



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL

Introduction

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

- a monetary order for damage to the rental unit, pursuant to section 67;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

"Landlord MK" did not attend this hearing, which lasted approximately 30 minutes. Landlord TP ("landlord"), the landlords' agent and the 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 30 minutes.

The landlord confirmed that he had permission to represent landlord MK, who is his wife (collectively "landlords"). He stated that both landlords are owners of the rental unit. He confirmed that the landlords' agent had permission to represent both landlords at this hearing.

The tenant confirmed receipt of the landlords' application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was duly served with the landlords' application.

The tenant confirmed that he did not submit any documentary evidence for this hearing.

At the outset of the hearing, I explained the hearing and settlement process to both parties, who had an opportunity to ask questions. Both parties affirmed that they were ready to proceed with the hearing.

Issues to be Decided

Are the landlords entitled to a monetary order for damage to the rental unit?

Are the landlords entitled to retain the tenant's security deposit?

Are the landlords entitled to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to the landlords' 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 July 15, 2018 and ended on September 30, 2020. Monthly rent in the amount of \$2,550.00 was payable on the first day of each month. A security deposit of \$1,275.00 was paid by the tenant and the landlords continue to retain this deposit. A written tenancy agreement was signed by both parties. Move-in and move-out condition inspection reports were completed for this tenancy. The tenant provided a written forwarding address to the landlords, by way of the move-out condition inspection report on September 30, 2020. The landlords did not have written permission to retain any amount from the tenant's security deposit. The landlords filed this application to retain the tenant's security deposit on October 5, 2020.

The landlords seek a monetary order of \$1,380.00 plus the \$100.00 application filing fee. The tenant disputes a portion of the landlords' application.

The landlords seek \$100.00 to clean the hood vents and the oven, which the landlords' agent claimed was dirty when the tenant vacated. The tenant agreed to pay this amount during the hearing.

The landlords seek \$280.00 to replace a flex room door, which the landlords' agent claimed the tenant drilled a hole in the door. The tenant disputed this cost. He agreed that he drilled a hole in the door in order to put a plastic vent over the top of the door because it was required in order to breathe. He stated that he did not get permission for this alteration, but he made other minor changes in the rental unit, which the landlords agreed that he could perform.

The landlords seek \$100.00 to remove three lights, including one standing light, and a wall-mounted shelf. The tenant disputed this cost. He claimed that two of the lights and the shelf were professionally installed in the walls. He stated that he offered to remove these items or allow the landlords to keep them, but he did not receive a response from the landlords' agent, who told the tenant that he would check with the landlords first. He said that the next time he heard about these items, it was in this application.

The landlords seek strata fines of \$200.00 for repairing a vehicle in the parking stall and \$300.00 for a move-out fee. The tenant agreed to pay both fines during the hearing.

The landlords seek strata fines of \$200.00 for the tenant leaving garbage in the hallway of the rental building and \$200.00 for no move-out schedule as of September 29, 2020. The tenant disputes these costs. He claimed that he only left garbage in the hallway for an hour while he was cleaning, and he never had a chance to respond to this strata fine. He stated that he tried to arrange a move-out and management "went dark," when a schedule was clearly arranged.

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 tenant 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 \$100.00 for the hood vent and oven cleaning, \$200.00 for the strata fine for the vehicle repair in the parking stall, and \$300.00 for the strata move-out fee, for a total of \$600.00. The tenant agreed to pay the above amounts during the hearing.

On a balance of probabilities and for the reasons stated below, I dismiss the remainder of the landlords' application for \$780.00 without leave to reapply.

I find that the landlords did not sufficiently prove their claim, failing to properly explain the photographs, letters, condition inspection reports, and other documents that the landlords submitted for the hearing. The landlords did not go through any of the above documents during the hearing. I notified the landlords during the hearing that they had the burden of proof, on a balance of probabilities, to prove their claim. I informed them about the above test during the hearing and I provided them with ample time and opportunity to present their case. I asked the landlords' agent questions about their monetary claim, including the amounts being claimed, but he still failed to go through the landlords' documents during the hearing.

The landlords did not provide any invoices or receipts for the damages claimed for the flex room door replacement of \$280.00 and the removal of 3 lights and a shelf of \$100.00. The landlords provided an online excel spreadsheet with estimated costs, which is not signed by anyone. The document can be edited or changed by anyone, as it is not locked online or protected by a password. The document indicates that \$1,921.50 total is due, with no indication as to whether this amount was paid, since no receipt was given. The landlords did not indicate when the work was done, what they paid, when they paid it, or how they paid it. I find that the landlords provided insufficient evidence for the above claims and they failed part 3 of the above test. The tenant disputed the landlords' claims for the above damages.

The landlords did not provide any receipts or proof of payment for the strata fines of \$200.00 for garbage in the hallway and \$200.00 for no move-out schedule. The landlords provided strata letters regarding the fines. The strata letters indicate that the landlords are required to pay by cheque or pre-authorized payment, requiring the landlords' authorization by email. No cancelled cheques, emails allowing pre-authorized payment, receipts, banking documents or other such records were provided by the landlords to confirm whether the above amounts were paid, what was paid, when it was paid, or how it was paid. I find that the landlords provided insufficient evidence for the above claims. The tenant disputed the landlords' claims for the above strata fines.

None of the landlords' above costs are included in the parties' move-out condition inspection report, which was submitted by the landlords.

Therefore, the landlord's claims for a flex door replacement of \$280.00, the removal of 3 lights and a shelf of \$100.00, and the strata fines of \$200.00 for garbage in the hallway and \$200.00 for no move-out schedule, are all dismissed without leave to reapply.

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

Security Deposit

The landlords continue to hold the tenant's security deposit of \$1,275.00. No interest is payable on the deposit during this tenancy. As the landlords applied to retain the deposit and in accordance with the offsetting provisions of section 72 of the *Act*, I order the landlords to retain \$600.00 from the tenant's security deposit of \$1,275.00.

I order the landlords to return the remaining \$675.00 from the tenant's security deposit to the tenant within 15 days of receiving this decision. The tenant is provided with a monetary order for \$675.00. Although the tenant did not file an application for the return of his deposit, I am required to consider it on the landlords' application to retain the deposit, as per Residential Tenancy Policy Guideline 17.

Conclusion

I order the landlords to retain \$600.00 from the tenant's security deposit of \$1,275.00.

The remainder of the landlords' application is dismissed without leave to reapply.

I issue a monetary order in the tenant's favour in the amount of \$675.00 against the landlord(s). The landlord(s) must be served with this Order as soon as possible. Should the landlord(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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 25, 2021

Residential Tenancy Branch