



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL

Introduction

On September 13, 2020, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) requesting a Monetary Order for damages, and to recover the cost of the filing fee. The matter was set for a participatory hearing via conference call.

The Landlord, the Tenants and the Tenants’ counsel attended the hearing and provided affirmed testimony. They were provided the opportunity to present their relevant oral, written and documentary evidence and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

Issues to be Decided

Should the Landlord receive a Monetary Order for damages, in accordance with section 67 of the Act?

Should the Landlord be authorized to apply the security deposit to the claim, in accordance with sections 38 and 72 of the Act?

Should the Landlord be compensated for the cost of the filing fee, in accordance with section 72 of the Act?

Background and Evidence

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Both parties agreed to the following terms of the tenancy:

The one-year, fixed-term tenancy began on May 1, 2018 and continued as a month-to-month tenancy. The rent was \$2,400.00 and due on the first of each month. The Landlord collected and still holds a security deposit in the amount of \$1,150.00 and a pet damage deposit of \$1,000.00.

The Landlord testified that a move-in condition report was quickly completed upon the Tenants' move-in. During the move-out inspection on August 31, 2020, tensions were high and the damage in the rental unit wasn't fully noted. The Landlord submitted that a broken mirror and some broken tile were noted on the move-out condition report; that the Tenants took responsibility for this damage; and, consented for the Landlord to keep \$200.00 of the security deposit.

The Landlord stated that the \$200.00 was an estimate for the damages and that he underestimated the cost for a replacement mirror and the repairs to the tile. The Landlord stated that he also found damage to the carpet in two of the bedrooms as a result of the Tenant's puppy urinating on the carpet.

The Landlord submitted a picture of the broken mirror and provided a message from a local glass company who provided an estimate of \$545.00 plus taxes to replace the mirror. The Landlord is claiming the amount of \$545.00 for a replacement mirror.

The Landlord submitted some pictures that captured minor damage to a few tiles in the kitchen. He submitted correspondence from a local tile store representative who acknowledged he would actually have to attend to the rental unit to provide an accurate estimate but suggested the cost for replacing the tiles between \$3,500.00 and \$5,000.00. The Landlord stated that all the floor and tile have to be replaced and is claiming \$700.00 in compensation towards fixing the damage.

The Landlord testified that he moved into the rental unit approximately 2 weeks after the Tenants left. The Landlord noticed a strong smell of urine in the bedrooms. The Landlord stated that the carpets and underlay in two bedrooms had to be replaced. The Landlord submitted a quote from a local flooring store and is claiming \$2,394.72 for the replacement of the two carpets.

The Tenants testified that, although they agreed that they had received an evidence package from the Landlord, they did not receive the condition inspection report that the Landlord submitted and referred.

The Tenants stated that a video was taken of the rental unit in good condition upon move-out and believe that the inspection was done thoroughly over a 20-minute time period. At the end of the inspection, they agreed to take responsibility for the broken mirror and to the minor damage of the tiles even though the cracks in the tiles were there throughout their tenancy. They agreed for the Landlord to keep \$200.00 of the security deposit as compensation for this damage.

The Tenants questioned the validity of the Landlord's evidence and noted that the flooring company quote is just a quote and it indicates that a balance is due, not that the work has been completed and paid.

Analysis

Section 7(1) of the Act establishes that a party who does not comply with the Act, the Regulations or the Tenancy Agreement must compensate the other party for damage or loss that results from that failure to comply.

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 the responsible 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 Applicant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the Tenancy Agreement or a contravention of the Act on the part of the other party. Once that has been established, the Applicant must then provide evidence that can verify the actual monetary amount of the loss or damage.

The Landlord provided undisputed testimony and evidence that the Tenants' were responsible for the damage to the mirror. The Tenants agreed that they caused the damage. The Landlord provided correspondence from a local glass company with a quote for a replacement mirror and has claimed the amount of \$545.00 in compensation. As the Tenants agreed that they caused the damage, I find that the Landlord has established a monetary claim regarding the damaged mirror.

The Landlord provided a few pictures of individual cracked tiles as part of a much larger tiled surface. The Tenants contested that they caused the damage; although, had agreed to forfeit a part of the security deposit for potential repair. When I reviewed the move-in condition inspection report, I noted that there were no indication as to the condition of the tiles upon move-in. I find there is no evidence in front of me that speaks to how the Tenants were responsible for the breaking of the tiles, the condition of the tile prior to the Tenants move-in or any documentation that would verify the actual monetary amount required for repair. For this issue, I find that the Landlord has failed to provide sufficient evidence to prove a loss pursuant to section 67 of the Act and as such, dismiss this part of the Landlord's claim.

The Landlord claimed that he had to replace the carpets and underlay in two of the bedrooms as a result of the urine from a puppy. The Landlord has claimed the full

amount to replace these carpets; however, I find that the Landlord failed to provide sufficient evidence as to the condition of these carpets upon move-in, whether there were any attempts to professionally clean the carpets and if the carpets had actually been replaced and the final costs. As such, I dismiss this part of the Landlord's claim.

The Landlord has established a monetary claim, in the amount of \$645.00, which includes \$545.00 for the damaged mirror and \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution.

Pursuant to section 72(2) of the Act, I authorize the Landlord to keep a portion of the Tenants' security deposit in the amount of \$645.00 and return the balance of the security deposit and the pet damage deposit.

Based on these determinations I order the Landlord to return the security deposit and the pet damage deposit in the amount of \$1,505.00, via registered mail, to the Tenants within 15 days of receiving this Decision. If the Landlord fails to return the deposits within 15 days, they may be at risk of owing double the amount of the deposits to the Tenants.

Conclusion

The Landlord was partially successful in his monetary claim. The Landlord is authorized to keep \$645.00 of the security deposit. The Landlord must return the balance of the security deposit and the pet damage deposit to the Tenants, in the amount of \$1,505.00.

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 27, 2021

Residential Tenancy Branch