



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNDCL-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 and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenants' security deposit, pursuant to section 38; and
- authorization to recover the filing fee for their application, pursuant to section 72.

The two tenants did not attend this hearing, which lasted approximately 33 minutes. The two landlords, male landlord ("landlord") and "female landlord," attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord initially claimed that the tenants were served with the landlords' application for dispute resolution hearing package about a week after September 30, 2020. The landlord then stated that the landlords' application was sent in two separate packages to each tenant on October 17, 2020, by way of registered mail to a forwarding address provided by the tenants. He said that the tenants provided a forwarding address verbally to the landlords at the move-out condition inspection on September 29, 2020, so it was recorded by the landlords on the report. The landlords provided a copy of the move-out condition inspection report.

The landlord provided two Canada Post tracking numbers verbally during the hearing. In accordance with sections 89 and 90 of the *Act*, I find that the tenants were deemed served with the landlords' application on October 22, 2020, five days after its registered mailing.

At the outset of the hearing, the landlords stated that they were calling from their car on a speakerphone because their house was undergoing renovations and they could not be inside the house. They stated that they did not have all of their evidence in front of them during the hearing because they did not have a printer to print out their paperwork.

At the outset of the hearing, I explained the hearing process to the landlords. The landlords appeared to be upset and claimed that they felt they were “on trial” when I asked them questions about service of their application to the tenants. They said that the tenants did not attend the hearing and they knew the tenants would not attend. I informed the landlords that since the tenants did not attend the hearing, they were required to provide service information regarding their application.

I notified the landlords that as the applicants in this application, they had the burden of proof, to prove their case on a balance of probabilities. I notified them that they would be required to present their evidence and confirm the information contained in their documents submitted for this hearing. I cautioned the landlords about proceeding with the hearing when they did not have all of their documents in front of them.

The landlords affirmed that they wanted to proceed with this hearing. They claimed that they made notes of their claims to present their case. They maintained that they uploaded all of their documents to the online Residential Tenancy Branch (“RTB”) website. Accordingly, I proceeded with the hearing on the basis of the landlords’ consent.

Issues to be Decided

Are the landlords entitled to a monetary order for damage to the rental unit and for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Are the landlords entitled to retain the tenants’ security deposit?

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

Background and Evidence

While I have turned my mind to the landlords’ documentary evidence and the testimony of the landlords, 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.

The landlord stated the following facts. This tenancy began on October 6, 2018 and ended on October 1, 2020. Monthly rent in the amount of \$2,400.00 was payable on the first day of each month. A security deposit of \$1,200.00 was paid by the tenants and the landlords continue to retain this deposit in full. A written tenancy agreement was signed by both parties. Move-in and move-out condition inspection reports were completed for this tenancy, but the tenants did not sign the move-out inspection report because they disagreed with it. The landlords did not receive a written forwarding address from the tenants, only a verbal address, which the landlords recorded on the move-out condition inspection report on September 29, 2020. The landlords did not have written permission to retain any amount from the tenants' security deposit. The landlords' application to retain the tenants' security deposit was filed on October 9, 2020.

The landlords seek a monetary order of \$1,393.53 plus the \$100.00 filing fee.

The landlord testified regarding the following facts. The landlords seek \$567.00 for a shattered window as per a glass doctor invoice; \$100.00 for a kitchen window lift repair; \$101.45 for a Fortis gas bill; \$501.90 to remove half a truckload of items including a dining room table, chairs, and other items left behind by the tenants; and \$123.18 to purchase two garage door remotes because they were not returned by the tenants so the doors had to be reset.

Analysis

Burden of Proof

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. To prove a loss, the landlords must satisfy the following four elements on a balance of probabilities:

- 1) Proof that the damage or loss exists;
- 2) Proof that the damage or loss occurred due to the actions or neglect of the tenants 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.

The following Residential Tenancy Branch (“RTB”) *Rules of Procedure* are applicable and state the following, in part:

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party’s agent...

...

7.17 Presentation of evidence

Each party will be given an opportunity to present evidence related to the claim. The arbitrator has the authority to determine the relevance, necessity and appropriateness of evidence...

7.18 Order of presentation

The applicant will present their case and evidence first unless the arbitrator decides otherwise, or when the respondent bears the onus of proof...

Findings

During the hearing, the landlords confirmed they were no longer pursuing their claims for \$50.00 to remove propane tanks and \$50.00 for plant damage, as they did not have receipts for these claims, and they were bearing their own costs for them. These claims are dismissed without leave to reapply.

On a balance of probabilities and for the reasons stated below, I make the following findings based on the testimony and evidence of the landlords. I dismiss the landlords’ application of \$1,393.53 without leave to reapply.

At the outset of the hearing, I informed the landlords that they had the burden of proof, on a balance of probabilities, to present their claims and evidence. I cautioned the landlords about proceeding with the hearing when they did not have all of their documents in front of them. The landlords chose to proceed with the hearing.

I find that the landlords did not properly present their evidence, as required by Rule 7.4 of the RTB *Rules of Procedure*, despite having the opportunity to do so during this hearing, as per Rules 7.17 and 7.18 of the RTB *Rules of Procedure*. This hearing lasted 33 minutes and the landlords had ample opportunity to present their application. No tenants or other parties were present during this hearing.

I find that the landlords failed to go through any of their documents that were submitted for this hearing, including invoices, receipts, condition inspection reports, photographs, and other documents. I find that the landlords failed to properly explain their claims in detail during the hearing. The landlord simply indicated the amounts being claimed. I asked the landlords repeatedly whether they had anything else to add regarding their application, and they declined to expand further.

I find that the landlords failed to show why the tenants were responsible for damages losses, the landlords failed to go through documentary proof of any amounts being claimed, and the landlords failed to explain what efforts, if any, they made to mitigate their damages and losses. I find that the landlords failed all 4 parts of the above test.

Therefore, the landlords' application for \$567.00 for a shattered window, \$100.00 for a kitchen window lift repair, \$101.45 for a Fortis gas bill, \$501.90 to remove half a truckload of items, and \$123.18 to purchase two garage door remotes, are all dismissed without leave to reapply.

As the landlords were unsuccessful in their application, I find that they are not entitled to recover the \$100.00 filing fee from the tenants.

The landlords continue to hold the tenants' security deposit of \$1,200.00. Over the period of this tenancy, no interest is payable on the deposit. In accordance with section 38 of the *Act* and Residential Tenancy Policy Guideline 17, I order the landlords to return the security deposit of \$1,200.00 to the tenants within 15 days of receiving this decision. I issue a monetary order to the tenants for \$1,200.00.

Although the tenants did not apply for the return of their security deposit, I am required to deal with its return on the landlords' application to retain the deposit, as per Residential Tenancy Policy Guideline 17.

Conclusion

The landlords' entire application is dismissed without leave to reapply.

I issue a monetary order in the tenants' favour in the amount of \$1,200.00 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 29, 2021

Residential Tenancy Branch