



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes LL: OPC, FFL, MNDL
 TT: LRE, OLC, CNC, FFT

Introduction

This hearing dealt with applications from both the landlord and tenants pursuant to the *Residential Tenancy Act* (the “Act”).

The landlord applied for:

- An order of possession pursuant to section 55;
- Authorization to recover the filing fee from the tenants pursuant to section 72; and
- A monetary award for damages and loss pursuant to section 67.

The tenants applied for:

- An order to suspend or set conditions on the landlord’s right to enter the rental unit pursuant to section 70;
- An order that the landlord comply with the Act, regulations or tenancy agreement pursuant to section 62;
- Cancellation of a 1 Month Notice to End Tenancy for Cause (the “1 Month Notice”) pursuant to section 47; and
- Authorization to recover the filing fee from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

As both parties were present service was confirmed. The parties each testified that they were in receipt of the materials. Based on the testimonies I find each party duly served with the respective materials in accordance with sections 88 and 89 of the *Act*.

At the outset of the hearing the parties said that the tenants have moved out and this tenancy has ended. The tenants withdrew their application in its entirety. The landlord withdrew the portions of their application pertaining to an ongoing tenancy.

Issue(s) to be Decided

Is the landlord entitled to a monetary award as claimed?

Background and Evidence

This periodic tenancy began in 2014. No condition inspection report was prepared at any time for the tenancy. The landlord submits that the rental unit required cleaning and work after the tenancy ended and seeks a monetary award for their losses.

The tenants paid a security deposit of \$325.00 which is still held by the landlord. The tenants confirmed that they have not provided the landlord with a forwarding address in writing as at the date of the hearing.

Analysis

Pursuant to Rule of Procedure 6.6 the applicant bears the onus to prove their case on a balance of probabilities.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I find that in the absence of a proper condition inspection report prepared in accordance with the *Act* and regulations there is insufficient evidence of the pre-tenancy state of the rental unit and that any damage is attributable to the tenants. I find the testimony of the landlord and their photographs to be insufficient to determine that there is damage as claimed, that the damage is caused by a breach on the part of the tenants or that the landlord incurred losses as claimed. I find that the landlord has not met their evidentiary

burden on a balance of probabilities. Consequently, I dismiss the landlord's application without leave to reapply.

Conclusion

Both applications are dismissed in their entirety 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: December 11, 2020

Residential Tenancy Branch