



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, MNDL-S, MNDCL-S, FFL

Introduction

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

- an order of possession for landlord's use of property, pursuant to section 55;
- a monetary order for damage and for compensation under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenants' security and pet damage deposits (collectively "deposits"), pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The two landlords, "male landlord" and female landlord ("landlord"), and the two tenants, male tenant ("tenant") and "female tenant" attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 33 minutes.

The female tenant confirmed receipt of the landlords' application for dispute resolution hearing package and amendment and the landlord confirmed receipt of the tenants' evidence. In accordance with sections 88, 89 and 90 of the *Act*, I find that both tenants were duly served with the landlords' application and amendment and both landlords were duly served with the tenants' evidence.

At the outset of the hearing, the landlord claimed that she did not require an order of possession because the tenants had already vacated the rental unit. Accordingly, this portion of the landlords' application is dismissed without leave to reapply.

Issues to be Decided

Are the landlords entitled to a monetary order for damage and for compensation under the *Act*, *Regulation* or tenancy agreement?

Are the landlords entitled to retain the tenants' deposits?

Are the landlords entitled to recover the filing fee for this 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 the landlords' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on February 10, 2017 and ended on September 13, 2020. Monthly rent in the amount of \$1,500.00 was payable on the first day of each month. A security deposit of \$750.00 and a pet damage deposit of \$500.00 were paid by the tenants and the landlords continue to retain both deposits. A written tenancy agreement was signed by both parties. The tenants provided written permission to the landlords to keep both their security and pet damage deposits, totalling \$1,250.00. Of the \$1,250.00 deposits, the tenants agreed to pay for the landlords' claimed costs of rent from September 1 to 13, 2020 of \$650.00, storage of \$72.13, and \$527.87 towards the carpet replacement cost of \$1,563.74.

The landlords seek a monetary order of \$2,747.00 plus the \$100.00 application filing fee. The tenants agreed to pay for \$1,250.00 towards the above cost and disputed the remaining \$1,497.00 and the \$100.000 filing fee.

The landlords seek \$461.13 to replace a refrigerator door, which the landlord claimed was new when the tenants moved in, there were scratches that could not be buffed out, and the tenants' children caused scratches with their magnets.

The landlords seek \$1,563.74 to replace the carpet at the rental unit because the landlord stated that there were scratches on the stairs, there were sharp edges where the tacks hold the carpet in place, there were cat urine stains, and the original carpet they got three years ago was no longer available so they had to replace it all.

The tenants dispute the refrigerator door replacement of \$461.13. The tenant claimed that the refrigerator is four years old, the door is not broken and still works, his two little children caused some scratches, the tenants buffed and got most of the scratches out before they vacated, and the remaining scratches were reasonable wear and tear.

The tenants dispute the remaining carpet replacement cost of \$1,035.87. The tenant stated that the carpet was from 2014, there were stains from the previous tenants, there were spikes in every room not just the stairs where their cat scratched, and the tenants already agreed to pay \$527.87 towards the above total cost of \$1,563.74. He said that the tenants' cat did not urinate on the carpet and the cat damage did not warrant a full replacement of the carpet.

Analysis

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicants to establish the claim on a balance of probabilities. In this case, to prove a loss, the landlords 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 landlords followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

I award the landlords \$650.00 for rent from September 1 to 13, 2020, \$72.13 for storage, and \$527.87 towards the carpet damage cost, totalling \$1,250.00. The tenants agreed to pay the above amounts during the hearing. I order the landlords to retain the tenants' security and pet damage deposits, totalling \$1,250.00, in full satisfaction of the monetary award.

On a balance of probabilities and for the reasons stated below, I dismiss the remainder of the landlords' application for \$1,497.00 without leave to reapply.

I find that the landlords did not sufficiently prove their claim, as they did not go through any of their documents during the hearing. They did not explain their photographs, invoices, receipts, or other documents. I notified the landlords during the hearing that they had the burden of proof, as the applicants, to prove their claim. I informed them about the above four-part test during the hearing. I provided the landlords with ample time and opportunity to present their claim during the hearing.

The landlords did not indicate when the above work was done, when or how they paid the amounts due, or any other such information. It is the landlords' burden to prove these amounts and claims.

I find that the tenants did not cause damage beyond reasonable wear and tear to the refrigerator door at the rental unit, as per Residential Tenancy Policy Guideline 1. I find that the damage claimed by the landlords is cosmetic, as the door still functions properly. I do not find that the scratches that could not be buffed out by the tenants to warrant a complete refrigerator door replacement.

I find that the tenants agreed to pay for damages of \$527.87 to the carpet at the rental unit caused by their cat. I find that the tenants are not liable for further damages to the carpet, as the landlords failed to show that these damages were caused only by the tenants and not from previous tenants. I find that the tenants are not responsible to replace the landlords' entire carpet in the rental unit, as the landlords claimed that their original carpet was no longer available.

Therefore, the landlord's claims for replacing the refrigerator door of \$461.13 and for carpet replacement of \$1,035.87 (since the tenants agreed to pay \$527.87 towards the total cost of \$1,563.74), are dismissed without leave to reapply.

As the landlords were only successful in this application based on what the tenants agreed to pay during the hearing, I find that the landlords are not entitled to recover the \$100.00 filing fee from the tenants.

Conclusion

I order the landlords to retain the tenants' security and pet damage deposits, totalling \$1,250.00, in full satisfaction of the monetary award. The remainder of the landlords' application is dismissed without leave to reapply.

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 08, 2020

Residential Tenancy Branch