



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDL-S, FFL**

Introduction

This hearing addressed the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a Monetary Order for damage to the unit, site or property, pursuant to section 67 of the *Act*;
- an application to keep all or part of the security deposit, pursuant to section 38 of the *Act*; and
- a request to be reimbursed by the tenants for the filing fee, pursuant to section 72 of the *Act*.

Both tenants and the landlord participated in the conference call hearing. The landlord and tenant K.F. were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord testified that on September 19, 2020 she served the tenants with her Application for Dispute Resolution and evidentiary package by way of Canada Post Registered Mail. The Canada Post tracking numbers were provided to the hearing confirming service of these documents. The tenants acknowledged receipt of these documents on December 18, 2020.

While the tenants made some arguments regarding the lateness of the application for dispute and receipt of evidence, I find pursuant to sections 89 & 90 of that *Act* that the tenants were served in accordance with the *Act*. Further, I note pursuant to Rule of Procedure 3.14 that evidence which an applicant intends to rely on at a hearing must be received no later than 14 days prior to a hearing. I find therefore that all documentation received on December 18, 2020 was in time for the January 4, 2021 hearing.

Issue(s) to be Decided

Is the landlord entitled to a monetary award?

Can the landlord retain the tenants' security deposit?

Can the landlord recover the filing fee?

Background and Evidence

A copy of the tenancy agreement notes this tenancy began on March 1, 2020 and was for a fixed term, set to expire on December 31, 2021. Rent was \$3,850.00 per month and a security deposit of \$1,925.00 paid on January 15, 2020 continues to be held by the landlord. The parties agree this tenancy ended by way of mutual agreement in August 2020.

The landlord is seeking an order to retain the tenants' security deposit in its entirety along with a monetary award of \$1,369.30. The landlord explained she sought to deduct the entirety of the tenants' security deposit to partially recover a monetary award as follows:

ITEM	AMOUNT
Re-Leasing Fees	\$1,925.00
Replacement of Fridge Handle	295.95
Garburator Replacement	253.35
Cleaning	200.00
Front Lawn (tidy)	50.00
Bathroom window repair	437.50
Bifold closet door replace	132.50
TOTAL =	\$3,294.30

Both parties presented conflicting testimony at the hearing. The landlord argued that she had incurred costs as a result of the parties mutually agreeing to end the tenancy in August 2020. Specifically, the landlord said she was forced to hire someone the help her re-rent the home and perform showings of the home for potential applicants. For this the landlord seeks to recover \$1,925.00. The remainder of the landlord's application for a monetary award concerns damages that are alleged to have occurred during the tenancy. The landlord argued that she was forced to repair the fridge door handle, a

bathroom window that would not open, a bifold closet door that had been broken and the garburator. Further, the landlord stated she incurred costs related to cleaning of the rental unit and for gardening services following the tenants' departure. The landlord testified that the tenants had moved-out on August 29, 2020 and placed the key in the landlord's mailbox without having performed a condition inspection of the home following the conclusion of the tenancy.

The tenants disputed the entirety of the landlord's claim. The tenants said they had left the unit in a clean condition and followed all direction from the landlord related to carpet cleaning. The tenants explained that the property was in an "average" state when they took possession of the home. Further, the tenants testified that the landlord had failed to perform a condition inspection of the unit with them when they took possession of the home in March 2020. The landlord acknowledged not being present during the walk-through inspection at the start of the tenancy but said she provided the tenants with the necessary condition inspection report and signed it after they had returned it to her.

The tenants argued that any damage which had occurred during their tenancy was the result of normal wear and tear or had previously been identified to the landlord. The landlord said the fridge and garburator were replaced in 2011 while the window and bifold doors were "30 some years old".

Finally, the tenants disputed that they failed to attend a move-out inspection. The tenants argued that no such inspection had ever been requested or scheduled by the landlord. They stated that they would have been happy to perform one with the landlord had it been requested, as they had yet to return to Australia following their departure from the rental home. The tenants said a copy of their forwarding address was provided to the landlord along with their keys after both were placed in the landlord's mailbox on August 29, 2020.

Analysis

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. In this case, the onus is on the landlord to

prove her entitlement to a claim for a monetary award. Section 67 of the *Act* must be read in conjunction with *Policy Guideline #16* which sets out the four-part test to be considered when awarding damages.

The landlord has applied for a Monetary Order to recoup the expenses she allegedly incurred re-renting the home and repairing the damage done to the rental unit by the tenants. The landlord is also seeking to retain the security deposit to apply against any monetary award and to recover the filing fee.

In her application and through her testimony, the landlord argued that the tenants had left the unit in an unreasonable state following the tenancy and had caused damage to the unit which went beyond reasonable wear and tear. Further, she argued the tenants had broken their lease, therefore, requiring her to hire an agent to re-rent the home.

After considering all testimony presented and having reviewed the evidence of all parties, I find the landlord has failed to demonstrate an entitlement to any amount claimed. A large part of the landlord's claim concerned an agent fee of \$1,925.00. I find no basis for which this amount is based. The landlord has not submitted an invoice demonstrating payment to an agency and she herself stated that the property was re-rented for September 1, 2020 after it was shown "3 or 4 times" after being advertised on Craigslist. While I acknowledged that someone would need to be present for these showings, I find no obligation for the tenants to incur these expenses as the tenancy ended by way of mutual agreement, nor do I find a liquidated damages clause outlining an anticipated costs of this nature in either the tenancy agreement or the addendum. I therefore dismiss this portion of the landlord's claim.

The remainder of the landlord's application concerns a return of funds related to damages and repairs. Section 37(2)(a) of the *Act* states that at the conclusion of a tenancy, a tenant must "leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear." After reviewing the tenants' evidence and having considered the landlord's testimony and evidence, I am not satisfied that the damage goes beyond the scope of "reasonable wear and tear." I note the fridge and garburator were installed in 2011 while the bifold door and window were by the landlord's own admission approximately 30 years old. Further, a close review of the landlord's evidence shows that the refrigerator was replaced in its entirety on September 2, 2020.

Section 23(1) notes, "The landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day." As the landlord failed to perform the move-in condition inspection

with the tenants, I place little emphasis on the landlord's ability to accurately comment on the state of the home prior to the tenants' departure.

Section 38 of the *Act* requires the landlord to either return a tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the *later* of the end of a tenancy and, or upon receipt of the tenant's forwarding address in writing.

Based on the tenants' own testimony, I find the forwarding address was placed in the landlord's mailbox on August 29, 2020. Pursuant to section 88 & 90 of the *Act*, the landlord is therefore deemed to have received this forwarding address 3 days after it was placed in the mailbox. Notwithstanding the deemed service date of August 31, 2020, I find the landlord applied to retain the tenants' security deposit on September 12, 2020 and therefore was within the 15-day time limit.

I find no reason why the landlord should be entitled to retain the tenants' security deposit. As noted above, I find the damage that occurred in the property to be largely the result of normal wear and tear and I find little evidence that the tenants did not leave the unit a "reasonably clean" condition as required by section 37(2)(a) of the *Act*.

The landlord is directed to return the tenants security deposit in its entirety. As the landlord was unsuccessful in her claim, she must bear the cost of the filing fee.

Conclusion

The landlord's application for a monetary award is dismissed without leave to reapply.

The landlord is ordered to return the tenants' security deposit in its entirety.

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: January 08, 2021

Residential Tenancy Branch