



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNRL, MNDL, MNDCL

Introduction

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

- a monetary order for damage to the unit, site, or property;
- a monetary order for unpaid rent;
- an order granting recovery of the filing fee.

The Landlord, the Landlord's Agent P.G., the Landlord's witness T.U., and the Tenants attended the hearing at the appointed date and time.

At the beginning of the hearing, the parties acknowledged receipt of their respective application package and documentary evidence. Pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The Landlord stated that she provided the RTB with digital photographic evidence in support of the Application, however, the Landlord stated that she did not serve a copy of the digital evidence to the Tenants. As such, the Landlord was notified that the digital photographic evidence would not be considered, pursuant to the Residential Tenancy Branch Rules of Procedure 3.17.

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 to the rental unit, pursuant to Section 67 of the *Act*?
2. Is the Landlord entitled to a monetary order for unpaid rent, pursuant to Section 67 of the *Act*?
3. 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 that the tenancy began on September 1, 2014. During the tenancy, the Tenants were required to pay rent in the amount of \$1,100.00 to the Landlord on the first day of each month. The Tenants paid a security deposit in the amount of \$550.00 which the Landlord continues to hold. The tenancy ended on October 15, 2019.

The Landlord is claiming \$1,275.00 in relation to damages caused by the Tenants during the tenancy. The Landlord outlined her monetary claims in an itemized fashion described below;

The Landlord stated that there had been a used metal desk which had been used as a workbench in the garage. The Landlord stated that at the end of the tenancy, the desk was gone. The Landlord estimates the cost of replacing the desk to be \$150.00. The Tenants denied taking the desk.

The Landlord stated that there were three bifold doors damaged during the tenancy in the amount of \$240.00. The Tenants responded by stating that the doors were only removed and stored, but not damaged.

The Landlord stated that there was a broken window latch in the amount of \$40.00, broken kitchen drawer handles \$18.00, damaged blinds \$65.00, missing garage step \$75.00, broken fan \$180.00, and electrical repairs \$40.00. The Tenants responded by stating that these items worked throughout the tenancy, and that they did not notice the deficiencies.

The Landlord stated that she was required to dispose of many items left behind by the Tenants following the end of the tenancy which cost \$67.00. The Tenants admitted to

leaving a bed frame behind at the end of the tenancy but stated that the Landlord had left the remaining items from a previous tenancy.

The Landlord stated that the Tenants damaged the lawn surrounding the driveway to add additional parking. The Landlord estimates the repair to cost \$400.00 for landscaping. The Landlord stated that she has not yet repaired the majority of the damage caused by the Tenants, and that the monetary amounts sought represent a rough estimate of the cost to replace the damaged items. The Tenants stated that the parties did not complete and move in or move out condition inspection report.

The Landlord is also seeking monetary compensation relating to unpaid rent for the month of October 2019. The parties testified and agreed that the Landlord served the Tenants with a Two Month Notice to End Tenancy for Landlord's Use (the "Two Month Notice") on September 24, 2019 with an effective vacancy date of December 1, 2019. The parties testified and agreed that the Tenants provided the Landlord with the written notice to end tenancy on October 1, 2019, which indicated that the Tenants would move out of the rental unit on October 15, 2019.

The Landlord was under the impression that the Tenants were required to provide a month's notice prior to ending their tenancy. In their notice, the Tenants instructed the Landlord to retain their security deposit in the amount of \$550.00 towards the half month of rent from October 1 to 15, 2019. The Landlord stated that she feels entitled to the full amount of rent for October 2019 in the amount of \$1,100.00.

The parties testified and agreed that the Tenants were not provided with compensation equivalent to one month of rent in relation to the Two Month Notice. If successful, the Landlord is also seeking the return of the filing fee.

Analysis

Based on the 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.

Section 21 of the Residential Tenancy Regulations outlines the evidentiary weight of condition inspection reports. In dispute resolution proceedings a condition inspection report completed in accordance with the Regulations is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

Section 23 and 35 of the *Act* directs a Landlord and Tenant to inspect the condition of a rental unit at both the beginning and end of the tenancy. The Landlord must offer the Tenant at least two opportunities for the inspections and the Landlord must complete condition inspection reports in accordance with the Regulations. Both parties must sign the condition inspection reports and the Landlord must give the Tenant a copy of the reports. The Landlord must make each inspection, complete and sign the reports without the Tenant if the Landlord has offered two opportunities for both the beginning and end of tenancy inspections and the Tenant does not participate on either of the occasions.

The Landlord is claiming \$1,275.00 in relation to damages caused by the Tenants during the tenancy. In this case, I find that the Landlord provided insufficient evidence to demonstrate that the Tenants caused any of the damages claimed by the Landlord. I accept that the parties did not complete a condition inspection at the start, or at the end of the tenancy which would indicate the condition of the rental unit at the start of the

tenancy in comparison to the condition of the rental unit at the end of the tenancy. Furthermore, the digital photographic evidence provided by the Landlord to the RTB was not served to the Tenants, as such, was not considered in this decision.

While the Landlord provided a rough estimate of the costs associated with replacing the damaged items, I find that the Landlord did not provide any evidence to support the value of the loss incurred. In light of the above, I dismiss the Landlord claims for monetary compensation relating to damage without leave to reapply.

With respect to the Landlord's claim for unpaid rent for the month of October 2019 in the amount of \$1,100.00, Section 50 states that a Tenant may end tenancy early following notice under certain sections;

- (1) If a landlord gives a tenant notice to end a periodic tenancy under section 49 [*landlord's use of property*] or 49.1 [*landlord's notice: tenant ceases to qualify*], the tenant may end the tenancy early by
 - (a) giving the landlord at least 10 days' written notice to end the tenancy on a date that is earlier than the effective date of the landlord's notice, and
 - (b) paying the landlord, on the date the tenant's notice is given, the proportion of the rent due to the effective date of the tenant's notice, unless subsection (2) applies.
- (2) If the tenant paid rent before giving a notice under subsection (1), on receiving the tenant's notice, the landlord must refund any rent paid for a period after the effective date of the tenant's notice.
- (3) A notice under this section does not affect the tenant's right to compensation under section 51 [*tenant's compensation: section 49 notice*].

I accept that the Landlord provided the Tenants with a Two Month Notice on September 24, 2019 with an effective vacancy date of December 1, 2019. After receiving the Two Month Notice, I accept that the Tenants provided the Landlord with their notice to end tenancy on October 1, 2019 indicating that they would move out of the rental unit on October 15, 2019. The Tenants instructed the Landlord to retain their security deposit in the amount of \$550.00 towards the half month of rent from October 1 to 15, 2019.

In this case, I find that after receiving the Two Month Notice, the Tenants were entitled to end their tenancy earlier than the effective date of the Two Month Notice by providing the Landlord at least 10 days written a notice to end tenancy in writing. I find that the Tenants complies with their requirement, pursuant to Section 50 of the *Act* and the Landlord is not entitled to a full month of rent in the amount of \$1,100.00.

I accept that the Tenants were required to pay rent in the amount of \$550.00 for the half month of rent from October 1 to 15, 2019. As such, I find that the Landlord is entitled to monetary compensation in the amount of \$550.00. I order that the Landlord retain the Tenants' security deposit in the amount of \$550.00 held in satisfaction of the claim.

During the hearing, the parties agreed that the Landlord did not provide the Tenants with compensation equivalent to one month of rent in relation to the Two Month Notice dated September 24, 2019. The Tenants are at liberty to apply for monetary compensation should they feel entitled to it.

As the Tenants had previously consented to the Landlord to retain their security deposit towards October 1 to 15, 2019 rent, I find that the Landlord's Application for unpaid rent was not necessary, therefore, I decline to award the Landlord with the filing fee.

Conclusion

The Landlord's Application for monetary compensation relating to damages is dismissed without leave to reapply. The Landlord is entitled to retain the Tenants' security deposit in satisfaction of the Landlord monetary claim for unpaid rent.

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: April 17, 2020

Residential Tenancy Branch