night inspection. I find it unreasonable that the landlord suddenly discovered damages after the first move-out

inspection was done with the tenants and wanted to add damages totaling \$3,980.00 later (this amount does not include the \$360.00 in pet damages agreed to by the tenants).

As the landlord was mainly unsuccessful in his application, except for what the tenants agreed to pay, I dismiss the landlord's application to recover the \$100.00 filing fee.

Tenants' Application

Section 51 of the Act states the following with respect to compensation pursuant to a 2 Month Notice (my emphasis added):

Tenant's compensation: section 49 notice

*51(1) A tenant who receives a notice to end a tenancy under section 49 [landlord's use of property] is entitled **to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent** payable under the tenancy agreement.*

The 2018/06 version of the #RTB-32 2 Month Notice indicates the following at page 2 of the form (my emphasis added):

3. LANDLORD MUST COMPENSATE YOU

*If this Notice was served under the reasons for landlord's use of property, on or before the effective date of this Notice, **your landlord has to compensate you an amount equal to one month's rent payable under your tenancy agreement**. You may withhold your last month's rent instead of being paid compensation. If you have already paid your last month's rent, your landlord has to refund you that amount.*

...

4. YOU MAY BE ABLE TO MOVE OUT EARLY

*If your tenancy is periodic (e.g. month-to-month), you can end the tenancy sooner than the date set out in this Notice as long as you give the landlord at least 10 days' written notice and pay the proportion of rent due to the effective date of that notice. **Ending the tenancy early does not affect your right to the one month compensation above**. Fixed term tenancies cannot be ended earlier than the end of the term.*

Both parties agreed that the landlord issued the 2 Month Notice to the tenants on the RTB form. Both parties agreed that the tenants moved out pursuant to the 2 Month Notice on September 30, 2019. Both parties agreed that the tenants did not receive one-month free rent from the landlord before moving out.

Therefore, I find that the tenants are entitled to one-month free rent compensation of \$1,800.00, pursuant to the 2 Month Notice and section 51 of the *Act*. Although the tenants moved out earlier than the effective date on the notice, this does not affect their entitlement to one-month free rent compensation, as noted above on the 2 Month Notice form. This is despite the fact that the tenants vacated before the end of the fixed term and did not provide the 10 days' notice to vacate, as these are separate issues from the one-month rent compensation under section 51 of the *Act*.

As the tenants were successful in their application, I find that they are entitled to recover the \$100.00 filing fee from the landlord.

Conclusion

I order the landlord to retain \$360.00 from the tenants' pet damage deposit of \$900.00, which has already been enforced.

The remainder of the landlord's application is dismissed without leave to reapply.

I issue a monetary order in the tenants' favour in the amount of \$1,900.00 against the landlord. 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: February 06, 2020

Residential Tenancy Branch