



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding TRG The Residential Group REALTY
and [tenant name suppressed to protect privacy]

DECISION

Code MNDC, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlords filed under the Residential Tenancy Act (the “Act”), for a monetary order for money owed and damages to the unit, for an order to retain the security deposit in partial satisfaction of the claim and to recover the cost of the filing fee.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The landlord confirmed receipt of the tenant’s evidence. The parties agreed that the tenant was not served with any photographs or the strata ledger that was submitted as evidence by the landlord on June 8, 2020. Therefore, I have excluded these documents. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

In this case, the landlord’s application is claiming the total amount of \$3,702.92; however, it appears the landlords have added the security deposit to their claim. The landlord confirmed the amount of their claim is \$1,802.92.

Issues to be Decided

Are the landlords entitled to monetary compensation for money owed and damages?
Are the landlords entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The parties agreed that the tenancy began on March 1, 2019. Rent in the amount of \$3,600.00 was payable on the first of each month. The tenants paid a security deposit of \$1,800.00. The tenancy ended on May 31, 2020.

The landlord claims as follows:

a.	Unpaid move-in fee	\$ 250.00
b.	Charge back from strata for flood	\$1,452.92
c.	Filing fee	\$ 100.00
	Total claimed	\$1,802.92

The landlord testified that the tenants did not pay the move-in fee that was a requirement of their tenancy. The landlord seeks to recover the move-in fee of \$250.00.

The tenant testified that this issue was resolved during the tenancy. The tenant stated that they were entitled to two parking stalls that were included in the rent; however, they only had one parking spot and they had incurred cost of \$420.00 for additional parking.

The tenant testified that it was an oversight that they had not paid the move-in fee and it was agreed that that the amount the landlord owed for the additional parking and the amount they owed for the move-in fee would be offset, which left a balancing owing to them, the tenants, of \$170.00. The tenant stated that the balance owing to them was deducted from March 2020, rent. Filed in evidence by the tenant is an email thread and a copy of March 2020 rent cheque, to support the tenant's testimony.

The landlord's agent stated that have no information on any prior agreement.

The landlord's agent testified that there was a flood in the rental unit causing damage as the tenants were using the appliance knowing it was leaking and they were charged back from the strata for the damage.

The tenant testified that the landlord was notified that the washing machine was leaking by email and they asked to send pictures. The tenant stated that they asked the landlord several times to send someone. Filed in evidence is an email thread, which supports the tenant's testimony.

The landlord's agent argued it was only leaking because the tenants continue to use the appliance causing the damage. The landlord's agent stated that the plumber said it was the tenant's fault that the damage occurred. The agent confirmed they did not submit any documentary evidence from the plumber.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the landlords have the burden of proof to prove their respective claim.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

I am satisfied based on the testimony of the tenant and their documentary evidence that the issue of the move-in fee was paid. This is supported by the email threads which the tenants were given credit for additional parking, which was to be included in the rent and that amount was offset with the move-in fee, leaving a balance owed to the tenants. The tenant deducted the balance owing from March 2020, rent. Therefore, I dismiss this portion of the landlords' claim.

I am not satisfied that the tenant is responsible for the water damage caused by the washing machine leaking. The landlord was notified of the problem and did not attend until several days later. I find any damage caused was for the landlord's failure to attend the rental unit when first notified. Further, there was no evidence present from a qualified person, such as a plumber to prove it was the tenant's neglect of using the

appliance knowing it was leaking. Therefore, I dismiss this portion of the landlord's claim.

Having found the above, I dismiss the landlords' application as the landlords were not successful, I decline to award the landlords the cost of the filing fee.

Since I have dismissed the landlords claim, I find the landlords have no legal authority to retain the tenants' security deposit of \$1,800.00. Therefore, I order the landlords to return the security deposit to the tenants forthwith.

Should the landlords fail to comply with my order, I grant the tenants a formal monetary order in the amount of \$1,800.00. This Order may be enforced the Provincial Court (Small Claims). The landlords are **cautioned** that costs of such enforcement are recoverable from the landlords.

Conclusion

The landlords' application is dismissed without leave to reapply. The tenants are granted a formal monetary order for the return of their security deposit.

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: October 02, 2020

Residential Tenancy Branch