



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDL-S, FFL**

Introduction

The words tenant and landlord in this decision have the same meaning as in the Act, and the singular of these words includes the plural.

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

- A monetary order for damages to the rental unit and authorization to retain a security deposit pursuant to sections 67 and 38; and
- Authorization to recover the filing fees from the tenants pursuant to section 72.

The tenants did not attend this hearing, although I left the teleconference hearing connection throughout the hearing that lasted approximately 40 minutes. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord testified that she served the tenant, JO with the Notice of Dispute Resolution Proceedings package by registered mail on October 20, 2020. The landlord testified that the tenants had previously filed a direct request for a return of a security deposit. The landlord testified she was given the tenant's forwarding address by email some time ago and that the tenants re-supplied their forwarding address to the landlord on their direct request application. The file number for the tenants' application is recorded on the cover page of this decision. The tracking number for the landlord's mailing is also recorded on the cover page of this decision. With the landlord's permission, I checked the Canada Post website and noted the Notice of Dispute Resolution Proceedings package was confirmed as received on November 4, 2020. As such, I find

the tenant JO was served with the Notice of Dispute Resolution Proceedings package on November 4, 2020 in accordance with section 89 of the Act.

The landlord testified she did not send the co-tenant with initials PA with the Notice of Dispute Resolution Proceedings package. As each respondent to an Application for Dispute Resolution Proceedings must be individually served with the Notice of Dispute Resolution Proceedings, I dismissed the landlord's application against the tenant, PA, without leave to reapply at the commencement of the hearing.

Preliminary Issue

As stated previously, the tenants filed a direct request application for a return of their security deposit. With the landlord's permission, I reviewed the adjudicator's decision and found that the issue of whether the landlord could retain any part of the security deposit had already been previously determined. I advised the landlord that I do not have the authority or jurisdiction to review the adjudicator's decision regarding the security deposit and that today's hearing would solely decide whether the landlord has successfully proven the damages to the rental unit by the tenant as she alleges.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for damages to the rental unit?
Can the landlord recover the filing fee?

Background and Evidence

The landlord testified that the co-tenants are brother and sister. When the tenancy began, the landlord did not conduct a condition inspection report with the tenants. The landlord testified that the rental unit was newly built in 2017 and there was only one previous set of tenants before these tenants moved in. According to the landlord, the previous tenants did not do any damage to the rental unit.

The tenancy with the tenant/respondents in this hearing began on June 1, 2019. The landlord submits that, given the newness of the rental unit, no condition inspection report was necessary. The landlord testified that she took photos of the rental unit before these tenants moved in, however she didn't think to provide those photos to me for this hearing.

When these tenants moved out, there was wall damage. There were scratches to the walls and doors. Big bumps from moving furniture were made. The tenants did no cleaning after they left. The landlord testified that the tenants put a TV on the wall and the TV mounting system did damage to the walls. The landlord testified that she

provided photos of the damage to the rental unit, however none were supplied to me in the dispute management system as being uploaded by the landlord.

In her application, the landlord seeks compensation of \$1,015.00. She did not provide a monetary order worksheet for me to determine how she arrived at this total.

In evidence, the landlord provided a \$2,310.00 invoice for drywall patching, repainting ceilings and walls in a different unit, XX63 Street. The landlord also provided an invoice for house cleaning at the same unit, unit #XX63Street. I note the rental address stated on the Application for Dispute Resolution is (basement) XX61... Street. The landlord did not provide any testimony regarding the discrepancy between the invoices with a different unit number and the one shown on the Application for Dispute Resolution as this discrepancy was not pointed out to her during the hearing.

The landlord testified that during the tenancy, the tenants had the heat up to thirty degrees in the summer, used the washer and dryer continually and flushed sanitary napkins down the toilet causing the sump to burn out. The landlord also discovered a problem with cockroaches while the tenants were moving out. The landlord did not indicate in her Application for Dispute Resolution that she seeks compensation for these issues.

Analysis

Section 7 of the Act states: If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

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.

Rule 6.6 of the Residential Tenancy Rules of Procedure indicate the onus to prove their case is on the person making the claim. The standard of proof is on a balance of probabilities. If the applicant is successful in proving it is more likely than not the facts occurred as claimed, the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; and

4. Steps taken, if any, to mitigate the damage or loss.

Section 14 of the Residential Tenancy Regulations (“Regs”) state: the landlord and tenant must complete a condition inspection described in section 23 or 35 of the Act [*condition inspections*] when the rental unit is empty of the tenant's possessions, unless the parties agree on a different time.

Sections 17 and 18 of the Regs indicate it is the landlord's responsibility to schedule the inspections and provide a copy to the tenant.

Section 21 of the Regs state that in dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

To begin, the landlord did not conduct a condition inspection report with the tenant at the beginning of the tenancy although this was her responsibility pursuant to sections 17 and 18 of the Regulations. In order for the landlord to succeed in proving the tenants damaged the rental unit, the landlord must first prove to me the condition of the rental unit at the commencement of the tenancy, as prescribed in Section 21. Without a condition inspection report signed by the parties acknowledging the pre-existing conditions of the rental unit, the landlord has put herself in a position where she cannot prove, on a balance of probabilities, the existence of the damages caused by the tenant when the tenancy ended. Though her testimony bears some weight, she has not met the burden of proof to show me the difference in condition between move-in and move-out.

While the condition inspection report would provide the most compelling proof of damage, photographs to corroborate the landlord's claim would also have been informative. The landlord has provided neither. I find the landlord has not proven the existence of the damages caused by the tenant (part 1 of the 4 point test)

Second, the landlord claimed compensation in the amount of \$1,015.00 although she did not provide any explanation on how she arrived at this figure. I find the landlord has also failed to provide sufficient evidence to justify the value of the damage or loss she seeks compensation for (part 3 of the 4-point test).

As the landlord has failed to provide sufficient evidence to establish all four of the points in the four-point test, the landlord's application is dismissed without leave to reapply.

As the landlord's application was not successful, the landlord is not entitled to recover the \$100.00 filing fee for the cost of this application.

Conclusion

The 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: January 19, 2021

Residential Tenancy Branch