



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNDCL-S, FFL, MNSD-DR

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- a monetary order for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover their filing fee for this application from the tenant pursuant to section 72.

The tenants applied for:

- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38.

The landlord, G.B. attended the hearing via conference call and provided affirmed testimony. The landlord, C.B. did not attend and was unrepresented. Both named tenants attended the hearing via conference call and provided affirmed testimony. Both parties confirmed the landlords served the tenants with the notice of hearing package and the 29 submitted documentary evidence via Regular Post with a signature requirement on October 22, 2020. Both parties also confirmed the tenants served the landlords with their notice of hearing package and the 14 submitted documentary evidence via Canada Post Registered Mail on October 22, 2020. I accept the undisputed affirmed evidence of both parties and find that both parties have been sufficiently served as per sections 88 and 89 of the Act.

At the outset of the hearing, both parties were given direction regarding the presentation of evidence. Rule 7.4 of the Rules of Procedure states,

Evidence must be presented by the party who submitted it, or by the party's agent. If a party or their agent does not attend the hearing to present evidence, any written submission supplied may or may not be considered.

In this case, both parties repeatedly mentioned the submission of evidence during the hearing, but neither party specifically referenced any actual documentary evidence submitted. During the hearing Rule 7.4 was explained in detail to both parties on how to present evidence. Both parties acknowledged their understanding and again mentioned that they did have evidence submitted, but neither party specifically referenced any documentary evidence during the hearing.

Issue(s) to be Decided

Are the landlords entitled to a monetary order for damage, for money owed or compensation and recovery of the filing fee?

Are the landlords entitled to retain all or part of the security deposit?

Are the tenants entitled to return of all or part of the security deposit?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the both the tenant's claim and the landlord's cross claim and my findings around each are set out below.

Both parties confirmed that this tenancy began on May 1, 2020 on a 1 year fixed term tenancy. The monthly rent was \$1,600.00 payable on the 1st day of each month. A security deposit of \$800.00 was paid.

Both parties confirmed that the tenancy ended on October 1, 2020.

The landlords seek a monetary claim of \$2,143.70 which consists of:

\$1,243.70	Refrigerator replacement cost
\$800.00	tenants lack of 30 day notice.
\$100.00	Filing Fee

The landlord claims that the tenant vacated the rental unit leaving a refrigerator damaged beyond repair that requires replacement. The landlords stated that at the start of the tenancy, the refrigerator was new and without defect purchased just before the start of tenancy. The landlord clarified that at the end of tenancy 4 dents were found in the stainless steel refrigerator. The landlord stated that he attempted to have the dented panels replaced, but stated that 1 panel was now discontinued and the other panel was only replaceable at a cost of \$800.00. The landlord stated that the refrigerator has now been depreciated in value due to the dents. The landlord seeks the \$1,243.70 paid for the damaged refrigerator.

The landlord stated that the tenants failed to provide proper 1 months notice to end the tenancy. The landlord stated that email notice was received from the tenants on September 12, 2020 to vacate the premises on October 1, 2020. The landlord as such, requests \$800.00 for the tenants failing to provide 1 months notice.

The tenants dispute the landlords claim arguing that only 2 marks were unintentionally left on the refrigerator by the tenants.

The tenants seek return of the \$800.00 security deposit.

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 on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

I accept the undisputed affirmed evidence of both parties and find based on their direct testimony that the tenancy ended on October 1, 2020 after the tenants provided notice via email to the landlord on September 12, 2020.

I find that the landlord provided undisputed evidence that the tenants vacated the rental unit leaving a stainless steel refrigerator with 2 marks on it. In contrast the landlords claim states that the tenants left the refrigerator with 4 dents in it.

The landlord stated that the refrigerator still functions and that the damage noted is on the front panels of the refrigerator. Despite the landlords claim that the refrigerator needs to be replaced, the refrigerator remains fully operational. I find that the actual damage is "cosmetic" in nature and does not impact the function of the refrigerator.

I note that the landlord's claim is for the original purchase price of the refrigerator and that no invoice/receipts were presented.

Despite the tenants disputing the landlords claims, the tenants confirmed the damage although unintentional did occur to the stainless steel refrigerator. The tenants stated that two marks were left on the refrigerator.

Despite the landlords claims that there were 4 dents to the refrigerator, I find that as neither party presented any documentary evidence in support of their claims that I shall rely on the affirmed testimony of both parties. On this basis, I find that although contested, I prefer the evidence of the landlords over that of the tenants. In either case, damage to the refrigerator by the tenants is confirmed by both parties. The landlords have failed to provide sufficient evidence of the entire replacement cost of \$1,243.70 for the original purchase price of the refrigerator. Despite the landlord's claim that only 1 of the panels was replaceable at a cost of \$800.00 and 1 panel that was not replaceable (discontinued part), the landlords have failed to provide any supporting evidence of this monetary claim amount. As such, the landlords monetary claim is dismissed. However, the landlords have provided sufficient evidence of damage to the refrigerator which was confirmed by the tenants. I note that the replacement of appliance parts typically exceeds the viability of replacing them as opposed to replacement. In this case, I accept the landlords' evidence that the replacement of 1 front panel costs \$800.00 and on this basis, I award the landlord a nominal award for this amount for loss in value to the refrigerator. The landlords' refrigerator is still functional as the front panels are "cosmetic".

The landlords' claim for compensation of \$800.00 is for the tenants failure to provide proper 1 months notice to end the tenancy. The landlords did not provide any further details of an entitlement for compensation. As such, this portion of the landlord's claim is dismissed.

The landlord having been partially successful is entitled to recovery of the \$100.00 filing fee. I authorize the landlord to retain the \$800.00 security deposit in partial satisfaction of this claim.

Conclusion

The landlords are granted a monetary order for \$100.00.

This order must be served upon the tenants. Should the tenants fail to comply with this order, the 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: February 08, 2021

Residential Tenancy Branch