



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNRL-S, FFL

Introduction

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

- a Monetary Order for unpaid rent, pursuant to sections 26 and 67;
- a Monetary Order for damage, pursuant to section 67;
- authorization to retain the tenants' security and pet damage deposits, pursuant to section 38; and
- authorization to recover the filing fee from the tenants, pursuant to section 72.

The tenants', landlord A.A. and landlord W.A.'s agent (the "agent") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Landlord A.A. testified that she emailed the tenants with her application for dispute resolution on May 15, 2020. The tenants testified that the email went to their junk mailbox and they did not receive it until September 7th or 8th, 2020. I asked the tenants if they required an adjournment to properly prepare for this hearing. The tenants testified that they did not need extra time to prepare and that they were happy to proceed. I find that the tenants were served in accordance with the March 30, 2020 Director's Order.

Preliminary Issue- Evidence

The tenants testified that they served the landlords with their evidence via email on September 8, 2020. The above email was not entered into evidence. Landlord A.A.

testified that she did not receive the tenants' evidence. I find that the tenants have not proved, on a balance of probabilities, that they served the landlord with their evidence.

Landlord A.A. testified that she served the tenants with her evidence via email on May 15, 2020. The above email was not entered into evidence. The tenants testified that they did not receive the landlords' evidence. I find that the landlords have not proved, on a balance of probabilities, that they served the tenants with their evidence.

Section 3.14 of the *Residential Tenancy Branch Rules of Procedure* (the "Rules") states that evidence not submitted at the time of Application for Dispute Resolution that are intended to be relied on at the hearing must be received by the respondent not less than 14 days before the hearing.

Section 3.15 of the *Rules* states that the Respondents' evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing.

I find that since neither party has proved the service of their evidence, all of the evidence is excluded from consideration. Oral testimony provided at the hearing will be considered.

Issues to be Decided

1. Are the landlords entitled to a Monetary Order for unpaid rent, pursuant to sections 26 and 67 of the *Act*?
2. Are the landlords entitled to a Monetary Order for damage, pursuant to section 67 of the *Act*?
3. Are the landlords entitled to retain the tenants' security and pet damage deposits, pursuant to section 38 of the *Act*?
4. Are the landlords entitled to recover the filing fee from the tenants, pursuant to section 72 of the *Act*?

Background and Evidence

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

Both parties agreed to the following facts. This tenancy began on April 1, 2018 and ended on April 30, 2020. Monthly rent in the amount of \$2,650.00 was payable on the first day of each month. A security deposit of \$1,325.00 and a pet damage deposit of \$1,325.00 were paid by the tenants to the landlords. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

Both parties agree that the landlord did not complete a move in or out condition inspection report with the tenants and did not request the reports to be completed.

Both parties agree that the tenants provided the landlords with their forwarding address via email on April 30, 2020. The landlords filed this application for dispute resolution on May 14, 2020.

Landlord A.A. testified that the tenants damaged a light fixture at the subject rental property. Landlord A.A. testified that the fixture was a few years old and that it cost \$84.16 to replace. The tenants agreed that they broke the light fixture.

Landlord A.A. testified that the tenants damaged a screen door and she estimated it would cost her \$40.00 to repair. The tenants testified that the screen door was in the same condition on move in as move out. The tenants testified that they did not damage the screen door.

Both parties agree that the tenants only paid \$1,297.00 of April 2020's rent. Landlord A.A. testified that she is seeking the remainder of April's rent in the amount of \$1,353.00.

The tenants testified that they deducted \$1,353.00 from their rent for repairs made to the subject rental property. The tenants testified that they had the hot water tank repaired for \$450.00. The tenants testified that they informed the landlord of the issue with the hot water tank and then had it repaired as it was an emergency. Landlord A.A. testified that the tenants informed her of the issue and that a friend of theirs could fix it. Landlord A.A. testified that she authorized the tenants to get a quote from their friend but did not authorize the repair. Landlord A.A. testified that she told the tenants that her father was going to attend and see if he could make the repair which was non-emergent.

The agent testified that he is landlord A.A.'s father and that he called the tenants the same day they reported the issue and left his name and number so that they could

arrange a time for him to inspect the hot water tank. The agent testified that the tenants never returned his call. The tenants testified that the agent never called them.

Landlord A.A. testified that she was not happy about the unauthorized repair but agreed to pay the bill, which the tenants informed her was \$400.00, once the tenants gave her a copy of the receipt. Landlord A.A. testified that the tenants never gave her a copy of the receipt and so she did not reimburse them. The tenants testified that they gave the tenants a copy of the receipt via email.

The tenants testified that they deducted \$903.00 from rent for the cost of repairing the lawn from damage caused by raccoons. Landlord A.A. testified that she did not authorize this repair and would never have authorized a charge of over \$900.00 for lawn repair. Landlord A.A. testified that the tenants had informed her that they caught many raccoons, but nothing about a \$903.00 lawn repair fee.

Analysis

Section 67 of the *Act* states:

Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Policy Guideline 16 states that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To be successful in a monetary claim, the tenant must establish all four of the following points:

1. a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
2. loss or damage has resulted from this non-compliance;
3. the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
4. the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Failure to prove one of the above points means the claim fails.

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means

that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails.

Section 37(2)(a) of the *Act* states that when tenants vacate a rental unit, the tenants must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Residential Tenancy Policy Guideline 16 states that nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

Based on the testimony of both parties, I find that the tenants damaged a light fixture in the subject rental property contrary to section 37(2)(a) of the *Act*. As no documents from the landlord were accepted into evidence, I find that the landlord has not proved the value of the loss suffered. Nonetheless, I find that the landlords have proved that there has been an infraction of a legal right. I award the landlords \$50.00 in nominal damages for the light fixture.

The testimony of the parties on the damage to the screen door is divergent. The landlords claim that the tenants damaged the screen door, the tenants testified that they did not damage the screen door. I find that the landlords have not proved, on a balance of probabilities, that the tenants damaged the screen door. I therefore dismiss the landlords' claim for \$40.00.

Section 26(1) of the *Act* states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*. The tenant is required to pay the full rent on the day it is due and is not permitted to make any deductions except for those set out in section 33 of the *Act*.

Section 33 of the *Act* states:

- 33** (1) In this section, "emergency repairs" means repairs that are
- (a) urgent,
 - (b) necessary for the health or safety of anyone or for the preservation or use of residential property, and

- (c)made for the purpose of repairing
 - (i)major leaks in pipes or the roof,
 - (ii)damaged or blocked water or sewer pipes or plumbing fixtures,
 - (iii)the primary heating system,
 - (iv)damaged or defective locks that give access to a rental unit,
 - (v)the electrical systems, or
 - (vi)in prescribed circumstances, a rental unit or residential property.

(2)The landlord must post and maintain in a conspicuous place on residential property, or give to a tenant in writing, the name and telephone number of a person the tenant is to contact for emergency repairs.

(3)A tenant may have emergency repairs made only when all of the following conditions are met:

- (a)emergency repairs are needed;
- (b)the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;
- (c)following those attempts, the tenant has given the landlord reasonable time to make the repairs.

(4)A landlord may take over completion of an emergency repair at any time.

(5)A landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant

- (a)claims reimbursement for those amounts from the landlord, and**
- (b)gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.**

(6)Subsection (5) does not apply to amounts claimed by a tenant for repairs about which the director, on application, finds that one or more of the following applies:

- (a)the tenant made the repairs before one or more of the conditions in subsection (3) were met;
- (b)the tenant has not provided the account and receipts for the repairs as required under subsection (5) (b);
- (c)the amounts represent more than a reasonable cost for the repairs;

(d)the emergency repairs are for damage caused primarily by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(7)If a landlord does not reimburse a tenant as required under subsection (5), the tenant may deduct the amount from rent or otherwise recover the amount.

I find that the tenants have not proved that they provided the landlords with a copy of the hot water repair receipt. I therefore find that the tenants were not entitled to deduct \$450.00 for the repair from rent.

I find that lawn repair is not an emergency repair and that the tenants did not prove that they had authorization from the landlord to complete this repair. I find that the tenants were not entitled to deduct the \$903.00 lawn repair fee from rent.

Pursuant to section 26(1) of the *Act*, I find that the tenants were obligated to pay the monthly rent in the amount of \$2,650.00 on the first day of each month. I find that the tenants did not pay rent in accordance with section 26(1) of the *Act* and owe the landlords \$1,353.00 in unpaid rent.

Section 38 of the *Act* states that within 15 days after the later of:

- (a)the date the tenancy ends, and
- (b)the date the landlord receives the tenant's forwarding address in writing, the landlord must do one of the following:
 - (c)repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
 - (d)make an application for dispute resolution claiming against the security deposit or pet damage deposit.

I find that the landlords made their application for dispute resolution claiming against the security and pet damage deposits pursuant to section 38(a) and 38(b) of the *Act*.

As the landlords were successful in their application, I find that they are entitled to recover the \$100.00 filing fee from the tenant, pursuant to section 72 of the *Act*.

Section 72(2) of the *Act* states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit due to the tenant. I

find that the landlords are entitled to retain \$1,503.00 from the tenants' deposits. I order the landlords to return the remaining \$1,147.00 to the tenants.

Conclusion

I issue a Monetary Order to the tenants under the following terms:

Item	Amount
Security deposit	\$1,325.00
Pet damage deposit	\$1,325.00
Less nominal damage for light fixture	-\$50.00
Less unpaid rent	-\$1,353.00
Less filing fee	-\$100.00
TOTAL	\$1,147.00

The tenants are provided with this Order in the above terms and the landlords must be served with this Order as soon as possible. Should the landlords 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: September 15, 2020

Residential Tenancy Branch